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Title 36. Local Government
(Chapters 1—59)

Including Acts of the 2025 Session of the General Assembly of Georgia
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and the Georgia Appeals Reports

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 4th day of June, in the year of our Lord Two Thousand and Twenty-Five and of the Independence of the United States of America the Two Hundred and Forty-Ninth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

(Pub. 41805)

Preface

This volume, along with the 2025 edition of Volume 27A, cumulate and replace the 2019 edition of Volume 27 of the Official Code of Georgia Annotated, as supplemented by the 2024 Cumulative Supplement. The 2019 Volume 27 and its 2024 Supplement may be recycled or, if so desired, may be retained for historical purposes.

This volume contains all laws specifically codified in Titles 35 and 36 (Chapters 1 through 59) by the General Assembly through the 2025 Regular Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2023, 2024, and 2025 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2023 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Georgia Emergency Telephone Number 9-1-1 Service Act of 1977, § 46-5-120 et seq.

Law reviews.

For article, "Restoring Public Confidence in the Criminal Justice System: Policing Prosecutions When Prosecutors Prosecute Police," see 67 Emory L.J. 853 (2018).

For article, "Dead Canaries in the Coal Mines: The Symbolic Assailant Revisited," see 34 Ga. St. U. L. Rev. 513 (2018).

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ALR.

When Good Faith or Reasonableness Is Necessary for Defense of Qualified Immunity in Action for Damages Against Law Enforcement Official Under 42 U.S.C.A. § 1983 for Violation of Right to Privacy Under Fourth Amendment, 51 A.L.R. Fed. 3d 1.

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Am. Jur. Trials.
Police Misconduct Litigation — Plaintiff's Remedies, 15 Am. Jur. Trials 555.

Police Misconduct Litigation, 35 Am. Jur. Trials 505.

Defense of a Police Misconduct Suit, 38 Am. Jur. Trials 493.

Obtaining Damages in Federal Court for State and Local Police Misconduct, 62 Am. Jur. Trials 547.

ALR.

Whether Sexual Misconduct Falls Within Scope of Police Officer's Employment to Support Theory of Vicarious Liability Under State Law, 70 A.LR.7th 4.

35-1-1. Definitions.

As used in this title, the term:

(1) "Board" means the Board of Public Safety.

(2) "Commissioner" means the commissioner of public safety.

(3) "Department" means the Department of Public Safety.

35-1-2. Examination of sexual assault victims; reports.

(a) As used in this Code section, the term:

(1) "Division" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(2) "Medical examination" means an examination pursuant to subsection (c) of Code Section 16-6-1 or subsection (c) of Code Section 16-6-2.

(b) When a forensic medical examination is performed, evidence is collected, and the alleged victim has requested that law enforcement officials be notified, the individual performing such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence and provide a summary of all rights guaranteed to the alleged victim pursuant to the Crime Victims' Bill of Rights established pursuant to Code Section 17-17-1, et seq., as provided by the Criminal Justice Coordinating Council. At the time of the examination, no alleged victim shall be required to assign or waive any rights afforded to him or her in the Crime Victims' Bill of Rights or that might prevent the alleged victim from seeking relief from the Crime Victims Compensation Board. Law enforcement officials shall take possession of such evidence no later than 96 hours of being notified.

(c) It shall be the duty of every law enforcement officer who takes possession of the evidence as provided in subsection (b) of this Code section to ensure that such evidence is submitted to the division within 30 days of it being collected, in accordance with the procedures established by the division.

(d) When a forensic medical examination was performed before July 1, 2016, evidence was collected, and the alleged victim requested that

law enforcement officials be notified, the individual who performed such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence on or before July 15, 2016, and law enforcement officials shall take possession of such evidence on or before July 31, 2016. It shall be the duty of every law enforcement officer who takes possession of the evidence as provided in this Code section to ensure that such evidence is submitted to the division by August 31, 2016, in accordance with the procedures established by the division.

(e) It shall be the duty of every law enforcement agency to create a list of evidence resulting from a forensic medical examination that is in such agency's possession on August 1, 2016, identifying such evidence as needing to be tested and submitting such listing of information to the division by August 15, 2016.

(f) A failure to comply with the provisions of this Code section shall not affect the admissibility of evidence collected from a forensic medical examination.

(g) Beginning December 1, 2016, the division shall issue an annual report detailing the number of cases for which it has tested evidence pursuant to this Code section and the number of cases that are awaiting testing. Such report shall be provided to the executive counsel of the Governor, the Speaker of the House of Representatives, the Lieutenant Governor, the members of the House Committee on Judiciary, Non-civil, the members of the Senate Judiciary Committee, the House Committee on Health and Human Services, and the Senate Health and Human Services Committee and posted online at the Georgia Bureau of Investigation's website.

History.

Code 1981, § 35-1-2, enacted by Ga. L. 2016, p. 145, § 2/SB 304; Ga. L. 2017, p. 774, § 35/HB 323.

Cross references.

Sexual assault protocol, § 24-15-1 et seq.

Sexual offense, § 16-6-1 et seq.

Editor's notes.

Former Code Section 35-1-2, pertaining to passenger motor vehicle for warden of Georgia State Prison, was repealed by Ga. L. 2007, p. 114, § 1, effective July 1, 2007. The former Code section was based on Ga. L. 1937, p. 322, art. 2, § 13; Ga. L. 1952, p. 3, § 1.

Ga. L. 2016, p. 145, § 1/SB 304, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Compassionate Care for Victims of Sexual Assault Act.'"

35-1-3. Subsistence allowance for law enforcement officers.

(a) The governing authorities of the several counties, municipal corporations, and other political subdivisions of this state are authorized to designate and set apart a portion of the compensation, whether payable on a salary or fee basis, to sheriffs, deputy sheriffs, patrolmen, policemen, and other law enforcement officers, as a subsistence allow-

ance, which allowance shall not exceed $5.00 for each day actually spent by such sheriff or other law enforcement officer in the performance of his duties.

(b) Nothing in this Code section shall affect any pension system which was being operated by any county, municipal corporation, or political subdivision of this state on March 9, 1956, nor shall this Code section affect any rights of any person under any pension system which was being operated by any county, municipal corporation, or political subdivision on March 9, 1956.

History.
Ga. L. 1956, p. 741, §§ 1, 3.
Editor's notes.
By a 1963 resolution (Ga. L. 1963, p. 316), the General Assembly ratified an executive order of the Governor dated March 9, 1962, which suspended until the convening of the 1963 Session of the General Assembly any income taxes due the state attributable to the inclusion in gross income of amounts received as subsistence allowances in accordance with this Code section.

35-1-4. Requirements for reporting stolen motor vehicles and license plates; notice to owner upon recovery; rules and regulations; failure of law enforcement officer to report; effect on Georgia Crime Information Center.

(a) As used in this Code section, the term:

(1) "Recovering agency" means the law enforcement agency which recovers a motor vehicle which has previously been reported stolen.

(2) "Reporting agency" means the law enforcement agency which receives a report that a motor vehicle has been stolen or lost and which reports such theft or loss to the Georgia Crime Information Center.

(b) It shall be the duty of every law enforcement officer who receives a report based on reliable information that any motor vehicle has been stolen or that the license plate for such vehicle has been stolen or lost to report the theft or loss to the Georgia Crime Information Center immediately after receiving such information, unless prior thereto information has been received of the recovery of the vehicle or plate. It shall be the duty of any person who reports the theft of a motor vehicle to provide the law enforcement agency to which the report of theft was made and the Georgia Crime Information Center with a means of contacting the owner of the stolen motor vehicle or the successor in interest to such owner in the event of the recovery of the motor vehicle. Any law enforcement officer, upon receiving information of the recovery of any motor vehicle or license plate which has previously been reported as stolen or lost, shall immediately report the recovery of the motor vehicle or plate directly to the Georgia Crime Information Center. It

shall be the duty of the reporting law enforcement agency, the agency to which the vehicle was first reported stolen, to notify the owner or the successor in interest to the owner within 72 hours when a previously reported stolen motor vehicle has been recovered, or within 72 hours after the reporting agency has received notification of recovery if recovery is by another agency. The owner or successor in interest shall not be charged or otherwise incur any storage fee on the recovered stolen motor vehicle until the expiration of at least 24 hours immediately following such notification to the owner or the successor in interest. In the event the reporting agency is different from the recovering agency, the recovering agency shall contact the reporting agency and provide all information required by the guidelines established by the Georgia Crime Information Center and any other relevant information. In all cases, it shall remain the responsibility of the reporting agency to notify the owner or the successor in interest to the owner. This requirement shall be included in the rules and regulations of the board promulgated pursuant to subsection (c) of this Code section. If, after a reasonable attempt, the reporting law enforcement agency is unable to contact the owner or the successor in interest to the owner, a record of such fact shall be made and filed with the incident reports and posted in the record required to be maintained by Code Section 17-5-50.

(c) The board is authorized and directed to promulgate rules and regulations pertaining to the submission of the reports provided for in subsection (b) of this Code section. Such rules and regulations shall include time limits for the submission of the reports and the forms upon which the reports shall be submitted.

(d) The intentional failure of any law enforcement officer to submit reports as prescribed in subsection (b) of this Code section or the failure to do so through wanton neglect shall constitute cause for removal from office, if the officer is elected, or shall be grounds for dismissal if the officer is a nonelected employee.

(e) The provisions of this Code section shall not be construed to affect the responsibilities of the Georgia Crime Information Center as provided by paragraph (14) of subsection (a) of Code Section 35-3-33.

History.

Ga. L. 1966, p. 733, §§ 2-4; Ga. L. 1984, p. 632, §§ 1, 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1991, p. 723, § 1; Ga. L. 1993, p. 91, § 35; Ga. L. 1993, p. 762, § 1; Ga. L. 2012, p. 775, § 35/HB 942.

Cross references.

Further provisions regarding duty of peace officer to report theft of motor vehicle, § 40-3-5.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "that a motor vehicle" was substituted for "that motor vehicle" in paragraph (a)(2) and "subsection (c)" was substituted for "subsection (b)" in the next-to-last sentence in subsection (b).

Pursuant to Code Section 28-9-5, in 2019, "submission" was substituted for "submissions" in the first sentence of subsection (c).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 169, 173, 177, 188 et seq.
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1 C.J.S., Abortion, § 29. 3 C.J.S., Aliens, § 21. 3 C.J.S., Aliens, § 1631. 4 C.J.S., Appeal and Error, § 44. 14 C.J.S., Citizens, §§ 6 et seq., 34. 14A C.J.S., Civil Rights, §§ 260, 421. 16 C.J.S., Constitutional Law, § 146. 16A C.J.S., Constitutional Law, § 725 et seq. 16B C.J.S., Constitutional Law, §§ 1204, 1418. 16C C.J.S., Constitutional Law, §§ 1607, 1832. 18 C.J.S., Convicts, § 8 et seq. 23A C.J.S., Criminal Procedure, § 1534. 25 C.J.S., Damages, § 237 et seq. 29 C.J.S., Elections, § 14. 35A C.J.S., Federal Civil Procedure, § 117 et seq. 36 C.J.S., Federal Courts, § 99 et seq. 48A C.J.S., Judges, § 30 et seq. 53 C.J.S., Licenses, § 45. 59A C.J.S., Mortgages, § 1265. 64 C.J.S., Municipal Corporations, § 1202. 64A C.J.S., Municipal Corporations, § 2143 et seq. 77 C.J.S., Right to Die, §§ 2 et seq., 36. 79 C.J.S., Searches and Seizures, §§ 161, 298. 80 C.J.S., Sheriffs and Constables, §§ 111, 137, 208. 81 C.J.S., Social Security and Public Welfare, §§ 292, 342. 83 C.J.S., Sunday, § 9. 85 C.J.S., Taxation, § 2072 et seq. 91 C.J.S., United States, §§ 16 et seq, 44 et seq. 91 C.J.S., Vagrancy and Related Offenses, § 17 et seq. 94 C.J.S., Weapons, § 9 101A C.J.S., Zoning and Land Planning, § 215.

35-1-5. Unauthorized use of wavelength of radio system adopted by department or Georgia Bureau of Investigation.

(a) It shall be a misdemeanor for any person, firm, or corporation to use the same wavelength of the radio system adopted by the department without the prior written authorization of the commissioner or to do any act interfering with the proper receipt or transmission of information relating to the department or any division thereof.

(b) It shall be a misdemeanor for any person, firm, or corporation to use the same wavelength of the radio system adopted by the Georgia Bureau of Investigation without the prior written authorization of the director or to do any act interfering with the proper receipt or transmission of information relating to the Georgia Bureau of Investigation.

History.
Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1960, p. 995, § 1.

Cross references.
Protection of public property generally, §§ 50-16-4, 50-16-14 et seq.

35-1-6. Appointment of nonuniformed investigators; salaries; status; assignment; powers.

(a) The commissioner is authorized to appoint five nonuniformed investigators who shall be certified peace officers pursuant to Chapter 8 of this title, the "Georgia Peace Officer Standards and Training Act." The commissioner shall determine the salaries of such investigators. The investigators shall be in the unclassified service as defined by Code Section 45-20-2 and therefore shall not be governed by any rules of

position, classification, appointment, promotion, demotion, transfer, dismissal, qualification, compensation, seniority privileges, tenure, or other such matters concerning their employment as may now or hereafter be established by the State Personnel Board or any successor boards or agencies. The investigators shall be assigned to the Internal Affairs Section of the Department of Public Safety in the office of the commissioner at the department's headquarters complex.

(b) The investigators shall have full arrest powers in cases involving internal affairs and in such cases shall be authorized:

(1) To investigate crimes committed anywhere in the state;

(2) To arrest any person violating the criminal laws of this state;

(3) To serve and execute warrants after notifying the law enforcement agency of the local jurisdiction of the intent to serve such warrant or warrants;

(4) To enforce in general the criminal laws of this state; and

(5) To carry firearms while performing their duties.

History.
Ga. L. 1981, p. 1450, § 2; Ga. L. 1992, p. 3131, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-46/HB 642.

Cross references.
Offenses involving illegal aliens, § 16-11-200 et seq.

Determination of immigration status of suspects, § 17-5-100.

Protection of public property generally, §§ 50-16-4, 50-16-14 et seq.

Secure and verifiable identity document, § 50-36-2.

Immigration enforcement review board, § 50-36-3.

Editor's notes.
Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d.
16A Am. Jur. 2d, Constitutional Law, § 219. 25 Am. Jur. 2d, Elections, § 99 et seq. 26 Am. Jur. 2d, Elections, § 226.

C.J.S.
29 C.J.S., Elections, § 15. 91 C.J.S., United States, § 45.

35-1-7. Liability of law enforcement officers performing duties at the scene of an emergency.

(a) As used in this Code section, the term:

(1) "Emergency" means an occurrence involving, or appearing to

involve, a clear and imminent danger or threat to life, health, or property, including, but not limited to, the rescuing of a person or pet from a locked vehicle when such person or pet remaining within such vehicle presents a clear and imminent danger to such person's or pet's life or health.

(2) "Law enforcement officer" means any peace officer who is employed by this state or any political subdivision thereof and who is required by the terms of his or her employment, whether by election or appointment, to give his or her full time to the preservation of public order or the protection of life and property or the prevention of crime. Such term shall include sheriffs and deputy sheriffs.

(3) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(b) A law enforcement officer shall not be liable at law for any action or actions done while performing any duty at the scene of an emergency except for gross negligence, willful or wanton misconduct, or malfeasance.

History.
Code 1933, § 3-1004.3, enacted by Ga. L. 1981, p. 655, § 1; Ga. L. 2019, p. 292, § 1/SB 31.

Cross references.
Immunity of state and political subdivisions and employees, agents, and representatives thereof for injury or damage arising from emergency management activities, § 38-3-35.

Liability of persons rendering emergency care, § 51-1-29.

Liability of members of fire departments for acts performed while fighting fires or performed at scenes of emergencies, § 51-1-30.

Immunity for operators of external defibrillators, § 51-1-29.3.

Limitation on health care liability claims for gross negligence in emergency medical care, § 51-1-29.5.

Law reviews.
For survey article citing developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For comment, "Good Samaritan Laws — Legal Disarray: An Update," see 38 Mercer L. Rev. 1439 (1987).

For article, "Georgia's Public Duty Doctrine: The Supreme Court Held Hostage," see 51 Mercer L. Rev. 73 (1999).

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Officers and Public Employees, § 315 et seq.

ALR.
Construction and application of "Good Samaritan" statutes, 68 A.L.R.4th 294.

35-1-8. Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons.

(a) It shall be the duty of every law enforcement agency to:

(1) Acquire, collect, classify, and preserve any information which

would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(2) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the agency shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(3) Exchange such records and information as provided in paragraphs (1) and (2) of this subsection with other law enforcement agencies of this state, any other state, or the United States. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies; and

(4) Report any case of an unusual illness, health condition, or death, or an unusual cluster of such events, or any other suspicious health related event to the Department of Public Health and the appropriate county board of health.

(b)(1) As used in this subsection, the term "facility" means a facility pursuant to Chapter 3, 4, or 7 of Title 37, relating to treatment of mentally ill, developmentally disabled, and alcoholic or drug dependent persons, or an institution classified as a nursing home pursuant to Code Section 31-7-1.

(2) A person hospitalized or resident in a facility shall be considered to be a missing person at the time such person's unaccounted for absence from that facility is reported by that facility, either by telephone or in writing, to a law enforcement agency.

(c) Any law enforcement agency which receives a report that a person who has Alzheimer's disease or other mental illness involving dementia is missing shall immediately open an investigation for the purpose of determining such person's whereabouts; and no policy for applying any waiting period prior to initiation of a missing persons investigation shall apply in the case of a person who has Alzheimer's disease or other mental illnesses involving dementia.

History.

Code 1981, § 35-1-8, enacted by Ga. L. 1984, p. 690, § 1; Ga. L. 1985, p. 1128, § 1; Ga. L. 1992, p. 6, § 35; Ga. L. 1997, p. 1504, § 1; Ga. L. 2002, p. 1386, § 10; Ga. L. 2009, p. 453, §§ 1-4, 3-5/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2025, p. 1029, § 35(1)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in this subsection, the term" for "For

purposes of this subsection," in paragraph (b)(1).

Cross references.

Delivery to board of certain unclaimed bodies, § 31-21-21 et seq.

Prohibition on minimum waiting periods for initiating missing person report, § 35-1-18.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, "subsection" was substituted for "Code section" in paragraph (a)(3) and "Chapter" was substituted for "Chapters" in paragraph (b)(1).

Pursuant to Code Section 28-9-5, in 2002, subsection (d) as enacted by Ga. L. 2002, p. 1386, § 10 was redesignated as paragraph (a)(4), "and" was deleted from the end of paragraph (a)(2) and "; and" was substituted for a period at the end of (a)(3).

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 1 (2002).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

35-1-9. Utilization of alarm verification required by alarm monitoring company.

(a) As used in this Code section, the term:

(1) "Alarm monitoring company" means any person, company, corporation, partnership, business, or a representative or agency thereof authorized to provide alarm monitoring services for burglar alarm systems, fire alarm systems, or other similar electronic security systems whether such systems are maintained on commercial business property, public property, or individual residential property.

(2) "Alarm verification" means a reasonable attempt by an alarm monitoring company to contact the alarm site or alarm user, by telephone or other electronic means, to determine whether a burglar alarm signal is valid prior to requesting law enforcement to be dispatched to the location and, where the initial attempted contact cannot be made, a second reasonable attempt to make such contact utilizing a different telephone number or electronic address or number.

(b) Except as provided in subsection (c) of this Code section, an alarm monitoring company shall utilize a system providing for alarm verification of all alarm signals.

(c) Alarm verification shall not be required in the case of a fire alarm or a panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified to be true by video or audible means.

History.

Code 1981, § 35-1-9, enacted by Ga. L. 2013, p. 750, § 1/HB 59.

Editor's notes.

This Code section formerly pertained to the prohibition of inspecting or copying records of law enforcement agency for commercial solicitation and was based on Ga. L. 1999, p. 1868, § 1. The former Code section was repealed by Ga. L. 1999, p. 809, § 2, effective July 1, 1999.

35-1-10. Development of training materials for family violence incidents and sexual offenses.

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in:

(1) Methods for identifying, combating, and reporting family violence incidents; and

(2) Methods for identifying and reporting sexual offenses and assisting victims of sexual offenses.

(b) The guidelines and procedures listed in subsection (a) of this Code section shall be for use by law enforcement training centers monitored by the Georgia Peace Officer Standards and Training Council and monitored and funded by the Georgia Public Safety Training Center in all courses for which they have responsibility and oversight.

History.
Code 1981, § 35-1-10, enacted by Ga. L. 1992, p. 2939, § 2; Ga. L. 1993, p. 91, § 35; Ga. L. 1997, p. 1488, § 1; Ga. L. 2004, p. 986, § 1.

35-1-11. Traffic control assistance; required training.

An elected sheriff or police chief of a local law enforcement agency or fire chief of a local fire department, with the approval of the local governing authority, shall be authorized to designate, equip, and train nonsworn law enforcement employees and firefighters and volunteers to assist in traffic control, provided that such individuals have successfully completed at least one hour of a traffic control training program approved by the Georgia Peace Officer Standards and Training Council. With the approval of the sheriff or police chief of a local law enforcement agency or fire chief of a local fire department, such individuals shall be authorized to direct and regulate the flow of traffic. Any such individual who is not certified pursuant to the requirements of Chapter 8 of this title shall not have the power of arrest provided to peace officers.

History.
Code 1981, § 35-1-11, enacted by Ga. L. 1999, p. 654, § 1; Ga. L. 2019, p. 302, § 2-2/HB 459.

Cross references.
Obedience to authorized persons directing traffic, § 40-6-2.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1999, Code Section 35-1-11 as enacted by Ga. L. 1999, p. 777, § 1, was redesignated as Code Section 35-1-12.

35-1-12. Chief of police or law enforcement head; exception.

Any county, municipality, or other public subdivision of this state which has a law enforcement agency shall declare a chief of police or a law

enforcement head for such law enforcement agency who is required to be a certified peace officer pursuant to the provisions of Chapter 8 of this title, known as the "Georgia Peace Officer Standards and Training Act." The provisions of this Code section shall not apply to sheriffs.

History.
Code 1981, § 35-1-12, enacted by Ga. L. 1999, p. 777, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1999, Code Section 35-1-11 as enacted by Ga. L. 1999, p. 777, § 1, was redesignated as Code Section 35-1-12.

35-1-13. Completion and transmission of reports from victims of identity fraud.

Notwithstanding any other provision of law, any law enforcement agency that receives a report from a resident of this state that such person has been the victim of identity fraud shall prepare an incident report and transmit the same to the Georgia Bureau of Investigation identity fraud repository, as provided in Code Section 16-9-123, notwithstanding the fact that such person's identity may have been used solely to commit one or more criminal offenses beyond the jurisdiction of this state. Copies of such incident reports shall be referred from the office of the Attorney General to the Georgia Crime Information Center as provided in Chapter 3 of this title and to any jurisdiction in which such identity has been used.

History.
Code 1981, § 35-1-13, enacted by Ga. L. 2002, p. 551, § 4; Ga. L. 2015, p. 1088, § 25/SB 148.
Cross references.
Identity fraud, § 16-9-120 et seq.
Fraudulent driver's license or identification card, § 40-5-125.
Law reviews.
For note on the 2002 enactment of this Code section, see 19 Ga. St. U. L. Rev. 81 (2002).
For article, "The Growing Threat of Identity Theft and Its Implications for Employers," see 11 Ga. St. B. J. 27 (2006).

35-1-14. Written policies for emergency pursuits.

On and after January 1, 2004, each state, county, and local law enforcement agency that conducts emergency response and vehicular pursuits shall adopt written policies that set forth the manner in which these operations shall be conducted. Each law enforcement agency may create its own such policies or adopt an existing model. All pursuit policies created or adopted by any law enforcement agency must address situations in which police pursuits cross over into other jurisdictions. Law enforcement agencies which do not comply with the requirements of this Code section are subject to the withholding of any state funding or state administered federal funding.

History.
Code 1981, § 35-1-14, enacted by Ga. L. 2003, p. 911, § 1; Ga. L. 2006, p. 72, § 35/SB 465.

Cross references.

Operation of ambulances and ambulance services generally, § 31-11-1 et seq.

Authorized emergency vehicles, § 40-6-6.

Yielding of right of way to authorized emergency vehicles, § 40-6-74.

Duty of pedestrians to yield right of way to authorized emergency vehicles, § 40-6-99.

Equipment of law enforcement and emergency vehicles, § 40-8-90 et seq.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Negligent Vehicular Police Chase, 41 POF2d 79.

35-1-15. Fresh pursuit by law enforcement officers of neighboring state; authority and responsibilities of officers; applicability.

(a) As used in this Code section, the term:

(1) "Fresh pursuit" means pursuit by a law enforcement officer of a person who is in immediate and continuous flight from the commission of a criminal offense.

(2) "Law enforcement officer" means a person employed or appointed by a state or political subdivision who is granted, by state law, the authority to enforce criminal, traffic, or penal laws of his or her respective state and who possesses the power to effect arrests.

(b) A law enforcement officer from Alabama, Florida, North Carolina, South Carolina, or Tennessee who enters this state in fresh pursuit of a person shall have the same authority to arrest and hold in custody such person within this state as that of a law enforcement officer of this state; provided, however, that the authority granted by this Code section shall be limited to criminal offenses of the pursuing state that also are criminal offenses under the laws of this state and that are punishable by death or imprisonment in excess of one year under the laws of the pursuing state.

(c)(1) When an arrest is made in this state by a law enforcement officer of another state pursuant to this Code section, the law enforcement officer shall, without unnecessary delay, take the person arrested before a judicial officer of this state.

(2) The judicial officer shall conduct a hearing for the limited purpose of determining whether such arrest meets the requirements of this Code section unless the person arrested executes a written waiver of his or her right to a hearing under this Code section. If the judicial officer determines that such arrest was unlawful, he or she shall discharge such person arrested. If the judicial officer determines that such arrest was lawful, he or she shall commit such person

arrested to imprisonment as provided in Code Section 17-13-35. Once such person is imprisoned pursuant to this Code section, the provisions of Chapter 13 of Title 17 shall govern the extradition and return of such person to the state in which the criminal offense was committed.

(d) This Code section shall apply only to a law enforcement officer from Alabama, Florida, North Carolina, South Carolina, or Tennessee where the state in which the law enforcement officer is employed or appointed has enacted a provision similar to this Code section relating to the arrest and custody of a person pursued into a neighboring state.

History.
Code 1981, § 35-1-15, enacted by Ga. L. 2008, p. 157, § 1/HB 983; Ga. L. 2009, p. 8, § 35/SB 46.

35-1-16. Development of training materials for incidents of labor or sex trafficking.

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in:

(1) Methods for identifying, combating, and reporting incidents where a person has been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46;

(2) Methods for providing proper detention facilities or alternatives to detention facilities for persons who have been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46, including providing information on therapeutic facilities for such persons; and

(3) Methods for assisting persons who have been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46, including providing information on social service organizations available to assist such person.

(b) The guidelines and procedures listed in subsection (a) of this Code section shall be for use by law enforcement training centers monitored by the Georgia Peace Officer Standards and Training Council and monitored and funded by the Georgia Public Safety Training Center in all courses for which they have responsibility and oversight.

History.
Code 1981, § 35-1-16, enacted by Ga. L. 2011, p. 217, § 8/HB 200.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2011, Code Section 35-1-16, as enacted by Ga. L. 2011, p. 794, § 9/HB 87, was redesignated as Code Section 35-1-17.
Law reviews.
For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 131 (2011).

35-1-17. State and local law enforcement actions relating to immigration laws; authority; immunity; penalty.

(a) **Legislative intent.** It is the intent of the General Assembly to promote compliance with state law related to deterring the presence of criminal illegal aliens and require Georgia law enforcement officials to work in conjunction with federal immigration authorities and to utilize all resources made available by the federal government to assist state and local law enforcement officers in the enforcement of the laws of this state and of the United States.

(b) **Cooperation with federal authorities.**

(1) To the extent authorized by federal law, state and local government employees, including law enforcement officers and prosecuting attorneys, shall send, receive, and maintain information relating to the immigration status of any individual as reasonably needed for public safety purposes. Except as provided by federal law, such employees shall not be prohibited from receiving or maintaining information relating to the immigration status of any individual or sending or exchanging such information with other federal, state, or local governmental entities or employees for official public safety purposes;

(2) State and local agencies shall promote compliance with state law related to deterring the presence of criminal illegal aliens and shall be authorized to enter into memorandums of understanding and memorandums of agreement with the United States Department of Justice, the Department of Homeland Security, or any other federal agency for the purpose of enforcing federal immigration laws, including 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 or a similar federal program. A local agency shall seek such memorandums of understanding annually when no current memorandum of agreement is in effect;

(3) Except as provided by federal law, no state or local agency or department shall be prohibited from utilizing available federal resources, including data bases, equipment, grant funds, training, or participation in incentive programs for any public safety purpose related to the enforcement of state and federal immigration laws; and

(4) When reasonably possible, applicable state agencies shall consider incentive programs and grant funding for the purpose of assisting and encouraging state and local agencies and departments to enter into agreements with federal entities and to utilize federal resources consistent with the provisions of this Code section.

(c) **Authority to transport illegal aliens.** If a state or local law enforcement officer has verification that a person is an illegal alien,

then such officer shall be authorized to securely transport such illegal alien to a federal facility in this state or to any other temporary point of detention and to reasonably detain such illegal alien when authorized by a federal immigration detainer or federal arrest warrant. Nothing in this Code section shall be construed to hinder or prevent a peace officer or law enforcement agency from arresting or detaining any criminal suspect on other criminal charges.

(d) **Authority to arrest illegal aliens.** When authorized by federal law, a state or local law enforcement officer shall be authorized to arrest any person based on such person's status as an illegal alien or for a violation of any federal immigration law.

(e) **Immunity.** A law enforcement officer or government official or employee, acting in good faith to enforce immigration laws pursuant to a memorandum or an agreement with federal authorities to collect or share immigration status information, or to carry out any provision of this Code section, shall have immunity from damages or liability from such actions.

(f) **Penalty.** A local governing body of a law enforcement agency that violates this Code section shall be subject to the withholding of state funding or state administered federal funding other than funds for the purposes of providing those services specified in subsection (d) of Code Section 50-36-1. As a condition of funding to a local governing body, the Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies shall require certification pursuant to Code Section 50-36-4 as proof of compliance with this Code section. No county commission shall be subject to the withholding of state or federal funding pursuant to this subsection when a sheriff or his or her employee violates this Code section.

History.

Code 1981, § 35-1-17, enacted by Ga. L. 2011, p. 794, § 9/HB 87; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2020, p. 493, § 35/SB 429; Ga. L. 2024, p. 491, § 5/HB 1105, effective May 1, 2024.

Amendments.

The 2024 amendment, effective May 1, 2024, in subsection (a), substituted "promote compliance with state law related to deterring the presence of criminal illegal aliens and require" for "encourage" and deleted "immigration" preceding "laws" near the end; in paragraph (b)(1), deleted "be authorized to" following "shall" in the first sentence, and substituted a semicolon for a period at the end; substituted the current provisions of paragraph (b)(2) for the former provisions, which read: "State and local agencies shall be authorized to enter into memorandums of understanding and agreements with the United States Department of Justice, the Department of Homeland Security, or any other federal agency for the purpose of enforcing federal immigration and customs laws and the detention, removal, and investigation of illegal aliens and the immigration status of any person in this state. A peace officer acting within the scope of his or her authority under any such memorandum of understanding, agreement, or other authorization from the federal government shall have the power to arrest, with probable cause, any person suspected of being an illegal

alien."; substituted "; and" for a period at the end of paragraph (b)(3); substituted "a federal immigration detainer or federal arrest warrant" for "federal law" at the end of the first sentence in subsection (c); inserted "a memorandum or" near the middle of subsection (e); and added subsection (f).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2011, Code Section 35-1-16, as enacted by Ga. L. 2011, p. 794, § 9/HB 87, was redesignated as Code Section 35-1-17.

Editor's notes.

Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the enactment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Ga. L. 2024, p. 491, § 1/HB 1105, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Criminal Alien Track and Report Act of 2024.'"

Law reviews.

For comment, "Immigration Detention Reform: No Band Aid Desired," see 60 Emory L. J. 1211 (2011).

For article on the 2011 enactment of this Code section, see 28 Ga. St. U.L. Rev. 35 (2011).

For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U.L. Rev. 51 (2011).

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 71 (2024).

35-1-18. Prohibition on minimum waiting periods for initiating missing person report.

No law enforcement agency shall implement a policy or practice which mandates a minimum waiting period before initiating a missing person report with such agency; provided, however, that it shall remain within the discretion of the law enforcement agency to determine what action, if any, is required in response to such a report.

History.

Code 1981, § 35-1-18, enacted by Ga. L. 2014, p. 704, § 2/SB 23.

Cross references.

Kidnapping, § 16-5-40.

Immediate investigation for missing person with Alzheimer's disease, § 35-1-8.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2014, Code Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

Editor's notes.

Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

Ga. L. 2014, p. 704, § 5/SB 23, approved by the Governor on April 24, 2014, provided that the effective date of this Code section is July 1, 2013. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

35-1-19. Disclosure of arrest booking photographs prohibited.

(a) As used in this Code section, the term "booking photograph"

means a photograph or image of an individual taken by an arresting law enforcement agency for the purpose of identification or taken when such individual was processed into a jail.

(b) Except as provided in Code Section 50-18-77 and booking photographs required for publication as set forth in Titles 16 and 40, for the state sexual offender registry, and for use by law enforcement agencies for administrative purposes, an arresting law enforcement agency or agent thereof shall not post booking photographs to or on a website.

(c) An arresting law enforcement agency shall not provide or make available a copy of a booking photograph in any format to a person requesting such photograph if:

(1) Such booking photograph may be placed in a publication or posted to a website or transferred to a person to be placed in a publication or posted to a website; and

(2) Removal or deletion of such booking photograph from such publication or website requires the payment of a fee or other consideration.

(d) When a person requests a booking photograph, he or she shall submit a statement affirming that the use of such photograph is in compliance with subsection (c) of this Code section. Any person who knowingly makes a false statement in requesting a booking photograph shall be guilty of a violation of Code Section 16-10-20.

History.

Code 1981, § 35-1-19, enacted by Ga. L. 2014, p. 742, § 1/HB 845; Ga. L. 2025, p. 1029, § 35(2)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "state sexual offender registry," for "State Sexual Offender Registry," in subsection (b).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2014, Code Section 35-1-18, as enacted by Ga. L. 2014, p. 742, § 1/HB 845, was redesignated as Code Section 35-1-19.

35-1-20. Retention of weapons by officers upon retirement or disability in the line of duty.

(a) As used in this Code section, the term:

(1) "Honorable conditions" means conditions of having satisfied, met, or exceeded the conduct and performance standards established by the state entity for sworn police officers.

(2) "State entity" means any state department, agency, board, bureau, office, commission, public corporation, system, or authority.

(b) The governing authority of each municipality and county in this

state and each board of education which employs sworn police officers who are certified by the Georgia Peace Officer Standards and Training Council may adopt policies under which such sworn police officers, upon their retirement from employment by such municipality, county, or board of education or upon leaving such employment as a result of a disability arising in the line of duty, shall be entitled, as part of their compensation, to retain their weapon and badge.

(c) Except where otherwise provided for by law for a state entity, each state entity which employs sworn police officers who are certified by the Georgia Peace Officer Standards and Training Council shall adopt rules, regulations, or policies under which such sworn police officers, upon their retirement from employment by such state entity or upon leaving such employment as a result of a disability arising in the line of duty, shall be entitled, as part of their compensation, to retain their weapon and badge; provided, however, that such sworn police officers retire or leave under honorable conditions.

History.
Code 1981, § 35-1-20, enacted by Ga. L. 2016, p. 823, § 1/SB 263; Ga. L. 2017, p. 24, § 2/SB 18.

35-1-21. Development of training materials for use in identifying, reporting, and combating domestic terrorism.

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in methods for:

(1) Identifying and reporting activity that may lead to domestic terrorism;

(2) Combating domestic terrorism; and

(3) Individuals, law enforcement officials, and personnel within state agencies and departments and local governments to provide information to the Georgia Information Sharing and Analysis Center to report activity that may lead to domestic terrorism.

(b) The guidelines and procedures listed in subsection (a) of this Code section shall be for use by law enforcement training centers monitored by the Georgia Peace Officer Standards and Training Council and monitored and funded by the Georgia Public Safety Training Center in all courses for which they have responsibility and oversight.

History.
Code 1981, § 35-1-21, enacted by Ga. L. 2017, p. 536, § 5-1/HB 452.

Editor's notes.
Ga. L. 2017, p. 536, § 1-1/HB 452, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Protect Georgia Act.'"

Law reviews.
For article on the 2017 enactment of

this Code section, see 34 Ga. St. U. L. Rev. 17 (2017).

35-1-22. Collection, storage, sharing, and destruction of captured license plate data for law enforcement purposes; penalty.

(a) As used in this Code section, the term:

(1) "Automated license plate recognition system" means one or more high-speed cameras combined with computer algorithms used to convert images of license plates into computer readable data.

(2) "Captured license plate data" means the global positioning device coordinates, date and time, photograph, license plate number, and any other data captured by or derived from an automated license plate recognition system or any other source.

(3) "Law enforcement agency" means the department, the Department of Transportation, and any other state, federal, local, public transit, school, college, or university agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, toll violation, regulatory, game, or controlled substance laws.

(4) "Law enforcement purpose" means the investigation of an offense or activity initiated by a law enforcement agency.

(5) "Person" means an individual, corporation, company, partnership, firm, association, joint venture, or any other unincorporated association or group.

(b) Law enforcement agencies may collect captured license plate data. Such data shall be stored immediately upon collection and not accessed except for a law enforcement purpose. All such data collected shall be destroyed no later than 30 months after such data were originally collected unless such data are the subject matter of a toll violation or for a law enforcement purpose.

(c) Law enforcement agencies may exchange or share captured license plate data with other law enforcement agencies for law enforcement purposes.

(d)(1) Any person who knowingly requests, uses, obtains, or attempts to obtain captured license plate data of a law enforcement agency under false pretenses or for any purpose other than for a law enforcement purpose shall for each such offense, upon conviction thereof, be guilty of a misdemeanor of a high and aggravated nature.

(2) Nothing in this Code section shall be construed to preclude a law enforcement agency from contracting with a person to hold and

maintain captured license plate data for such law enforcement agency; provided, however, that such person shall be subject to the policies of the law enforcement agency and paragraph (1) of this subsection.

(e) Any law enforcement agency deploying an automated license plate recognition system shall maintain policies for the use and operation of such system, including but not limited to policies for the training of law enforcement officers in the use of captured license plate data consistent with this Code section.

(f) Captured license plate data collected by a law enforcement agency shall not be subject to public disclosure pursuant to Article 4 of Chapter 18 of Title 50.

History.
Code 1981, § 35-1-22, enacted by Ga. L. 2018, p. 758, § 1/HB 79; Ga. L. 2025, p. 1029, § 35(42)(A)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in paragraph (a)(3).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 35-1-22(d)(1) appear to be offenses for which fingerprinting is required. 2018 Op. Att'y Gen. No. 18-3.

35-1-23. Violent Criminal Apprehension Program data base; petition for removal; applicability.

(a) As used in this Code section, the term "data base" means the national data base of the Violent Criminal Apprehension Program established and maintained by the Federal Bureau of Investigation or a successor data base.

(b) Each law enforcement agency in this state shall request access from the Federal Bureau of Investigation to enter information into the data base.

(c) Each law enforcement agency that investigates a homicide or attempted homicide in which the actions of the perpetrator are known or suspected to be serial in nature or are random or sexually oriented; a rape, aggravated sodomy, or aggravated assault with the intent to rape in which the actions of the perpetrator are known or suspected to be serial in nature or in which the assault was committed by a stranger; a missing person case in which the circumstances indicate a strong possibility of foul play; or a case involving unidentified human remains

from a known or suspected homicide shall enter into the data base the following information regarding such investigation, as available:

(1) The name and date of birth of the alleged perpetrator;

(2) The specific crime being investigated;

(3) A description of the manner in which the crime was committed, including any pattern of conduct occurring during the course of multiple crimes suspected to have been committed by the alleged perpetrator; and

(4) Any other information required by the Federal Bureau of Investigation for inclusion in the data base.

Such information shall be updated with any new developments in the investigation every 60 days thereafter.

(d)(1) Any individual who was deemed an alleged perpetrator and who had any information collected pursuant to subsection (c) of this Code section may seek removal of such information by:

(A) Submitting a request in writing for the removal of all such information, along with all supporting documentation regarding such request, to the investigating law enforcement agency; or

(B) If the investigating law enforcement agency denies the request to remove such information, the individual may file a petition of removal with the superior court in the jurisdiction of the investigating law enforcement agency.

(2) In considering a petition of removal pursuant to this subsection, the court shall consider:

(A) Any evidence introduced by the petitioner;

(B) Any evidence introduced by the investigating law enforcement agency of the jurisdiction where the petition is filed; and

(C) Any other relevant evidence.

(3) The court shall order a hearing on the petition if requested by the petitioner. The court may issue an order removing the petitioner's name and information from the data base if the court finds by a preponderance of the evidence that the petitioner's information should be removed from the data base. The court shall send a copy of any order directing the removal of the petitioner's name and information from the data base to the investigating law enforcement agency.

(e) Information entered into the data base under this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50.

(f) This Code section shall apply to any pending investigation of an allegation of rape, aggravated sodomy, or aggravated assault with intent to rape, regardless of whether the investigation was commenced before, on, or after July 1, 2021.

(g) This Code section shall not apply to offenses when the victim is at least 14 but less than 16 years of age and the offender is 18 years of age or younger and is not more than four years older than the victim.

History.
Code 1981, § 35-1-23, enacted by Ga. L. 2021, p. 567, § 5/HB 255.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2021, "July 1, 2021" was substituted for "the effective date of this Code section" in subsection (f).

Editor's notes.
Ga. L. 2021, p. 567, § 1/HB 255, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Sexual Assault Reform Act of 2021.'"

35-1-24. Peace officers eligible for indemnification or disability compensation; notifications.

(a) As used in this Code section, the term "eligible peace officer" means any individual who is employed on a full-time or part-time basis by the state or any municipality, county, or other political subdivision thereof; who is required by the terms of such employment, whether by election or appointment, to maintain public order or to make arrests for all criminal offenses; who is required by the terms of such employment to comply with the requirements of the "Georgia Peace Officer Standards and Training Act" contained in Chapter 8 of this title; and who suffers permanent or temporary disability in the line of duty due to a direct interaction with a criminal suspect, arrestee, or inmate.

(b) Each law enforcement agency of this state shall notify every employee whom such agency has reasonable cause to believe may be an eligible peace officer of the existence of the Georgia State Indemnification Fund and the temporary disability compensation program of Parts 1 and 2, respectively, of Article 5 of Chapter 9 of Title 45. Such notification shall be given within ten days of such employee suffering an injury which may reasonably cause such employee to suffer a permanent or temporary disability. Additionally, such notification shall include such appropriate contact and other information as shall be determined necessary by the Department of Administrative Services through the promulgation of rules and regulations.

History.
Code 1981, § 35-1-24, enacted by Ga. L. 2025, p. 211, § 3/HB 105, effective May 8, 2025.

Effective date.

This Code section became effective May 8, 2025.

Editor's notes.

Ga. L. 2025, p. 211, § 1/HB 105, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Daniel D. Podsiadly, Jr. Act.'"

CHAPTER 2

DEPARTMENT OF PUBLIC SAFETY

Article 1

General Provisions

Sec.

35-2-1. Creation of Board of Public Safety; composition; appointment and terms of office of members.
35-2-2. Creation of Department of Public Safety.
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35-2-10. Awards to employees for outstanding service, heroism, or other exemplary act.
35-2-11. Commissioner authorized to facilitate public safety demonstrations in public schools.
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35-2-16. Subsistence and per diem for employees; retention of badge and weapon upon retirement; salary increases; impact on other statutory provisions.

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Uniform Division

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35-2-45. Promotions of personnel.
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35-2-47. Suspension pending dismissal.
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35-2-160. Definitions.
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Cross references.

Powers and duties of the Department of Driver Services with regard to drivers' licenses, § 40-5-1 et seq.

Juvenile traffic offenses, Uniform Rules for the Juvenile Court of Georgia, Rule 13.

Administrative rules and regulations.

Rules of general applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570.

ARTICLE 1

GENERAL PROVISIONS

35-2-1. Creation of Board of Public Safety; composition; appointment and terms of office of members.

(a) There is created a Board of Public Safety which shall establish the general policy to be followed by the department.

(b) The board shall consist of 16 members:

(1) The following four members serve as follows:

(A) The Governor, ex officio, who shall be chairperson of the board;

(B) An appointee of the Governor who shall not be the Attorney General;

(C) The official in charge of the Department of Corrections, ex officio; and

(D) The commissioner of community supervision, ex officio.

(2) Five members shall be selected as follows:

(A) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Sheriffs Association; the first representative shall serve an initial term ending on January 20, 1975, each subsequent term being three years;

(B) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia Association of Chiefs of Police; the first representative shall serve an initial term ending on January 20, 1974, each subsequent term being three years;

(C) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the District Attorneys Association of Georgia; the first representative shall serve an initial term ending on January 20, 1973, each subsequent term being three years;

(D) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the Georgia State Firemen's Association; the first representative shall serve an initial term ending on January 20, 1984, each subsequent term being for three years; and

(E) A representative appointed by the Governor by and with the advice and consent of the Senate from the membership of the

Georgia Association of Fire Chiefs; the first representative shall serve an initial term beginning on January 21, 2011, each term being for three years.

(3) Four members shall be selected as follows:

(A) Two members appointed by the Governor. The first appointees shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years;

(B) One member appointed by the Lieutenant Governor. The first appointee shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years; and

(C) One member appointed by the Speaker of the House of Representatives. The first appointee shall serve an initial term ending on January 20, 2002. Each subsequent term shall be for three years.

(4) By majority vote the board shall appoint three members from the state at large; no person so appointed shall be an officer or employee of any state or local governmental entity at the time of his or her appointment to or during his or her membership on the board. All terms of the three at-large members shall be four years. Any vacancy in the at-large membership shall be filled by the board for the unexpired term.

(c) Appointments made pursuant to paragraph (2) of subsection (b) of this Code section at times when the Senate is not in session shall be effective ad interim.

History.

Ga. L. 1972, p. 1015, §§ 18, 1609; Ga. L. 1981, p. 814, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1999, p. 1211, § 1; Ga. L. 2009, p. 831, § 1/HB 607; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2018, p. 334, § 1/HB 856; Ga. L. 2025, p. 1029, § 35(42)(B)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (a).

Cross references.

Powers and duties of board with regard to Georgia Fire Academy, § 25-7-1 et seq.

Editor's notes.

Ga. L. 2009, p. 831, § 2/HB 607, not codified by the General Assembly, provides that the amendment to this Code section shall apply to appointments made on or after January 20, 2011.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 236. 76 Am. Jur. 2d, United States, § 8 et seq.

C.J.S.

91 C.J.S., United States, § 16 et seq.

35-2-2. Creation of Department of Public Safety.

There is created a Department of Public Safety.

History.
Ga. L. 1937, p. 322, art. 1, § 1; Ga. L. 1972, p. 1015, § 1601.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 20.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

35-2-3. Creation and appointment of the position of commissioner of public safety; powers and duties; rules and regulations.

(a) There is created the position of commissioner of public safety. The commissioner shall be the chief administrative officer and shall be both appointed and removed by the board with the approval of the Governor. Except as otherwise provided by law and subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by law.

(b) The commissioner shall be authorized to promulgate rules and regulations as necessary to carry out his or her official duties.

History.
Ga. L. 1972, p. 1015, § 1602; Ga. L. 1996, p. 271, § 1.

JUDICIAL DECISIONS

Commissioner of public safety is a public officer. Blackmon v. State, 153 Ga. App. 359, 265 S.E.2d 320, 1980 Ga. App. LEXIS 1806 (1980).

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, §§ 31, 32.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 17 et seq.

35-2-4. Commissioner as a member of Uniform Division authorized.

The commissioner may be a member of the Uniform Division of the department and upon removal from such office without prejudice he shall revert to his original rank in the Uniform Division which he held when he was appointed to office.

History.
Ga. L. 1949, p. 70, § 1.

35-2-5. Chief officer of Uniform Division.

As prescribed by the board, the commissioner may rank as senior colonel in the Uniform Division and may be the chief officer thereof or the board may appoint a colonel in the Uniform Division as the chief officer thereof.

History.
Ga. L. 1937, p. 322, art. 1, § 4; Ga. L. 1949, p. 70, § 2; Ga. L. 2000, p. 951, § 12-3.
Editor's notes.
Ga. L. 2000, p. 951, § 13-1, not codified by the General Assembly, provides that the 2000 Act which amended this Code section became effective April 28, 2000, for purposes of authorization for appointments as provided in this Code section as amended by § 12-3 of the 2000 Act.

35-2-6. Employment of temporary expert assistance.

In perfecting the organization of the department or any division thereof, the commissioner shall be authorized with approval of the board to employ and provide compensation for such expert temporary assistance as may be necessary.

History.
Ga. L. 1937, p. 322, art. 2, § 8.

35-2-7. Appointment of deputy commissioner; term of office; rank; membership in Uniform Division; duties; oath.

(a) The commissioner is vested with authority to appoint a deputy commissioner of public safety, who shall have the rank of lieutenant colonel in the Uniform Division of the department.

(b) The deputy commissioner may be a member of the Uniform Division of the department and upon removal from office without prejudice he shall revert to the original rank in the Uniform Division which he held when he was appointed to office.

(c) His appointment shall be subject to confirmation by the board.

(d) The deputy commissioner shall perform such duties as he may be charged with by the commissioner, and in case of a vacancy shall act as commissioner until an appointment is made to fill the vacancy.

(e) The deputy commissioner shall take the same oath as that required of the commissioner, which oath shall be administered by the commissioner.

History.
Ga. L. 1937, p. 332, art. 1, § 5; Ga. L. 1943, p. 196, § 3; Ga. L. 1949, p. 70, § 3; Ga. L. 1958, p. 296, § 2; Ga. L. 1967, p. 98,

§ 2; Ga. L. 1969, p. 145, § 1; Ga. L. 1972, p. 409, § 1; Ga. L. 1989, p. 1285, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Deputy commissioner entitled to same longevity increases as battalion members. — Deputy director (now deputy commissioner) of public safety is entitled to the same longevity increases as are members of the battalion. 1967 Op. Att'y Gen. No. 67-134.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, §§ 31, 32. 63C Am. Jur. 2d, Public Officers and Employees, §§ 1 et seq., 48 et seq., 70, 88, 105 et seq.

C.J.S.
67 C.J.S., Officers and Public Employees, §§ 6, 20 et seq., 135 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

35-2-8. Appointment of comptroller; membership in Uniform Division prohibited; bond.

The commissioner shall appoint a comptroller to ensure the proper receipt, accounting, and disbursement of funds of the department. The comptroller shall not be a member of the Uniform Division of the department. The comptroller shall give a good and sufficient surety bond in the amount of $100,000.00, payable to the Governor and his successors in office and to be approved by the commissioner, conditioned for the faithful discharge of his duties and the faithful accounting of all funds received by him.

History.
Ga. L. 1977, p. 228, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, §§ 31, 32. 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70 et seq., 227 et seq., 237, 247, 248, 250. 70 Am. Jur. 2d, Sheriffs, Police and Constables, §§ 7 et seq., 42 et seq.

C.J.S.
67 C.J.S., Officers and Public Employees, §§ 312 et seq., 323 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

35-2-9. Payment of medical and other similar expenses of members of Georgia State Patrol injured in line of duty; procedure.

The department is authorized to pay all medical, surgical, hospital, nursing, and other similar expenses incurred by any member of the Georgia State Patrol as a result of injuries received in the line of duty. The department is authorized to make such payments in addition to any award made by the State Board of Workers' Compensation based on

such injuries. Such payments shall only be made upon proper presentation of bills to the comptroller of the department. The comptroller and the injured party shall together ascertain the correctness of all bills presented. No payments shall be made without the approval of the commissioner.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 392, § 1.
Cross references.
Workers' compensation generally, § 34-9-1 et seq.
State employees' health insurance, § 45-18-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Department's authorized payments in addition to workers' compensation award. — Department is authorized to pay all medical, surgical, hospital, nursing, and other similar expenses incurred by any member of the Georgia State Patrol as a result of injury received in the line of duty; such payments may be made in addition to any award made by the Board of Workers' Compensation based on the injury. 1974 Op. Att'y Gen. No. 74-82.

Payment allowed even if no workers' compensation award made. — Department is authorized to pay all hospital and surgical bills of the members of the state patrol under certain conditions, even if no award has been made by workers' compensation. 1960-61 Ga. Op. Att'y Gen. 423.

Department may pay expenses resulting from original injury, but not improper treatment. — Department may properly pay additional medical expenses incurred by a member of the Georgia State Patrol provided that the department is satisfied from evidence before it, or to be required by it, that the expenses are a result of the original injuries and not as a result of improper treatment of the injuries, or other events that transpired subsequent thereto. 1957 Ga. Op. Att'y Gen. 218.

Upon payment, department becomes subrogated to employee's rights. — Department has authority to pay medical expenses incurred by employees when engaged in the line of duty and, upon payment, the department becomes subrogated to the rights of the employee. 1960-61 Ga. Op. Att'y Gen. 425.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 279.

C.J.S.
67 C.J.S., Officers and Public Employees, § 377 et seq.

35-2-10. Awards to employees for outstanding service, heroism, or other exemplary act.

(a) The department shall have the authority to make awards to employees of the department on behalf of the department or the state in recognition of outstanding service, heroism, or other exemplary acts arising out of the performance of their duties. All expenditures incurred in making such awards shall be defrayed from the department's regular operating budget and shall not exceed $100.00 per award.

(b) The board shall promulgate rules and regulations in connection with the granting of the awards provided for in this Code section.

History.
Ga. L. 1977, p. 246, §§ 1, 2.

35-2-11. Commissioner authorized to facilitate public safety demonstrations in public schools.

The commissioner is authorized to furnish one or more lecturers to conduct lectures and demonstrations relating to public safety in the public schools in cooperation with school authorities. The commissioner may furnish such lecturers with appropriate literature and equipment.

History.
Ga. L. 1937, p. 322, art. 3, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 227, 237.

C.J.S.
67 C.J.S., Officers and Public Employees, §§ 312 et seq., 323 et seq.

35-2-12. Contribution to political campaigns by employees of department.

No person in the employ of the department shall, either directly or indirectly, contribute any money or any other thing of value to any person, organization, or committee for political campaign or election in county or state primaries or general elections.

History.
Ga. L. 1949, p. 70, § 4; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, § 3; Ga. L. 1994, p. 1921, § 1.

JUDICIAL DECISIONS

All "peace officers" are not bound by the prohibitions placed on employees of the Department of Public Safety. Segars v. Fulton County, 644 F. Supp. 682, 1986 U.S. Dist. LEXIS 20619 (N.D. Ga. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality. — O.C.G.A. § 35-2-12 may constitutionally be enforced against employees of the Department of Public Safety. 2000 Op. Att'y Gen. No. 2000-7.

35-2-13. Headquarters for commissioner and deputy commissioner of public safety and divisions.

The department is authorized to provide comfortable and accessible headquarters for the commissioner and deputy commissioner of public

safety and for the various divisions thereof. The department is authorized and empowered to provide such quarters and offices by purchase, lease, or construction, any contract made or title acquired to be made in the name of and on behalf of the State of Georgia.

History.
Ga. L. 1937, p. 322, § 10.

35-2-14. Memorandums of understanding regarding federal immigration and customs laws.

(a) As used in this Code section, the term "peace officer" means peace officer as defined in subparagraph (A) of paragraph (8) of Code Section 35-8-2, as amended.

(b) The commissioner is authorized and directed to negotiate the terms of a memorandum of understanding between the State of Georgia and the United States Department of Justice or Department of Homeland Security concerning the enforcement of federal immigration and customs laws, detention and removals, and investigations in the State of Georgia.

(c) The memorandum of understanding negotiated pursuant to subsection (b) of this Code section shall be signed on behalf of the state by the commissioner and the Governor or as otherwise required by the appropriate federal agency.

(d) The commissioner shall annually designate no fewer than ten peace officers to apply to be trained pursuant to the memorandum of understanding provided for in subsections (b) and (c) of this Code section. Such training shall be funded pursuant to any federal Homeland Security Appropriation Act or any subsequent source of federal funding. The provisions of this subsection shall become effective upon such funding.

(e) A peace officer certified as trained in accordance with the memorandum of understanding as provided in this Code section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties.

History.
Code 1981, § 35-2-14, enacted by Ga. L. 2006, p. 105, § 4/SB 529; Ga. L. 2011, p. 794, § 10/HB 87.

Cross references.
Registration of Immigration Assistance Act, § 43-20A-1 et seq.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2006, "customs" was substituted for "custom" near the end of subsection (b).

Editor's notes.
Ga. L. 2006, p. 105, § 1/SB 529, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning

immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

The provisions of subsection (d) of this Code section become effective upon funding provided pursuant to the federal Homeland Security Appropriation Act of 2006, Public Law 109-90, or any subsequent source of federal funding. Federal funds were appropriated in 2008.

Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews.

For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 247 (2006).

For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally . . . Act Locally'," see 13 Ga. St. B. J. 14 (2007).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 35 (2011).

For article, "State Government: Illegal Immigration Reform and Enforcement Act of 2011," see 28 Ga. St. U.L. Rev. 51 (2011).

For article, "Taming Immigration: The 64th Henry J. Miller Distinguished Lecture Series Remarks," see 36 Ga. St. U.L. Rev. 971 (2020).

35-2-15. Off-duty use of motor vehicles and other equipment by certain law enforcement officers; conditions for use; rules and regulations.

(a)(1) Certified law enforcement officers employed by the department may use a department motor vehicle while working an off-duty job if such job requires vested police powers as a condition of employment, has been approved by the commissioner, and has been determined by the commissioner to be in furtherance of the department's mission and service to the state. Department motor vehicles used for off-duty employment shall not be used at any political function.

(2) Except as otherwise provided for in this subsection, department motor vehicles shall be used only in the discharge of official duties.

(3) Any other equipment shall be used only with the express written approval of the commissioner. The commissioner shall adopt rules and regulations governing the use of equipment subject to approval of the board.

(b) The commissioner, in his or her sole discretion, in granting approval for such off-duty job in which a department motor vehicle is used, prior to the use of such vehicle, shall determine whether the off-duty employer provided for in subsection (a) of this Code section

shall reimburse the department for use of the vehicle. When reimbursement is required, such off-duty employer shall enter into a written agreement with the department to pay an amount determined by the commissioner to be sufficient to reimburse the department for the use of the vehicle and to pay the off-duty employee sufficient compensation. Pursuant to such agreement, the department shall pay the employee of the department the compensation earned on off-duty employment whenever such employee performs such service in a department motor vehicle; provided, however, that such compensation shall not be characterized as direct employment compensation but shall be paid as services under contract.

(c) Employees of the department operating a department motor vehicle pursuant to this Code section shall be deemed to be acting within the scope of their official duties and employment within the meaning of Code Section 50-21-20, et seq., and the commissioner of administrative services shall provide liability coverage for claims arising out of such use. The commissioner shall adopt rules and regulations governing the use of equipment subject to approval of the Board of Public Safety.

History.

Code 1981, § 35-2-15, enacted by Ga. L. 2016, p. 385, § 3/HB 806; Ga. L. 2017, p. 774, § 35/HB 323; Ga. L. 2025, p. 1029, § 35(3)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "board." for "Board of Public Safety." in paragraph (a)(3).

Administrative rules and regulations.

Off-duty police employment, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Rule 570-9-.01 et seq.

35-2-16. Subsistence and per diem for employees; retention of badge and weapon upon retirement; salary increases; impact on other statutory provisions.

(a) The commissioner shall be authorized to provide for a subsistence and per diem allowance for employees of the department.

(b) The commissioner shall be authorized to pay to sworn employees of the department additional compensation upon any such employee's retirement in the form of the badge and the duty weapon issued by the department to such employee.

(c) The commissioner shall be authorized to grant a salary increase to those sworn employees of the department and those communications officers who have obtained degrees from an accredited member of the Federation of Regional Accrediting Commissions of Higher Education or who have obtained a degree of completion from some other educational institution with respect to a course of instruction related to law enforcement, so long as both the course of instruction and the institution are specifically approved by the commissioner.

(d) This Code section is not intended to repeal existing law concerning the following:

(1) The authority of the board to pay certain medical expenses incurred by any member of the Georgia State Patrol or the Georgia Bureau of Investigation;

(2) The authority of the commissioner to provide uniforms and supplies to members of the Uniform Division; or

(3) The requirement that board and quarters be furnished to every member of the Uniform Division on active duty.

History.
Code 1981, § 35-2-16, enacted by Ga. L. 2021, p. 463, § 1/SB 198.

ARTICLE 2

UNIFORM DIVISION

35-2-30. Creation and designation.

There is created and established a division of the Department of Public Safety to be known as the Uniform Division, the members of which shall be known and designated as the "Georgia State Patrol."

History.
Ga. L. 1937, p. 322, art. 2, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 20.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 17 et seq.

35-2-31. Composition.

The Uniform Division of the department shall consist of:

(1) The officers, noncommissioned officers, and troopers of the headquarters staff;

(2) The officers, noncommissioned officers, and troopers of one battalion.

History.
Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 2025, p. 1029, § 35(42)(C)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public

Safety" near the beginning of this Code section.

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Deputy commissioner entitled to same longevity increases as battalion members. — Deputy director (now deputy commissioner) of public safety is entitled to the same longevity increases as are members of the battalion. 1967 Op. Att'y Gen. No. 67-134.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, §§ 31, 32.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 17 et seq.

35-2-32. Jurisdiction; primary duty; patrolling of safety rest areas and welcome centers.

(a) The Uniform Division of the department shall have jurisdiction throughout this state with such duties and powers as are prescribed by law.

(b) It shall be the primary duty of the Uniform Division to patrol the public roads and highways of this state, including interstate and state maintained highways, and to safeguard the lives and property of the public; and such duty shall also include accident investigation and traffic enforcement. The Uniform Division shall prevent, detect, and investigate violations of the criminal laws of this state, any other state, or the United States which are committed upon these public roads and highways or upon property appertaining thereto and shall apprehend and arrest those persons who violate such criminal laws.

(c) Without limiting the generality of any other provisions of this article, it is specifically provided that the Uniform Division shall have jurisdiction to patrol safety rest areas and welcome centers located on or adjacent to the state highway system for the purposes of: (1) enforcing the laws of this state relating to the use, ownership, control, licensing, and registration of motor vehicles; (2) enforcing the criminal laws of this state; and (3) enforcing the laws of this state and the regulations of the Department of Transportation with respect to the use of such safety rest areas and welcome centers. The limitations of paragraph (5) of subsection (a) of Code Section 35-2-33 shall not apply with respect to enforcement in safety rest areas and welcome centers.

History.
Ga. L. 1937, p. 322, art. 2, § 14; Ga. L. 1950, p. 77, § 1; Ga. L. 1970, p. 577, § 1; Ga. L. 1981, p. 1450, § 1; Ga. L. 1990, p. 1329, § 1.

JUDICIAL DECISIONS

Error for court not to instruct jury on "good faith" defense in false imprisonment trial. — Since, during the trial of a state patrolman for false imprisonment, it appeared from the evidence that the patrolman's sole defense was that the patrolman made the arrest for drunkenness upon the public highway without a warrant because the patrolman, in good faith, had probable cause to believe that the offense was being committed in the patrolman's presence, a failure to instruct the jury on a good faith defense was an error, requiring the grant of a new trial. Henderson v. State, 95 Ga. App. 830, 99 S.E.2d 270, 1957 Ga. App. LEXIS 928 (1957).

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Parameters of statutory authority. — When the function to be performed involves something other than the enforcement of traffic and motor vehicle laws, the enforcement of criminal laws on state property, or apprehending fugitives, some further requirement is necessary to authorize the activity; that further requirement may be either the Governor's direction to suppress riots or labor strikes or assist in a criminal case investigation, a local law enforcement request for assistance in a criminal matter, or the failure to prevent or detect a criminal act because of the unavailability of a local law enforcement officer at the time. 1987 Op. Att'y Gen. No. 87-14.

Authority within local jurisdictions. — Local law enforcement agency may not prevent the state patrol from investigating accidents on public roads and highways within the jurisdiction of the local agency. 1997 Op. Att'y Gen. No. 97-4.

State Patrol cannot enforce traffic laws in Fort Benning Reservation. — Provisions of O.C.G.A. §§ 35-2-32 and 35-2-33 do not give the Georgia State Patrol authority to enforce traffic laws on that portion of U.S. 27 and U.S. 280 running through Fort Benning Reservation. 1981 Op. Att'y Gen. No. 81-83.

Traffic control at sporting events. — To safeguard the lives and property of the public, the Uniform Division is authorized to provide traffic enforcement and control on public roads and highways affected by large crowds at sporting events such as football games at state universities. 1987 Op. Att'y Gen. No. 87-14.

Providing security at sporting events. — If none of the triggering mechanisms for invoking the Uniform Division's authority is present, the Uniform Division is without authority to provide security for coaches and players or crowd control at professional, college, and high school sporting events in Georgia. 1987 Op. Att'y Gen. No. 87-14 (rendered prior to the 1988 amendment to O.C.G.A. § 35-2-33).

If a coach or anyone else is attacked in the presence of a trooper and there is no local law enforcement officer immediately available to respond, the trooper is a sworn officer and has a duty, recognized by statute, to intervene to stop the criminal act and arrest the attacker; in so doing, the trooper is acting within the scope of employment, and, under the terms of the present policy, is entitled to insurance coverage. However, there is no authority for the Uniform Division to provide private security, within or without the boundaries of Georgia. 1987 Op. Att'y Gen. No. 87-14.

Authority to control, manage, and close public highways is vested in the Department of Transportation, not the Department of Public Safety. 1973 Op. Att'y Gen. No. 73-184.

Advertising campaign designed to promote safe and sane driving within section's purview. — This section clearly makes it the duty of the state patrol to endeavor to prevent criminal offenses from being committed on the highways, and, in addition, to safeguard the lives and property of the public; an advertising campaign designed to promote safe and sane driving would come

within the purview of this section. 1945-47 Ga. Op. Att'y Gen. 601.

It is the duty and responsibility of the state patrol to enforce safety inspection laws in regard to dealers of used motor vehicles. 1967 Op. Att'y Gen. No. 67-204.

Authority of trooper in another state. — Member of the Uniform Division on official department business in another state has such law enforcement authority while there as the law of that state may confer upon the member. 1987 Op. Att'y Gen. No. 87-14.

County sheriff not required to investigate accident on private property. — There is no specific statutory mandate which would require a county sheriff to investigate an accident occurring on private property. 1968 Op. Att'y Gen. No. 68-206.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 45 et seq.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 79 et seq.

35-2-33. Additional duties.

(a) It shall be the duty of the Uniform Division:

(1) To enforce the laws of this state relating to the use, ownership, control, licensing, and registration of motor vehicles and Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes;

(2) On property owned by this state or any agency thereof:

(A) To enforce the criminal laws of this state;

(B) To apprehend and arrest any person who violates the criminal laws of this state; and

(C) To serve and execute warrants;

(3) To apprehend and arrest any person who is a fugitive from justice;

(4) To suppress riots, labor strikes, or picketing, as provided by law, at the direction of the Governor on request made by the chief of police of any municipality or the sheriff of any county; and

(5)(A) To make initial inquiries into any situation which occurs off the public roads and highways and which occurs under circumstances where it has reasonable grounds to believe a criminal law has been, is being, or is about to be violated. The Uniform Division shall further have the duty to make arrests in connection with such initial inquiries.

(B) Any initial inquiry or arrest which is made pursuant to subparagraph (A) of this paragraph shall be initiated only if a local law enforcement officer is not readily available and the member of

the Uniform Division reasonably believes that his failure to act could result in the commission of a criminal act or the escape of a person who has committed a criminal act. In any action taken by the Uniform Division under subparagraph (A) of this paragraph, the Uniform Division shall relinquish jurisdiction to the local law enforcement agency as soon as possible under the circumstances.

(b) The Uniform Division shall cooperate with all law enforcement agencies of this state or any municipality, county, or other political subdivision thereof in enforcing the laws of this state, any other state, or the United States relating to the operation of motor vehicles. The commissioner may, and in the case of a request by the Governor shall, authorize and direct the Uniform Division to cooperate with and render assistance to any law enforcement agency of this state or any municipality, county, or other political subdivision thereof in any criminal case, in the prevention or detection of violations of any law, or in the apprehension or arrest of persons who violate the criminal laws of this state, any other state, or the United States, upon a request by the governing authority or chief law enforcement officer of any municipality, the sheriff of any county, a judge of the superior court of any county, or the Governor.

(c) The commissioner may, and in the case of a request by the Governor shall, authorize and direct the Uniform Division to:

(1) Provide security protection services, or transportation or escort services, or both to coaches, players, and referees and other officials in connection with collegiate athletic events involving an institution of the University System of Georgia which offers four-year postsecondary degrees when such security protection services, or transportation or escort services, or both are necessary or appropriate to deter actual or potential threats to the safety of such individuals;

(2) Provide services which are necessary or appropriate to promote the safety of the collegiate athletic teams of such institutions of the University System of Georgia which offer four-year postsecondary degrees or the general public or both or to facilitate travel by such collegiate athletic teams or the general public or both;

(3) Allow personnel of the Uniform Division, while on duty and in uniform, to accompany collegiate athletic teams of such institutions of the University System of Georgia which offer four-year postsecondary degrees traveling to athletic events inside or outside the state and to make use of department vehicles for this purpose, provided that the department shall be reimbursed by such affected institution of the University System of Georgia for any expenses incurred by such personnel of the Uniform Division while carrying out such duties; and

(4) Allow personnel of the Uniform Division, while on duty and in uniform, to provide security at special events at any location, whether or not the event takes place on state property.

(d) In no case where the Uniform Division is exercising any power or performing any duty authorized by this Code section shall it usurp any of the duties or authority of any sheriff of any county, any chief of police of any municipality, or any chief of police of any county police force.

(e) The duties and powers of the Uniform Division, as provided for in this Code section, shall be in addition to any other duties or powers provided by law.

History.

Ga. L. 1937, p. 322, art. 2, §§ 14, 15; Ga. L. 1950, p. 77, § 1; Ga. L. 1956, p. 495, § 1; Ga. L. 1970, p. 577, § 1; Ga. L. 1974, p. 447, § 1; Ga. L. 1978, p. 254, § 1; Ga. L. 1981, p. 1450, § 1; Ga. L. 1988, p. 1982, § 1; Ga. L. 1989, p. 14, § 35; Ga. L. 1996, p. 1507, § 1; Ga. L. 2005, p. 334, § 13A-1/HB 501.

Cross references.

Registration and licensing of motor vehicles generally, § 40-2-1 et seq.

JUDICIAL DECISIONS

Criminal investigative functions of pharmacy board transferred to department. — Under the Executive Reorganization Act of 1972, the functions of the Georgia State Board of Pharmacy relating to alleged violations pertaining to drugs under former Code 1933, § 79A-208 were transferred to the Department of Public Safety, and the criminal investigative functions so transferred were assigned to the Division of Investigation (now Georgia Bureau of Investigation). Smith v. State, 131 Ga. App. 722, 206 S.E.2d 711, 1974 Ga. App. LEXIS 1535 (1974).

Executive order authorizing arrests effective beyond expiration of Governor's term. — Executive order authorizing the Georgia Bureau of Investigation to make arrests, until rescinded or superseded, is effective beyond the expiration of the term of the Governor who issued the order. Baxter v. State, 134 Ga. App. 286, 214 S.E.2d 578, 1975 Ga. App. LEXIS 1990, cert. denied, 423 U.S. 895, 96 S. Ct. 194, 46 L. Ed. 2d 127, 1975 U.S. LEXIS 2956 (1975).

Evidence of "good faith" arrest in false imprisonment action admissible. — If, in a false imprisonment action, there is evidence from which the jury would be authorized to find that the defendant officer in good faith and with probable cause arrested the plaintiff for drunkenness, any facts, circumstances, or information on which the defendant officer acted in making the arrest are admissible, not as proof of the facts, but as evidence that the defendant officer in making the arrest did so upon reasonable ground of suspicion. Henderson v. State, 95 Ga. App. 830, 99 S.E.2d 270, 1957 Ga. App. LEXIS 928 (1957).

Error not to instruct jury on defense of "good faith" arrest in false imprisonment action. — Since, during the trial of a state patrolman for false imprisonment, it appears from the evidence that the patrolman's sole defense was that the patrolman made the arrest for drunkenness upon the public highway without a warrant because the patrolman in good faith had probable cause to believe that the offense was being committed in the patrolman's presence, it is error, requiring the grant of a new trial, for the trial court to fail to instruct the jury on this defense. Henderson v. State, 95 Ga. App. 830, 99 S.E.2d 270, 1957 Ga. App. LEXIS 928 (1957).

Roadblocks permitted. — O.C.G.A. § 35-2-33(a)(1) permits the setting up of roadblocks by police officials for the purpose of checking the legality of

licensing of drivers and registration of vehicles. Davis v. State, 194 Ga. App. 482, 391 S.E.2d 124, 1990 Ga. App. LEXIS 196 (1990).

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Parameters of statutory authority. — When the function to be performed involves something other than the enforcement of traffic and motor vehicle laws, the enforcement of criminal laws on state property, or apprehending fugitives, some further requirement is necessary to authorize the activity; that further requirement may be either the Governor's direction to suppress riots or labor strikes or assist in a criminal case investigation, a local law enforcement request for assistance in a criminal matter, or the failure to prevent or detect a criminal act because of the unavailability of a local law enforcement officer at the time. 1987 Op. Att'y Gen. No. 87-14.

State Patrol cannot enforce traffic laws in Fort Benning Reservation. — Provisions of O.C.G.A. §§ 35-2-32 and 35-2-33 do not give the Georgia State Patrol authority to enforce traffic laws on that portion of U.S. 27 and U.S. 280 running through Fort Benning Reservation. 1981 Op. Att'y Gen. No. 81-83.

Traffic control at sporting events. — To safeguard the lives and property of the public, the Uniform Division is authorized to provide traffic enforcement and control on public roads and highways affected by large crowds at sporting events such as football games at state universities. 1987 Op. Att'y Gen. No. 87-14.

Providing security at sporting events. — If none of the triggering mechanisms for invoking the Uniform Division's authority is present, the Uniform Division is without authority to provide security for coaches and players or crowd control at professional, college, and high school sporting events in Georgia. 1987 Op. Att'y Gen. No. 87-14 (decided prior to the 1988 amendment to O.C.G.A. § 35-2-33).

If a coach or anyone else is attacked in the presence of a trooper and there is no local law enforcement officer immediately available to respond, the trooper is a sworn officer and has a duty, recognized by statute, to intervene to stop the criminal act and arrest the attacker; in so doing, the trooper is acting within the scope of employment, and, under the terms of the present policy, is entitled to insurance coverage. However, there is no authority for the Uniform Division to provide private security, within or without the boundaries of Georgia. 1987 Op. Att'y Gen. No. 87-14.

Carrying dynamite without permit proper jurisdiction for state patrol. — Carrying dynamite without a permit in an automobile is a law regulating the use of a motor vehicle or an offense committed upon the state highway and therefore would be proper jurisdiction for the state patrol. 1967 Op. Att'y Gen. No. 67-324.

State patrol may seize fireworks, but not arrest off highway. — State patrol may seize fireworks which the state patrol finds, declare the fireworks contraband, and destroy the fireworks even though the fireworks are found off the highways of this state, but any arrest made off the highways would have to be accomplished by the local authorities; however, any violation observed on the highways may give rise to a proper arrest by the members of the state patrol. 1962 Ga. Op. Att'y Gen. 431.

Section as expression of how Governor's powers performed. — Provisions of Ga. L. 1956, p. 495, § 1 (see now O.C.G.A. § 35-2-33) are merely one expression of the legislature as to how the broad powers of the Governor may be performed; the statute should not be considered exhaustive by any means. 1963-65 Ga. Op. Att'y Gen. 42.

Governor may authorize Georgia Bureau of Investigation to conduct investigations and make arrests in localities. — Governor has the power and the authority to authorize the Georgia Bureau of Investigation to conduct investigations and make arrests in any criminal case in any county or municipality of this state. 1963-65 Ga. Op. Att'y Gen. 532.

Governor may order state patrol to make arrests, even in absence of request from localities. — Governor is authorized to order the director (now commissioner) of public safety to direct members of the Georgia State Patrol to make arrests for violations of the laws of this state; this would be true even in the absence of any request for assistance emanating from the governing authorities of the counties or municipalities involved. 1963-65 Ga. Op. Att'y Gen. 38.

Governor may order department members to assist judge in enforcing criminal laws. — Governor is authorized to order the director (now commissioner) of public safety to direct members of the director's (now commissioner's) department to assist a superior court judge, if the orders are designed in any way, either directly or indirectly, to aid the enforcement of the criminal laws within the jurisdiction of the court issuing the orders. 1963-65 Ga. Op. Att'y Gen. 42.

Authority of state patrol members to execute warrants no greater than authority to make an arrest. 1945-47 Ga. Op. Att'y Gen. 604.

Competent authorities may request or order patrol officers to execute warrants. — If competent municipal authorities, or the sheriff of any county, or a judge of the superior court requests members of the Georgia State Patrol to execute a warrant, or if by the terms of a warrant they order such members to execute the warrant, the patrol officers are perfectly competent to execute such warrants. 1945-47 Ga. Op. Att'y Gen. 604.

Warrant resulting from criminal contempt, misdemeanor, or nonobeying witness. — Any warrant issued by the court itself resulting from a case of criminal contempt, or a misdemeanor case proceeding upon an accusation, or to bring in a witness who has not obeyed a subpoena issued in a criminal case, could properly be served by members of the Department of Public Safety. 1963-65 Ga. Op. Att'y Gen. 42.

Assistance not rendered in noncriminal matters. — This section does not contemplate the rendering of assistance in matters such as the service of process or civil writs which have no connection with criminal enforcement. 1963-65 Ga. Op. Att'y Gen. 42.

Authority of trooper in another state. — Member of the Uniform Division on official department business in another state has such law enforcement authority while there as the law of that state may confer upon the member. 1987 Op. Att'y Gen. No. 87-14.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur.2d, Administrative Law, § 52 et seq.

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, § 79 et seq.

ALR.

Validity of statute or ordinance against picketing, 122 A.L.R. 1043; 125 A.L.R. 963; 130 A.L.R. 1303.

35-2-34. Composition of headquarters staff.

The headquarters staff shall be composed of the commissioner, deputy commissioner, and such other commissioned and noncommissioned officers, troopers, and clerical personnel as the commissioner deems necessary for use at headquarters.

History.

Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1946, p. 39, § 1; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, § 3; Ga. L. 1960, p. 132, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 1.

Cross references.

Composition of the battalion, § 35-2-36.

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Commissioner may create other commissioned officer positions for headquarters staff in addition to positions specifically required by this section as the commissioner deems necessary. 1977 Op. Att'y Gen. No. 77-49.

35-2-35. Performance of clerical duties by headquarters staff; transfer of members of headquarters staff by commissioner.

The clerical duties at headquarters shall be performed by the headquarters staff. The commissioner, in his discretion, may transfer any member of the headquarters staff to any other division or district for any other duty.

History.
Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1946, p. 39, § 1; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, § 3; Ga. L. 1960, p. 132, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 45 et seq.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 79 et seq.

35-2-36. Composition of battalion; rank of battalion personnel; employment of recruits or cadets by commissioner; promulgation of rules and regulations as to enlistment and training of recruits or cadets.

(a) The battalion of the Uniform Division shall consist of such personnel as the commissioner, with the approval of the board, may deem necessary within the limits set by available appropriations.

(b) The personnel of the battalion shall be ranked according to a semimilitary structure with such ranks as the board shall deem appropriate, including, but not restricted to, the following:

(1) Major;

(2) Captain;

(3) First lieutenant;

(4) Sergeant first class;

(5) Sergeant;

(6) Corporal;

(7) Trooper first class;

(8) Trooper;

(9) Trooper cadets; and

(10) Process servers.

(c) Within the limits set by available appropriations, the commissioner, with the approval of the board, is authorized to employ such recruits or cadets as may be deemed necessary, who may become members of the Uniform Division but who shall not be members of the Uniform Division so long as they remain recruits or cadets; provided, however, that such recruits or cadets are designated as "peace officers" as such term is defined in paragraph (11) of Code Section 16-1-3 and shall have the authority of a peace officer.

(d) The commissioner shall prescribe rules and regulations governing the enlistment and training of recruits or cadets subject to the approval of the board.

History.
Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1939, p. 135, § 2; Ga. L. 1946, p. 39, § 2; Ga. L. 1947, p. 1159, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1951, p. 635, §§ 1, 1A; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1965, p. 125, § 1; Ga. L. 1967, p. 84, § 1; Ga. L. 1969, p. 147, § 1; Ga. L. 1970, p. 117, § 1; Ga. L. 1971, p. 306, § 1; Ga. L. 1971, p. 309, § 1; Ga. L. 1972, p. 354, § 2; Ga. L. 1973, p. 449, §§ 1, 2; Ga. L. 1974, p. 1007, § 1; Ga. L. 1974, p. 1122, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1986, p. 452, § 1; Ga. L. 1988, p. 312, § 1; Ga. L. 1992, p. 3131, § 2.

35-2-36.1. Auxiliary Service; appointment of members; salary; authority and powers; equipment; eligibility.

(a) There is created within the Uniform Division, a special service known as the Auxiliary Service. The members of the Auxiliary Service of the Uniform Division shall be appointed by the commissioner on a part-time basis and shall serve at the pleasure of the commissioner. The members shall have such rank as assigned by the commissioner. The members of the Auxiliary Service shall be paid on an hourly basis and, with the exception of workers' compensation medical coverage and any benefits mandated by federal law, shall not be entitled to any employee benefits based on their employment in the Auxiliary Service.

(b) Members of the Auxiliary Service shall have the same authority and powers as other members of the Uniform Division.

(c) The commissioner is authorized to furnish the members of the Auxiliary Service with such equipment, uniforms, and badges as the commissioner deems necessary for the duties of such members.

(d) No person shall be eligible for appointment in the Auxiliary Service unless that person has, prior to such appointment, successfully completed trooper school, served in the Uniform Division, and volun-

tarily left the Uniform Division in good standing through retirement, resignation, or otherwise. Persons appointed to the Auxiliary Service must complete the annual training required under Code Section 35-8-21 for certified law enforcement officers, provided that such persons may serve up to six months without having such training. The department is authorized to provide or to pay for such training in the same fashion that it provides or pays for such training for members of the Uniform Division.

History.

Code 1981, § 35-2-36.1, enacted by Ga. L. 1996, p. 1507, § 2; Ga. L. 2025, p. 1029, § 35(42)(D)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (d).

35-2-37. Employment of communications officers to support battalion generally.

To support the battalion, the commissioner, with the approval of the board, is authorized to employ such communications officers as may be necessary, within the limits set by available appropriations. Such personnel shall not be considered members of the Uniform Division. Communications officers may be divided into such ranks or categories as the commissioner, with the approval of the board, deems appropriate.

History.

Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1939, p. 135, § 2; Ga. L. 1946, p. 39, § 2; Ga. L. 1947, p. 1159, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1951, p. 635, §§ 1, 1A; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1965, p. 125, § 1; Ga. L. 1967, p. 84, § 1; Ga. L. 1969, p. 147, § 1; Ga. L. 1970, p. 117, § 1; Ga. L. 1971, p. 306, § 1; Ga. L. 1971, p. 309, § 1; Ga. L. 1972, p. 354, § 2; Ga. L. 1973, p. 449, §§ 1, 2; Ga. L. 1974, p. 1007, § 1; Ga. L. 1974, p. 1122, § 1; Ga. L. 1975, p. 1115, § 1; Ga. L. 1977, p. 228, § 2; Ga. L. 2000, p. 951, § 12-4.

RESEARCH REFERENCES

C.J.S.

63 C.J.S., Municipal Corporations, § 638 et seq. 67 C.J.S., Officers and Public Employees, § 200 et seq.

35-2-38. Division of state into districts or divisions by commissioner.

The commissioner, with the approval of the board, is authorized to divide the state into districts or divisions as may be necessary for the purpose of effectually patrolling the public roads and highways of the state and of the counties thereof and for combating, detecting, and preventing crime.

History.
Ga. L. 1937, p. 322, art. 2, § 11; Ga. L. 1946, p. 39, § 3.

35-2-39. Provision of barracks and quarters for officers and troopers of Uniform Division.

The commissioner is authorized, with the approval of the board, to provide comfortable barracks and quarters for the officers and troopers of the Uniform Division.

History.
Ga. L. 1937, p. 322, art. 2, § 11; Ga. L. 1946, p. 39, § 3.

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Per diem received in addition to expenses when on duty away from district or division. — Officers and troopers should receive a per diem allowance in addition to the officers' actual expenses for meals and lodging when on duty away from the district or division to which the officers are assigned. 1948-49 Ga. Op. Att'y Gen. 396.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 5, 227 et seq., 237, 247, 248, 250. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 48.

C.J.S.
63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, §§ 312 et seq., 323 et seq., 373 et seq.

35-2-40. Purchase, lease, or construction of barracks and equipment for districts or divisions; acceptance of property, equipment, or services.

In the event any district or division headquarters is established by the commissioner, he shall be authorized, with the approval of the board, to purchase, lease, or construct proper quarters or barracks for the men and equipment at such district or division, and to this end may contract with municipalities, persons, or corporations in the name of the state. Subject to the provisions of Code Section 50-16-38 and Code Section 35-2-41.1, the board is authorized to accept in the name and on behalf of the state any property, equipment, or service that may be donated for use at headquarters or any division or district thereof which may be of value to any division of the department.

History.
Ga. L. 1937, p. 322, art. 2, § 12; Ga. L. 1985, p. 486, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1985, "35-2-41.1" was substituted for "35-2-40.1" in the second sentence.

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Department (now board) may accept private foundation funds designated for specified projects subject to the following limitations: (1) the gift must be accepted in the name of and in the behalf of the State of Georgia; (2) any conditional gift must not require the department (now board) to exceed the department's powers; and (3) all gifts of money must be held in accordance with the statutes (see now O.C.G.A. Art. 3, Ch. 17, T. 50), relating to the deposit of money in state depositories. 1974 Op. Att'y Gen. No. 74-140.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 227 et seq., 237, 247, 248, 250.

C.J.S.
67 C.J.S., Officers and Public Employees, §§ 312 et seq., 322 et seq.

35-2-41. Municipality and county purchase or conveyance of property for use as division or district headquarters; effect if property has reversionary clause; approval of contracts.

Subject to the provisions of Code Section 35-2-41.1, any municipality or county of this state is authorized to purchase and convey property by deed, gift, rent, or lease for the use of the department for division or district headquarters. If the deed from the municipality or county to the property to be used for such headquarters contains a reversionary clause to the effect that the property shall revert to the municipality or county in the event it ceases to be used for the headquarters, the commissioner shall not be authorized to enter into any contract or agreement relative to the construction of quarters, barracks, or other facilities for such headquarters which shall, in any manner whatsoever, obligate the department to pay for more than one-half the costs of construction of the quarters, barracks, or other facilities. Any such contract or agreement must be approved by the board.

History.
Ga. L. 1937, p. 322, art. 2, § 12; Ga. L. 1964, p. 144, § 1; Ga. L. 1985, p. 486, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 472 et seq.

C.J.S.
64 C.J.S., Municipal Corporations, §§ 1114, 1121.

35-2-41.1. Donation or conveyance of property, equipment, or services to the department; procedure.

(a) Any offer to donate or convey by deed, gift, rent, lease, or other

means any property, equipment, or services to the department shall be made in writing through command channels to the commissioner. If the commissioner approves the offer, he or she shall submit a written proposal of the offer to the board for its approval. A copy of the formal proposal shall be forwarded by the commissioner to the Office of Planning and Budget, the Senate Budget and Evaluation Office, and the House Budget and Research Office, any of which may comment on the proposal.

(b) Title to real property shall be in the State of Georgia for the use of the department. No member of the department shall be authorized to accept any donation or conveyance of property, equipment, or services unless the provisions of this Code section have been complied with and until the board has approved the donation or conveyance.

History.

Code 1981, § 35-2-41.1, enacted by Ga. L. 1985, p. 486, § 3; Ga. L. 2008, p. VO1, § 1-16/HB 529; Ga. L. 2014, p. 866, § 35/SB 340; Ga. L. 2025, p. 1029, § 35(42)(E)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (b).

Editor's notes.

Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

35-2-42. Personnel administration.

All members of the Uniform Division, all communications officers, and all recruits or cadets shall be governed by rules and regulations as now or hereafter established under Chapter 20 of Title 45.

History.

Ga. L. 1937, p. 322, art. 2, § 2; Ga. L. 1939, p. 135, § 2; Ga. L. 1946, p. 39, § 2; Ga. L. 1947, p. 1159, § 2; Ga. L. 1949, p. 70, § 4; Ga. L. 1951, p. 635, §§ 1, 1A; Ga. L. 1952, p. 129, § 1; Ga. L. 1955, p. 298, § 1; Ga. L. 1956, p. 573, § 1; Ga. L. 1957, p. 103, § 1; Ga. L. 1958, p. 296, §§ 3, 4; Ga. L. 1960, p. 132, § 1; Ga. L. 1965, p. 125, § 1; Ga. L. 1967, p. 84, § 1; Ga. L. 1969, p. 147, § 1; Ga. L. 1970, p. 117, § 1; Ga. L. 1971, p. 306, § 1; Ga. L. 1971, p. 309, § 1; Ga. L. 1972, p. 354, § 2; Ga. L. 1973, p. 449, §§ 1, 2; Ga. L. 1974, p. 1007, § 1; Ga. L. 1974, p. 1122, § 1; Ga. L. 1975, p. 1115, §§ 1, 2; Ga. L. 1977, p. 228, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 1992, p. 3131, § 3; Ga. L. 2000, p. 951, § 12-5; Ga. L. 2006, p. 1050, § 1/SB 520; Ga. L. 2021, p. 463, § 2/SB 198.

OPINIONS OF THE ATTORNEY GENERAL

State merit system not authorized to grant investigators salary different from salary set by law. — State Merit System of Personnel Administration does not have the authority to grant investigators in the Division of Investigation (now Georgia Bureau of Investigation) a salary different

from the salary set by law. 1973 Op. Att'y Gen. No. 73-123.

Compensation increases subject to longevity pay increases. — Compensation increases for members of the Department of Public Safety and the Georgia Bureau of Investigation are subject to longevity pay increases. 1971 Op. Att'y Gen. No. 71-96.

Deputy commissioner entitled to same longevity increases as battalion members. — Deputy director (now deputy commissioner) of public safety is entitled to the same longevity increases as are members of the battalion. 1967 Op. Att'y Gen. No. 67-134.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, §§ 258 et seq., 432 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 42 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, § 365 et seq.

35-2-43. [Reserved] Eligibility for appointment to or enlistment in Uniform Division; appointment or reappointment of discharged members of National Guard, armed forces of the United States, and law enforcement agencies.

History.

Ga. L. 1937, p. 322, art. 2, § 3; Ga. L. 1945, p. 117, § 1; Ga. L. 1949, p. 70, § 5; Ga. L. 1976, p. 524, § 1; Ga. L. 1984, p. 895, § 1; Ga. L. 1990, p. 283, § 1; Ga. L. 1991, p. 1375, § 1; Ga. L. 1996, p. 271, § 2; repealed by Ga. L. 1998, p. 852, § 1, effective April 10, 1998.

Editor's notes.

Ga. L. 1998, p. 852, § 1 repealed and reserved this Code section, effective April 10, 1998.

35-2-44. Enlistment, examination, preliminary training, subsequent instruction, and rules and regulations for discipline and conduct of recruits and troopers.

It shall be the duty of the commissioner, subject to the laws of this state, to arrange for the enlistment and examination of applicants for service as troopers or officers of the Uniform Division of the department, to provide the necessary preliminary training and subsequent instruction of troopers and recruits as peace officers of this state, and to make all necessary rules and regulations for the discipline, conduct, and control of all officers, troopers, and other employees of the department.

History.

Ga. L. 1937, p. 322, art. 2, § 8; Ga. L. 2025, p. 1029, § 35(42)(F)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in the middle of this Code section.

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 14 et seq.
C.J.S.
63 C.J.S., Municipal Corporations, § 615 et seq. 67 C.J.S., Officers and Public Employees, § 21.

35-2-45. Promotions of personnel.

(a) Any trooper first class of the Uniform Division of the department shall be eligible for promotion to the rank of corporal, provided he has served a period of 12 months in the Georgia State Patrol including the period of probation.

(b) Any noncommissioned or commissioned officer shall be eligible for promotion to a higher rank, provided he has served at least one year in the preceding rank.

(c) Promotions to ranks of corporal through lieutenant shall be made in accordance with the Georgia State Patrol Promotion System.

History.
Ga. L. 1937, p. 322, art. 2, § 4; Ga. L. 1939, p. 135, § 4; Ga. L. 1949, p. 70, § 6; Ga. L. 1975, p. 1115, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1992, p. 3131, § 4; Ga. L. 2025, p. 1029, § 35(42)(G)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70 et seq. 70 Am. Jur. 2d, Sheriffs, Police and Constables, §§ 7 et seq., 42 et seq.
C.J.S.
63 C.J.S., Municipal Corporations, § 638 et seq. 67 C.J.S., Officers and Public Employees, § 200 et seq.

35-2-46. Dismissal of officers, troopers, and communications officers.

All officers, troopers, and communications officers who are in the classified service as defined by Code Section 45-20-2 may be dismissed from their employment with the department only in accordance with Chapter 20 of Title 45 and the rules and regulations promulgated thereunder.

History.
Ga. L. 1937, p. 322, art. 2, § 5; Ga. L. 1949, p. 70, § 7; Ga. L. 1976, p. 465, § 1; Ga. L. 1992, p. 3131, § 5; Ga. L. 1997, p. 880, § 1; Ga. L. 2000, p. 951, § 12-6; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-47/HB 642.
Editor's notes.
Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly,

provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 7 et seq., 20 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, § 651 et seq. 67 C.J.S., Officers and Public Employees, §§ 232 et seq., 246 et seq.

ALR.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

35-2-47. Suspension pending dismissal.

All officers, troopers, and communications officers who are in the classified service as defined by Code Section 45-20-2 may be suspended pending their dismissal from employment with the department as provided in Chapter 20 of Title 45 or the rules and regulations promulgated thereunder.

History.

Ga. L. 1937, p. 322, art. 2, § 5; Ga. L. 1949, p. 70, § 7; Ga. L. 1976, p. 465, § 1; Ga. L. 1992, p. 3131, § 6; Ga. L. 1997, p. 880, § 2; Ga. L. 2000, p. 951, § 12-6; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-48/HB 642.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

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Member may be suspended without prior hearing. — Any officer or trooper is entitled to a hearing before discharge, but the officer or trooper may be suspended without hearing, provided that a hearing is to be held within 60 days after the suspension. 1948-49 Ga. Op. Att'y Gen. 714.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, § 79. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 23 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 107. 63 C.J.S., Municipal Corporations, §§ 588 et seq., 651 et seq., 745. 67 C.J.S., Officers and Public Employees, §§ 219, 232 et seq., 246 et seq.

ALR.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

35-2-48. [Reserved] State Patrol Disciplinary Board; composition; appointment and terms of members; conduct of hearings by board; recommendation to commissioner; finality of commissioner's decision.

History.

Ga. L. 1937, p. 322, art. 2, § 5; Ga. L. 1949, p. 70, § 7; Ga. L. 1976, p. 465, § 1; Ga. L. 1981 Ex. Sess., p. 8; Ga. L. 1982, p. 3, § 35; Ga. L. 1986, p. 193, § 1; Ga. L. 1987, p. 3, § 35; Ga. L. 1991, p. 1375, § 2 and Ga. L. 1992, p. 6, § 35; repealed by Ga. L. 1992, p. 3131, § 7, effective July 1, 1992.

Editor's notes.

Ga. L. 2000, p. 951, § 12-6, reserved this Code section, effective July 1, 2001.

35-2-49. Provision of uniforms and equipment to sworn members of the department and radio operators; retention of weapons and badges upon retirement.

The commissioner shall, within the limit of the appropriation, provide the sworn members of the department with proper uniforms, suitable to the season, and also with emergency and first-aid outfits, weapons, motor vehicles with radio equipment, and all other necessary supplies and equipment for the purpose of carrying out this article, the same to remain the property of the state; provided, however, that, after a sworn member has accumulated 15 years of service with the department, including prior service with the Department of Driver Services (formerly known as the Department of Motor Vehicle Safety), Public Service Commission, Department of Transportation, or Georgia Building Authority, upon leaving the department under honorable conditions, or upon leaving the department as a result of a disability arising in the line of duty regardless of the number of years of service, such member shall be entitled, as part of his or her compensation, to retain his or her weapon and badge pursuant to regulations promulgated by the commissioner. The commissioner shall also, within the limit of the appropriation, provide proper uniforms and equipment to radio operators. After a radio operator has accumulated 15 years of service with the department, including prior service with the Department of Driver Services (formerly known as the Department of Motor Vehicle Safety), Public Service Commission, Department of Transportation, or Georgia Building Authority, upon leaving the department under honorable conditions, such radio operator shall be entitled, as part of his or her compensation, to retain his or her badge pursuant to regulations promulgated by the commissioner.

History.
Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8; Ga. L. 1975, p. 1175, § 7; Ga. L. 1979, p. 1072, § 1; Ga. L. 1996, p. 271, § 3; Ga. L. 2000, p. 951, § 12-6; Ga. L. 2006, p. 1050, § 2/SB 520; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2025, p. 1029, § 35(4)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, in the first sentence, substituted "department" for "Department of Public Safety" twice and substituted "however, that," for "however, that".

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Commissioner cannot authorize cadets to carry firearms. — Trooper cadets are not members of the Uniform Division of the Department of Public Safety, and the commissioner has no authority to authorize the cadets to carry firearms in the performance of the cadets' duty. 1974 Op. Att'y Gen. No. 74-135.

35-2-49.1. Retention of badge and weapon upon disability in line of duty.

(a) As used in this Code section, the term "disability" means a disability that prevents an individual from working as a law enforcement officer.

(b) When a member of the Uniform Division of the department leaves the Uniform Division as a result of a disability arising in the line of duty, such member of the Uniform Division shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner.

History.
Code 1981, § 35-2-49.1, enacted by Ga. L. 2004, p. 1058, § 3; Ga. L. 2005, p. 60, § 35/HB 95; Ga. L. 2025, p. 1029, § 35(42)(H)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (b).

35-2-50. Purchasing of uniforms, supplies, and equipment.

(a) The uniforms, supplies, and equipment authorized by Code Section 35-2-49 shall be purchased by the Department of Administrative Services, with the consent and approval of the department, by bid let to the lowest and best bidder and in accordance with specifications named in the advertisement of bid.

(b) The advertisement of the letting of contracts for the purchase of uniforms, supplies, or equipment shall be published in at least two issues of some public journal of the state published daily and having a state-wide circulation for not less than 15 days before the time bids for

the contracts are opened. The Department of Administrative Services shall have the right to reject any and all bids.

History.
Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8; Ga. L. 1979, p. 1072, § 1; Ga. L. 2025, p. 1029, § 35(42)(I)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Works and Contracts, §§ 22, 32, 43, 44, 60.

35-2-51. Storage of excess clothing, equipment, and other articles; disposition of old and worn equipment.

(a) The commissioner shall provide a storeroom or rooms where all excess supplies of clothing, equipment, and other articles shall be stored and shall insure the same against loss by fire.

(b) All old and worn equipment shall be delivered to the custodian or custodians of such storeroom or rooms, who need not be members of the Uniform Division of the department nor subject to age limitations, to be properly receipted before new equipment shall be issued.

History.
Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8; Ga. L. 2025, p. 1029, § 35(5)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "shall" for "must" and "department" for "Department of Public Safety" in subsection (b).

35-2-52. Clothing allowance for personal security or special duty assignments.

The commissioner, at his discretion and subject to available funds, shall be authorized to pay to members of the Uniform Division a clothing allowance when the members are permanently assigned to personal security or special duty assignments which necessitate those members wearing clothing other than the uniform of the Uniform Division. The commissioner, subject to the approval of the board, shall establish the amount of clothing allowance to be paid each year.

History.
Ga. L. 1937, p. 322, art. 2, § 9; Ga. L. 1949, p. 70, § 8; Ga. L. 1975, p. 1175, § 7; Ga. L. 1979, p. 1072, § 1; Ga. L. 1986, p.

452, § 2; Ga. L. 2025, p. 1029, § 35(6)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "board," for "Board of Public Safety," in the last sentence.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, § 5. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 46 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, § 377 et seq.

35-2-53. No costs or emoluments authorized; exception for rewards; payment and distribution of fines and costs.

No member of the Uniform Division of the department shall receive any costs, emoluments, or other compensation other than his salary and any additional compensation provided by or through federal funding to which he may be entitled, except a legal reward as otherwise stated in this article. All fines and costs shall be paid into the treasury of the tribunal having jurisdiction of the offense and distributed according to law.

History.

Ga. L. 1937, p. 322, art. 2, §§ 6, 15; Ga. L. 1973, p. 449, § 3; Ga. L. 2025, p. 1029, § 35(42)(J)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" near the beginning of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

State patrol officer is not entitled to fees for performance of duties in criminal cases of whatever type the cases may be. 1948-49 Ga. Op. Att'y Gen. 49.

Participation in federal drug abuse program not prohibited "office". — When additional compensation will be part of the salary of a member of the Uniform Division of the Department of Public Safety for additional work done for a federal drug abuse program, participation in such a program would not be an "office of profit or trust under the government of the United States" as prohibited by former Code 1933, § 89-101 (see now O.C.G.A. § 45-2-1), primarily because participation would not be an "office" within the meaning of that section. 1972 Op. Att'y Gen. No. 72-69.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, § 5. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 41, 45.

C.J.S.

63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, § 372 et seq.

ALR.

Right of officer to compensation for services in recovering stolen property, 58 A.L.R. 1125.

Construction of statute authorizing public authorities to offer rewards for arrest and conviction of persons guilty of crime, 86 A.L.R. 579.

Knowledge of reward as condition of right thereto, 86 A.L.R.3d 1142.

35-2-54. Purchase of group insurance.

(a) The commissioner, with the approval of the board, is authorized to purchase group life, group accident, and group hospitalization insurance contracts, policies, or certificates issued to the members of the Uniform Division, provided that such contracts of insurance shall be approved by the board as to the amount of insurance, amount of premiums, and company issuing or writing them; provided, further, that the premiums for such contracts, policies, or certificates of insurance shall be paid by the members of the Uniform Division desiring to participate therein; and this purchase shall be in no way considered as incurring a liability on the part of the state to pay for such insurance.

(b) The contracts, policies, or certificates of insurance, as provided for in subsection (a) of this Code section, may be made payable to the beneficiary designated by the member of the Uniform Division to whom the contracts, policies, or certificates are issued.

History.
Ga. L. 1941, p. 277, § 1; Ga. L. 1987, p. 3, § 35.

Cross references.
Gratuities, Ga. Const. 1983, Art. III, Sec. VI, Para. VI.

Insuring and indemnification of public officers and employees, § 45-9-1 et seq.

State Employees' Health Insurance Plan, § 45-18-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
44A Am. Jur. 2d, Insurance, § 1784 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, §§ 41, 42, 45.

C.J.S.
44 C.J.S., Insurance, § 476 et seq. 63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, § 365 et seq.

35-2-55. Compensatory time off for working on state holiday.

The commissioner is authorized and directed to arrange the work schedules of members of the Uniform Division in such a manner that each member shall be given compensatory time off for each day which he is required to work and which is also a legal state holiday. Such compensatory time off shall be given within 90 days of the holiday involved, except where the day of compensatory time off coincides with an emergency situation, in which case the granting of compensatory time off shall be postponed until such time as the emergency no longer exists.

History.
Ga. L. 1970, p. 849.

35-2-56. [Reserved] Use of motor vehicles or other equipment by members of Uniform Division.

History.
Ga. L. 1937, p. 322, art. 2, § 13; Ga. L. 1952, p. 3, § 1; Ga. L. 1992, p. 1310, § 1; Ga. L. 1999, p. 560, § 1; repealed by Ga. L. 2016, p. 385, § 4/HB 806, effective April 26, 2016.

Editor's notes.
Ga. L. 2016, p. 385, § 4/HB 806 repealed and reserved this Code section, effective April 26, 2016.

35-2-57. Use of retired unmarked pursuit cars for training.

When an unmarked pursuit vehicle used by the Uniform Division for the purpose of enforcing the traffic laws of this state is first removed from the field and will no longer be used on a regular basis for pursuit purposes, the commissioner is authorized, in his or her discretion, to make such pursuit vehicle available to the Georgia Public Safety Training Center for the purpose of training public safety officers pursuant to Chapter 5 of this title. Such vehicles may also be sold or traded pursuant to Code Section 35-2-58. Upon notification by the commissioner, the administrator of the Georgia Public Safety Training Center shall be authorized to take immediate possession of any such pursuit vehicle.

History.
Code 1981, § 35-2-57, enacted by Ga. L. 1987, p. 317, § 1; Ga. L. 2012, p. 1, § 1/HB 253; Ga. L. 2025, p. 1029, § 35(7)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Uniform Division" for "Georgia State Patrol" and deleted "of public safety" following "commissioner" in the first sentence.

Cross references.
Georgia Public Safety Training Center Act, § 35-5-1 et seq.

Editor's notes.
The former Code section, relating to false representation as a police officer, was based on Ga. L. 1937, p. 322, art. 2, § 1 and Ga. L. 1960, p. 247, § 1, and was repealed by Ga. L. 1986, p. 1059, § 3, effective April 7, 1986. For current provisions regarding falsely holding oneself out to be a peace officer or other public officer or employee, see Code Section 16-10-23.

OPINIONS OF THE ATTORNEY GENERAL

Authority to allow off-duty troopers to work part-time security jobs in uniform and utilizing state vehicles. — See 1987 Op. Att'y Gen. No. 87-14.

35-2-58. Approval by board to sell or trade surplus motor vehicles towards purchase of new motor vehicles.

(a) Any other provision of law notwithstanding, the commissioner,

subject to approval by the board, shall have the power to sell or trade surplus motor vehicles no longer needed by the department and use the proceeds from the sale or trade toward the purchase of new motor vehicles by the department.

(b) Subject to approval by the board, available funds, and Article 3 of Chapter 5 of Title 50, the commissioner is authorized, in his or her discretion, to purchase new motor vehicles for use by the department.

(c) The board shall promulgate rules and regulations to implement the provisions of this Code section. The disposition of motor vehicles by the department shall not be subject to Article 4 of Chapter 5 of Title 50 or subject to the procedures or approval of any other state agency.

History.
Code 1981, § 35-2-58, enacted by Ga. L. 2012, p. 1, § 2/HB 253.

Administrative rules and regulations.
Vehicle Sales Program, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Rule 570-34-.01 et seq.

ARTICLE 3

SECURITY GUARD DIVISION

Cross references.
Employment of security guards to protect property of Georgia Building Authority, § 50-9-9.

35-2-70. Establishment.

The commissioner is authorized, with the approval of the board, to establish a Security Guard Division within the department.

History.
Ga. L. 1968, p. 475, § 1.

35-2-71. Powers and duties of security guards.

(a) While in the performance of their duties, such security guards shall have the same powers of arrest and the same powers to enforce law and order as the sheriff of the county and the chief of police of the municipality in this state in which any such security guards are performing their duties.

(b) While in the performance of their duties, such security guards shall also be authorized to exercise such powers and duties as are authorized by law for members of the Uniform Division of the department.

History.
Ga. L. 1968, p. 475, § 4; Ga. L. 1987, p. 3, § 35.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 3. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 31 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, § 619 et seq.

35-2-72. Compensation, uniforms, and equipment of security guards.

All persons employed as security guards shall be compensated in an amount to be prescribed by the commissioner and shall be furnished with and shall wear such distinctive uniforms and equipment as may be prescribed by the commissioner.

History.
Ga. L. 1968, p. 475, § 3.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 258 et seq., 276 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 41 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, § 365 et seq.

35-2-73. Security guards for protection of Governor, Lieutenant Governor, Speaker of the House, and their families and executive department; transportation of family members at state expense.

(a) The commissioner shall be authorized to employ such number of security guards as may be necessary to keep watch over and protect the Governor and members of his immediate family, the Lieutenant Governor and members of his immediate family, the Speaker of the House of Representatives and members of his immediate family, the executive department at the state capitol or at any other place as the executive department may be moved, the executive center or other residence of the Governor, the residences and offices of the Lieutenant Governor and the Speaker of the House of Representatives, and such other state property and individuals as may be directed by the Governor.

(b) Members of the Governor's family, the Lieutenant Governor's family, and the Speaker's family for whom protection is provided by the Security Guard Division, when traveling with the Governor, the Lieutenant Governor, or the Speaker, as the case may be, when traveling on state related business at the request of the Governor, the Lieutenant Governor, or the Speaker, as the case may be, or when in the judgment of the commissioner security considerations so dictate, may be transported by means of state owned transportation facilities, when appro-

priate, or at state expense by private carrier, when the use of such state owned facilities are not practical or appropriate.

History.
Ga. L. 1968, p. 475, § 1; Ga. L. 1979, p. 143, § 2; Ga. L. 1981, p. 684, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 1992, p. 6, § 35.

OPINIONS OF THE ATTORNEY GENERAL

Governor's security guards are, in effect, the Governor's body guards, and it is the guards' duty to provide security for the Governor. 1972 Op. Att'y Gen. No. 72-144.

Expenses of Governor's security guards chargeable to state. — Expenses incurred by the state troopers who travel within and without the state with the Governor as security guards are properly chargeable to the state. 1972 Op. Att'y Gen. No. 72-144.

Use of state-owned aircraft. — If the Governor, Lieutenant Governor, or Speaker of the House must travel on personal or political business, such travel must be accomplished by private means unless the commissioner of public safety has determined that travel on state aircraft is necessary for personal security; otherwise, when any public officer uses a state aircraft for a personal or political reason, the use of the aircraft is contrary to the prohibitions of the gratuities clause and state statutes authorizing the use of state aircraft, even if the official to reimburse the state for the direct costs associated with the trip. 2004 Op. Att'y Gen. No. 2004-3.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 227, 229, 237. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 31 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, §§ 627 et seq., 643.

35-2-74. Governor to prescribe coverage by State Personnel Board.

(a) The Governor is authorized, in his discretion, to direct by executive order that the employees of the Security Guard Division shall be covered by the rules of the State Personnel Board and in such order shall specify the date on which the rules shall become applicable to such personnel.

(b) The application of the rules of the State Personnel Board to employees of the Security Guard Division shall not affect any other personnel of the department.

History.
Ga. L. 1968, p. 475, § 6; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-49/HB 642; Ga. L. 2025, p. 1029, § 35(42)(K)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (b).

Cross references.
State Personnel Board generally, § 45-20-1 et seq.

Editor's notes.
Ga. L. 2012, p. 446, § 3-1/HB 642, not

codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d.
15A Am. Jur. 2d, Civil Service, § 14.
C.J.S.
62 C.J.S., Municipal Corporations, § 560 et seq. 67 C.J.S., Officers and Public Employees, § 74 et seq.

35-2-75. Adoption of rules, regulations, and orders by board.

The board shall be authorized to promulgate and adopt such rules, regulations, and orders in regard to security guards as in its judgment public service may demand.

History.
Ga. L. 1968, p. 475, § 5.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 227, 229, 237.
C.J.S.
62 C.J.S., Municipal Corporations, § 444 et seq. 67 C.J.S., Officers and Public Employees, § 312 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 108 et seq.

ARTICLE 4

DEPARTMENT OF PUBLIC SAFETY NOMENCLATURE

Editor's notes.
Ga. L. 1995, p. 925, § 1, not codified by the General Assembly, provides: "(a) It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with the Department of Public Safety, the State Patrol, or with a member thereof when in fact the individual or organization is not the Department of Public Safety, the State Patrol, the state police, nor a member thereof. Furthermore, the Department of Public Safety, which has provided quality law enforcement services to the citizens of this state since 1937, has established a name for excellence in its field. This name should be protected for the department, its members, and the citizens of the state. Therefore, no person or organization should be allowed to use the department's

name or any term used to identify the department or its members without the expressed permission of the chief administrative officer of the department. The provisions of this Act are in furtherance of the promotion of this policy.

"(b) It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with the Georgia Bureau of Investigation or with an agent thereof when in fact the individual or organization is not the Georgia Bureau of Investigation nor an agent thereof. Furthermore, the Georgia Bureau of Investigation, which has provided quality law enforcement services to the citizens of this state, has established a name for excellence in its field. This name should be protected for the bureau, its agents, and the citizens of this state. Therefore, no person or organization should be allowed to use the bureau's name or any term used to identify the bureau or its agents without the expressed permission of the director of investigation. The provisions of this Act are in furtherance of the promotion of this policy."

35-2-80. Short title.

This article shall be known and may be cited as the "Department of Public Safety Nomenclature Act of 1995."

History.
Code 1981, § 35-2-80, enacted by Ga. L. 1995, p. 925, § 2.

35-2-81. Definitions.

As used in this article, the term:

(1) "Badge" means any official badge used by members of the department, either in the past or currently.

(2) "Emblem" means any official patch or other emblem worn currently or formerly or used by the department to identify the department or its employees.

(3) "Person" means any person, corporation, organization, or political subdivision of the State of Georgia.

(4) "Willful violator" means any person who knowingly violates the provisions of this article. Any person who violates this article after being advised in writing by the commissioner that such person's activity is in violation of this article shall be considered a willful violator and shall be considered in willful violation of this article. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this article unless, upon learning of the violation, he or she immediately terminates the agency or other relationship with such violator.

History.
Code 1981, § 35-2-81, enacted by Ga. L. 1995, p. 925, § 2; Ga. L. 2025, p. 1029, § 35(8)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department," for "Department of Public Safety," in paragraph (1); deleted former paragraphs (2) and (3), which read:

"(2) 'Commissioner' means the commissioner of public safety.

"(3) 'Department' means the Department of Public Safety."; and redesignated former paragraphs (4) through (6) as present paragraphs (2) through (4), respectively.

35-2-82. Permission required for use of department nomenclature.

Whoever, except with the written permission of the commissioner, knowingly uses the words "Georgia Department of Public Safety," "State Patrol," "State Police," "State Highway Patrol," "State Trooper," or "State Patrolman" in connection with any advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by or associated with the department shall be in violation of this article.

History.

Code 1981, § 35-2-82, enacted by Ga. L. 1995, p. 925, § 2.

35-2-83. Permission required for use of department symbols.

Any person who uses or displays any symbol, including any emblem, seal, or badge, current or historical, used by the department without written permission from the commissioner shall be in violation of this article.

History.

Code 1981, § 35-2-83, enacted by Ga. L. 1995, p. 925, § 2.

35-2-84. Procedure for seeking permission to use department nomenclature or symbols.

Any person wishing permission to use either department nomenclature or symbols may request such permission in writing to the commissioner. The commissioner shall serve notice on the requesting party within 15 calendar days after receipt of the request of his or her decision on whether the person may use the nomenclature or the symbol. If the commissioner does not respond within the 15 day time period, then the request is presumed to have been denied. The grant of permission under Code Section 35-2-82 or 35-2-83 shall be in the discretion of the commissioner under such conditions as the commissioner may impose. If the commissioner denies such request and

the person making such request reasonably believes that the commissioner has acted in bad faith or based on an illegal motive, then the person may, within 15 days after the person's request was denied or granted on limited terms, file an appeal with the board. The matter will then be considered before the board, but the burden will be with the person making the request to show that the request was improperly denied or limited.

History.
Code 1981, § 35-2-84, enacted by Ga. L. 1995, p. 925, § 2; Ga. L. 2025, p. 1029, § 35(9)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "board" for "Board of Public Safety" at the end of the fifth sentence.

35-2-85. Injunctions against violations.

Whenever there shall be an actual or threatened violation of Code Section 35-2-82 or 35-2-83, the commissioner shall have the right to apply to the Superior Court of Fulton County or to the superior court of the county of residence of the violator for an injunction to restrain the violation.

History.
Code 1981, § 35-2-85, enacted by Ga. L. 1995, p. 925, § 2.

35-2-86. Civil penalties.

In addition to any other relief or sanction for a violation of Code Section 35-2-82 or 35-2-83, where the violation is willful, the commissioner shall be entitled to collect a civil penalty in the amount of $500.00 for each violation. Further, when there is a finding of willful violation, the commissioner shall be entitled to recover reasonable attorney's fees for bringing any action against the violator. The commissioner shall be entitled to seek civil sanctions in the Superior Court of Fulton County or in the county of residence of the violator.

History.
Code 1981, § 35-2-86, enacted by Ga. L. 1995, p. 925, § 2.

35-2-87. Damage suits against violators.

Any person who has given money or any other item of value to another person due in part to such person's use of department nomenclature or symbols in violation of this article may maintain a suit for damages against the violator. Where it is proven that the violation was willful,

the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees.

History.
Code 1981, § 35-2-87, enacted by Ga. L. 1995, p. 925, § 2.

35-2-88. Criminal penalties.

Any person who violates the provisions of this article shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than $1,000.00 nor more than $5,000.00 or to imprisonment for not less than one and not more than five years, or both. Each violation shall constitute a separate offense.

History.
Code 1981, § 35-2-88, enacted by Ga. L. 1995, p. 925, § 2.

ARTICLE 5

COMMERCIAL VEHICLE ENFORCEMENT DIVISION

35-2-100. Creation; establishment of Regulatory Compliance Section; members designated as law enforcement officers.

There shall be created and established a division of the Department of Public Safety to be known as Commercial Vehicle Enforcement, and within the division shall be created a section to be known as the Regulatory Compliance Section. Except as provided in Code Section 35-2-102, the members of Commercial Vehicle Enforcement shall be known, designated, trained, sworn, and certified as "law enforcement officers."

History.
Code 1981, § 35-2-100, enacted by Ga. L. 2005, p. 334, § 13A-2/HB 501; Ga. L. 2009, p. 122, § 1/HB 343; Ga. L. 2012, p. 580, § 7/HB 865; Ga. L. 2025, p. 1029, § 1/HB 116, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, in the first sentence, substituted "Commercial Vehicle Enforcement" for "the Motor Carrier Compliance Division" and "the Regulatory Compliance Section" for "the Motor Carrier Compliance Enforcement Section"; and substituted "the members of Commercial Vehicle Enforcement shall be known, designated, trained, sworn, and certified" for "the members of the Motor Carrier Compliance Enforcement Section shall be known and designated" in the second sentence.

35-2-101. Jurisdiction; duties and powers; use of dogs to detect controlled substances.

(a) The Commercial Vehicle Enforcement division of the department

shall have jurisdiction throughout this state with such duties and powers as are prescribed by law.

(b) The primary duties of the division of Commercial Vehicle Enforcement shall be as follows:

(1) Enforcement of laws and regulations relating to the size and the weights of motor vehicles, trailers, and loads as provided for in Article 2 of Chapter 6 of Title 32;

(2) Enforcement of laws and regulations relating to licensing and fuel tax registration requirements and the reporting of violations thereof to the Department of Revenue;

(3) Enforcement of safety standards for motor vehicles and motor vehicle components;

(4) Enforcement of laws relating to hazardous materials carriers;

(5) Enforcement of all state laws on the following properties owned or controlled by the Department of Transportation or the State Road and Tollway Authority: rest areas, truck-weighing stations or checkpoints, wayside parks, parking facilities, toll facilities, and any buildings and grounds for public equipment and personnel used for or engaged in administration, construction, or maintenance of the public roads or research pertaining thereto;

(6) Enforcement of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers;

(7) Directing and controlling traffic on any public road which is part of the state highway system but only in areas where maintenance and construction activities are being performed and at scenes of accidents and emergencies until local police officers or Georgia State Patrol officers arrive and have the situation under control;

(8) Enforcement of Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes;

(9) Enforcement of Code Section 16-11-43, relating to obstructing highways, streets, sidewalks, or other public passages, on any public road which is part of the state highway system;

(10) Enforcement of Code Section 16-7-43, relating to littering public or private property or waters, on any public road which is part of the state highway system;

(11) Enforcement of Code Section 16-7-24, relating to interference with government property, on any public road which is part of the state highway system; and

(12) Enforcement of any state law when ordered to do so by the commissioner.

(c) In performance of the duties specified in subsection (b) of this Code section, certified law enforcement officers employed by the department or designated by the commissioner shall:

(1) Be authorized to carry firearms;

(2) Exercise arrest powers;

(3) Have the power to stop, enter upon, and inspect all motor vehicles using the public highways for purposes of determining whether such vehicles have complied with and are complying with laws, the administration or enforcement of which is the responsibility of the department;

(4) Have the power to examine the facilities where motor vehicles are housed or maintained and the books and records of motor carriers for purposes of determining compliance with laws, the administration or enforcement of which is the responsibility of the department; and

(5) Exercise the powers generally authorized for law enforcement officers in the performance of their duties or otherwise to the extent needed to protect any life or property when the circumstances demand action.

(d) The commissioner shall authorize law enforcement officers of Commercial Vehicle Enforcement to make use of dogs trained for the purpose of detection of drugs and controlled substances while such officers are engaged in the performance of their authorized duties. If such authorized use of such a dog indicates probable cause to indicate the presence of contraband, the officer or officers shall in those circumstances have the full authority of peace officers to enforce the provisions of Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," and Article 3 of Chapter 13 of Title 16, the "Dangerous Drug Act"; provided, however, that the department must immediately notify the local law enforcement agency and district attorney of the jurisdiction where a seizure is made.

History.

Code 1981, § 35-2-101, enacted by Ga. L. 2005, p. 334, § 13A-2/HB 501; Ga. L. 2012, p. 580, § 7/HB 865; Ga. L. 2016, p. 385, § 5/HB 806; Ga. L. 2025, p. 221, § 2/HB 116, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, substituted "Commercial Vehicle Enforcement division of the" for "Motor Carrier Compliance Enforcement Section of the" in subsection (a); substituted "division of Commercial Vehicle Enforcement" for "Motor Carrier Compliance Enforcement Section" in subsection (b); and substituted "Commercial Vehicle Enforcement" for "the Motor Carrier Compliance Enforcement Section" in subsection (d).

35-2-102. Weight inspector positions; training; powers and responsibilities; presence of certified peace officer.

(a) The commissioner is authorized to establish a position to be known as "weight inspector" within the Commercial Vehicle Enforcement division of the department. Weight inspectors shall be assigned to fixed scales facilities and shall not be authorized to operate outside such facilities. The number of such positions shall be determined by the commissioner within the limits set by available appropriations. Weight inspectors may be divided into such ranks as the commissioner deems appropriate.

(b) The commissioner shall ensure that a weight inspector is properly trained regarding laws governing commercial motor vehicle weight, registration, size, and load, including, but not limited to, commercial motor vehicle provisions in Article 2 of Chapter 6 of Title 32 and safety standards for commercial motor vehicles and such motor vehicle components. The training required in the areas required by this subsection shall be equivalent to training provided to certified officers in Commercial Vehicle Enforcement.

(c) A weight inspector, at a fixed scales facility, shall be authorized to:

(1) Enforce noncriminal provisions relating to commercial motor vehicle weight, registration, size, and load and assess a civil penalty for a violation of such provisions; and

(2) Detain a commercial motor vehicle that:

(A) Has a safety defect which is critical to the continued safe operation of the vehicle;

(B) Is being operated in violation of any criminal law; or

(C) Is being operated in violation of an out-of-service order as reported on the federal Safety and Fitness Electronic Records data base.

The detention authorized by this paragraph shall be for the purpose of contacting a certified member of Commercial Vehicle Enforcement or the Georgia State Patrol. A certified officer shall report to the scene of a detained vehicle and take any further action deemed appropriate, including completing the inspection and investigation, making an arrest, or bringing criminal or civil charges.

(d) At all times while a weight inspector is on duty, there shall be a supervisor over the weight inspector also on duty who shall be a certified peace officer.

History.
Code 1981, § 35-2-102, enacted by Ga. L. 2009, p. 122, § 2/HB 343; Ga. L. 2012, p. 580, § 7/HB 865; Ga. L. 2021, p. 625,

§ 5/HB 479; Ga. L. 2025, p. 221, § 3/HB 116, effective July 1, 2025; Ga. L. 2025, p. 1029, § 35(42)(L)/SB 153, effective July 1, 2025.

Amendments.

The first 2025 amendment, effective July 1, 2025, substituted "the Commercial Vehicle Enforcement division of the department" for "the Motor Carrier Compliance Enforcement Section of the Department of Public Safety" in the first sentence of subsection (a); substituted "Commercial Vehicle Enforcement" for "the Motor Carrier Compliance Enforcement Section" in subsection (b); substituted "a fixed scales facility" for "the fixed scales facility" in subsection (c); and substituted "or Commercial Vehicle Enforcement or the Georgia State Patrol" for "the Motor Carrier Compliance Enforcement Section or Georgia State Patrol" in the first sentence of the undesignated paragraph following paragraph (c)(2).

The second 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (a).

Editor's notes.

Ga. L. 2021, p. 625, § 8/HB 479, not codified by the General Assembly, provides, in part, that: "This Act shall not apply to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Act." This Act became effective May 10, 2021.

Law reviews.

For article, "HB 479: Repeal of Georgia's Citizen's Arrest Law," see 38 Ga. St. U.L. Rev. 25 (2021).

ARTICLE 6

CAPITOL POLICE DIVISION

35-2-120. Definitions.

As used in this article, the term:

(1) "Capitol Square" means that area designated as such by Code Section 50-2-28.

(2) "Division" means the Capitol Police Division of the department created by this article.

History.

Code 1981, § 35-2-120, enacted by Ga. L. 2010, p. 137, § 1/HB 1074; Ga. L. 2025, p. 1029, § 35(10)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted paragraphs (2) and (3), which read:

"(2) 'Commissioner' means the commissioner of public safety.

"(3) 'Department' means the Department of Public Safety."; and redesignated former paragraph (4) as present paragraph (2).

Cross references.

Appointment of nonuniformed investigators to protect state property, § 35-1-6.

Law reviews.

For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

35-2-121. Creation; staffing.

There is created and established a division of the Department of Public Safety to be known as the Capitol Police Division. The department shall staff such division with certified law enforcement officers, who shall be designated capitol police officers, security personnel under the employ-

ment of or contract with the department, and any other certified peace officer employed by the department.

History.
Code 1981, § 35-2-121, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.

35-2-122. Jurisdiction; duties; power.

(a) The division shall have jurisdiction and the primary duty to enforce all laws in Capitol Square and the property and buildings owned by the Georgia Building Authority within a five-mile radius of Capitol Square.

(b) The division shall have the following additional duties:

(1) To maintain peace and order and enforce the laws and regulations relating to controlling access to any building or property under the control or operation of the Georgia Building Authority;

(2) To maintain peace and order and enforce the laws and regulations relating to controlling access to Capitol Square;

(3) To enforce parking and traffic laws and to investigate accidents within Capitol Square;

(4) To enforce state law when ordered to do so by the commissioner; and

(5) To exercise the powers of a law enforcement officer to protect life and property.

(c) In the performance of their duties, certified law enforcement officers shall be authorized to carry firearms and exercise the power of arrest.

History.
Code 1981, § 35-2-122, enacted by Ga. L. 2010, p. 137, § 1/HB 1074.

35-2-123. [Reserved] Use of vehicles by off-duty law enforcement officer.

History.
Ga. L. 2010, p. 137, § 1/HB 1074; repealed by Ga. L. 2016, p. 385, § 6/HB 806, effective April 26, 2016.

Editor's notes.
Ga. L. 2016, p. 385, § 6/HB 806 repealed and reserved this Code section, effective April 26, 2016.

35-2-124. Reimbursement to the department for costs.

The Georgia Building Authority shall reimburse the department for the costs to the department of performing police and security duties within

Capitol Square in accordance with an intergovernmental agreement by and between the department and the Georgia Building Authority. Such agreement shall set forth the amount to be paid by the Georgia Building Authority to the department for each fiscal year and shall be executed prior to the budget submission deadline set by the Office of Planning and Budget.

History. Code 1981, § 35-2-124, enacted by Ga. L. 2010, p. 137, § 1/HB 1074; Ga. L. 2020, p. 493, § 35/SB 429.

ARTICLE 7

STATE AVIATION OPERATIONS

35-2-140. Transfer of certain personnel, aircraft, and other assets from the Georgia Aviation Authority to the department; powers.

(a)(1) On and after September 1, 2011, the department shall be authorized to acquire, operate, maintain, house, and dispose of all state aviation assets assigned to the department, to provide aviation services and oversight of such state aircraft and aviation operations for public safety and legitimate state business purposes, to achieve policy objectives through aviation missions, and to provide for the efficient operation of such state aircraft.

(2) On September 1, 2011, the Georgia Aviation Authority shall transfer back to the custody and control of the department all of the aircraft previously transferred to the authority by the department and any associated parts and equipment; provided, however, that this article shall have no application to aircraft owned or operated by the Department of Defense.

(3) On September 1, 2011, any person who is employed by the department and is assigned for administrative purposes only to the Georgia Aviation Authority shall be transferred back to the department and shall no longer be under the administration or direction of the Georgia Aviation Authority. In addition, on September 1, 2011, the six aviation mechanic positions that were previously transferred by the department to the Georgia Aviation Authority shall be returned to the department along with the funds budgeted for such positions.

(4) All airfields and appurtenances, including hangars, previously transferred to the Georgia Aviation Authority by the department and all funds, accounts receivable, a percentage of the budgeted operating funds, contracts, liabilities, and obligations associated with the aircraft being transferred back to the department as of September 1,

2011, shall become the property, funds, accounts receivable, budgeted operating funds, contracts, liabilities, and obligations of the department on such date.

(5) The department shall be responsible for providing aviation services in support of public safety. The department shall be authorized to dispose of any state aircraft and apply the proceeds derived therefrom to the purchase of replacement aviation assets.

(b) The department shall have the power to:

(1) Hire, organize, and train personnel to operate, maintain, house, purchase, and dispose of aviation assets;

(2) Purchase, lease, maintain, develop, and modify facilities to support aviation assets and operations;

(3) Develop operating, maintenance, safety, security, training, education, and scheduling standards for state aviation operations and conduct inspections, audits, and other similar oversight to determine practices and compliance with such standards;

(4) Develop an accountability system for state aviation operations and activities;

(5) Identify the costs associated with training, education, and the purchase, operation, maintenance, and administration of state aircraft and aviation operations and related facilities;

(6) In conjunction with the Georgia Aviation Authority, develop an appropriate joint billing structure for passenger transportation where the aircraft is designated and operated as a "civil aircraft" under Part 91 of the Federal Aviation Regulations and charge agencies and other state entities for the full variable hourly costs for the operation of each type aircraft, evaluated annually and adjusted as necessary based upon the price of fuel, maintenance, and other fees that are a direct result of flying the aircraft on that specific trip; provided, however, that any billing to an agency by the department shall be suspended whenever the Governor declares a state of emergency on any cost associated with aircraft used during and in response to such state of emergency;

(7) Retain appropriate external consulting and auditing expertise;

(8) Engage aviation industry representatives to ensure best practices for state aviation assets;

(9) Delegate certain powers pursuant to this article to other state entities;

(10) Otherwise implement appropriate and efficient management practices for state aviation operations; and

(11) Enter into agreements with the Georgia Aviation Authority for mutual use of state airfields and appurtenances, including aircraft hangars.

History.
Code 1981, § 35-2-140, enacted by Ga. L. 2011, p. 409, § 4/HB 414; Ga. L. 2025, p. 1029, § 35(42)(M)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" throughout this Code section.

ARTICLE 8

OFFICE OF PUBLIC SAFETY SUPPORT

Editor's notes.
Ga. L. 2018, p. 716, § 3/HB 703, not codified by the General Assembly, provided that this article becomes effective only when funds are specifically appropriated for purposes of the Act, in an appropriations Act. When funds are so appropriated, then the article shall become effective on the later of the date on which such appropriations Act becomes effective or the beginning date of the fiscal year for which such appropriations are made. Funds were appropriated at the 2019 session of the General Assembly. This article became effective July 1, 2019.

35-2-160. Definitions.

As used in this article, the term:

(1) "Critical incident support services" means interventions designed to provide compassionate or coping support in the event of involvement in, being a witness to, or being otherwise affected by a traumatic event, including, but not limited to, any series of events that render a traumatic effect.

(2) "Peer counselor" shall have the same meaning as provided for in Code Section 24-5-510.

(3) "Public entity" means any agency or department of this state or a political subdivision or municipality of this state or an authority of this state.

(4) "Public safety officer" means a peace officer, correctional officer, emergency health worker, firefighter, highway emergency response operator, jail officer, juvenile correctional officer, probation officer, or emergency services dispatcher.

(5) "Support coordinator" means the coordinator of the Office of Public Safety Support within the department.

History.
Code 1981, § 35-2-160, enacted by Ga. L. 2018, p. 716, § 2/HB 703; Ga. L. 2020, p. 671, § 2/HB 838; Ga. L. 2025, p. 1029, § 35(42)(N)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in paragraph (5).

35-2-161. Creation.

There is established the Office of Public Safety Support within the department.

History.
Code 1981, § 35-2-161, enacted by Ga. L. 2018, p. 716, § 2/HB 703; Ga. L. 2020, p. 671, § 3/HB 838; Ga. L. 2025, p. 1029, § 35(42)(O)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" at the end of this Code section.

35-2-162. Support coordinator.

The support coordinator shall be appointed by and be under the direction of the commissioner. The support coordinator shall be an individual with experience as a public safety officer and who has received training and exhibited a demonstrated professional ability to provide emotional and moral support to public safety officers. The support coordinator may also otherwise serve as a public safety officer within the department. The support coordinator is charged and empowered to carry out the responsibilities provided for under this article.

History.
Code 1981, § 35-2-162, enacted by Ga. L. 2018, p. 716, § 2/HB 703.

35-2-163. Peer counseling and critical incident support services; certification; employment of necessary staff.

(a) The Office of Public Safety Support within the department may respond to and provide peer counselors and critical incident support services to any requesting public entities that employ public safety officers. The office may respond to and provide peer counselors and critical incident support services for the benefit of public safety officers experiencing post-traumatic stress disorder or other trauma associated with public safety. The office shall develop a course of training in critical incident stress management and in any other related subject matter for the benefit of public safety officers.

(b) The support coordinator shall certify individuals, who shall be

peer counselors, as having received training and demonstrated ability to provide emotional and moral support to public safety officers consistent with the purposes of this article.

(c) The support coordinator, with approval of the commissioner, may employ or retain persons as he or she deems necessary to serve as peer counselors and staff consistent with the purposes of this article.

History.
Code 1981, § 35-2-163, enacted by Ga. L. 2018, p. 716, § 2/HB 703; Ga. L. 2020, p. 671, § 4/HB 838; Ga. L. 2025, p. 1029, § 35(42)(P)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (a).

35-2-164. Provision and designation of office space, personnel, supplies, and materials; policies and procedures.

The commissioner is authorized to provide and designate for the use of the support coordinator such space as shall be necessary to quarter the support coordinator and his or her staff. The support coordinator shall establish policies and procedures for the implementation of this article and is authorized to employ and secure the necessary staff, supplies, and materials to carry out this article, subject to the approval of the commissioner.

History.
Code 1981, § 35-2-164, enacted by Ga. L. 2018, p. 716, § 2/HB 703.

CHAPTER 3

GEORGIA BUREAU OF INVESTIGATION

Article 1

General Provisions

Sec.

35-3-1. Definitions.

35-3-2. Creation.

35-3-3. Divisions of bureau.

35-3-4. Powers and duties of bureau generally.

35-3-4.1. Subpoena authority for records relating to computer or electronic device used in furtherance of certain offenses.

35-3-4.2. Subpoena authority for investigating fraudulent real estate transactions.

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35-3-5. Creation of director; appointment and removal; powers and duties.

35-3-6. Director classification and compensation.

35-3-7. Agreements by director and commissioner for provision of services and material.

35-3-8. Powers of agents of bureau relative to certain substances.

35-3-8.1. Power of bureau to assist other law enforcement agencies; jurisdiction in terrorism cases.

35-3-9. Narcotics agents.

35-3-10. Participation by bureau personnel and director in Employees' Retirement System of Georgia.

35-3-11. Applicability of merit system to agents of bureau; retention of badge and weapon by disabled agent.

Sec.

35-3-12. Payment of medical and similar expenses of members injured in line of duty; procedure.

35-3-13. Requests for investigation of criminal matters and crime related fires; access to local services and records.

35-3-14. Posting of information relating to certain persons released from federal custody within state.

Article 2

Georgia Crime Information Center

35-3-30. Definitions.

35-3-31. Creation; staff and equipment generally; State Personnel Board status of personnel.

35-3-32. Establishment of council; composition; duties and responsibilities of council generally.

35-3-33. Powers and duties of center generally.

35-3-34. Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.

35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.

35-3-34.2. Exchange of national criminal history background checks on providers of care to children, the elderly, and persons with disabilities.

35-3-35. Disclosure and dissemination of records to public agencies and political subdivisions; responsibility and liability of issuing center.

Sec.
35-3-35.1. Superseded.
35-3-36. Information to be submitted to center; uniform crime reports.
35-3-37. Criminal history record information; review; corrections; restriction of access for certain dispositions.
35-3-38. Unauthorized requests or disclosures of criminal history record information; disclosure of techniques used to ensure security or privacy of criminal history records.
35-3-39. Effect of neglect or refusal of official to act as required by article.
35-3-39.1. National Crime Prevention and Privacy Compact; ratification; criminal history records repository.
35-3-40. Construction of article.

Article 3

Antiterrorism Task Force

35-3-60. Short title.
35-3-61. Legislative findings; purpose; liberal construction.
35-3-62. "Terroristic act" defined.
35-3-63. Creation; purposes.
35-3-64. Confidentiality of investigative reports and identity of agents.
35-3-65. Authority to work with other law enforcement agencies.

Article 4

Missing Children Information Center

35-3-80. Definitions.
35-3-81. Establishment, development, maintenance, and operation of center; staff.
35-3-82. Powers and duties.
35-3-83. Missing child reports.
35-3-84. Sending information to center.
35-3-85. Registration of related organizations.

Article 5

Georgia Bureau of Investigation Nomenclature

Sec.
35-3-100. Short title.
35-3-101. Definitions.
35-3-102. Permission required for use of bureau nomenclature.
35-3-103. Permission required for use of bureau symbols.
35-3-104. Procedures for seeking permission to use bureau nomenclature or symbols.
35-3-105. Injunction against violations.
35-3-106. Civil penalties.
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35-3-108. Criminal penalties.

Article 6

Division of Forensic Sciences

35-3-150. Definitions.
35-3-151. Responsibilities.
35-3-152. Appointment, powers, and responsibilities of division director.
35-3-153. Chief medical examiner office created; appointment; responsibilities.
35-3-154. Division requirements.
35-3-154.1. Admission of reports from state crime laboratory.
35-3-155. Application of "Administrative Procedure Act."

Article 6A

DNA Sampling, Collection, and Analysis

35-3-160. DNA analysis in felony convictions and certain felony charges; performance of tests.
35-3-161. Collection of DNA samples; time and procedure for withdrawal of blood samples.
35-3-162. Procedure for analysis and storage of DNA sample; use of remainder of sample not subjected to analysis; confidentiality of results.

Sec.
35-3-163. Availability of DNA profiles collected; request for DNA profile comparisons; authority to establish unknown identity data base.
35-3-164. Unlawful dissemination or use of information; obtaining sample without authority.
35-3-165. Expungement of DNA profile in data bank; requirements.

Article 7

Alert System for Missing Disabled Adults and the medically endangered

35-3-170. Short title.
35-3-171. Definitions.
35-3-172. Development and implementation.
35-3-173. Director to be state-wide coordinator for alert system.
35-3-174. Time for reporting elopement of disabled person from personal care home and assisted living community.
35-3-175. Recruitment of media, private and governmental entities, and others for assistance in developing and implementing alert system; contractual agreements for system support.
35-3-176. Criteria for activating alert system.
35-3-177. Verification that criteria for activation have been met.
Sec.
35-3-178. Obligations of agencies participating in alert system; participation of Georgia Lottery Corporation in disseminating alert information through retail establishments.
35-3-179. Termination of an alert.
35-3-180. Immunity.

Article 8

Alert System for Unapprehended Suspects

35-3-190. Alert system for dangerous murder or rape suspects; development and implementation; termination of an alert; immunity.
35-3-191. Alert system for dangerous suspects of crimes involving death or serious injury to peace officer; alert system for missing peace officer; termination of an alert; immunity.

Article 9

Georgia Information Sharing and Analysis Center

35-3-200. Definitions.
35-3-201. Creation; purpose.
35-3-202. [Reserved] Responsibilities of director for center operations.
35-3-203. Cooperative activities of center.
35-3-204. Membership; availability of analysts.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes.

By resolution (Ga. L. 1986, p. 534), the General Assembly designated the headquarters of the Georgia Bureau of Investigation as the "Phil Peters Building".

35-3-1. Definitions.

As used in this chapter, the term:

(1) "Bureau" means the Georgia Bureau of Investigation.

(2) "Director" means the director of the Georgia Bureau of Investigation.

History.
Code 1981, § 35-3-1; Ga. L. 2005, p. 599, § 1/SB 146.
Editor's notes.
This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).

35-3-2. Creation.

There is created a Georgia Bureau of Investigation which shall be a separate department and agency of state government.

History.
Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1972, p. 1015, §§ 1608, 1608.1; Ga. L. 1974, p. 109, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
16A Am. Jur. 2d, Constitutional Law, §§ 347 et seq., 393.

C.J.S.
16A C.J.S., Constitutional Law, §§ 707, 708, 709.

35-3-3. Divisions of bureau.

The bureau shall be composed of the Investigations Division, the Forensic Sciences Division, the Georgia Crime Information Center Division, the Legal Division, and such other divisions as may be created by the board.

History.
Ga. L. 1974, p. 109, § 2; Ga. L. 1980, p. 497, § 1; Ga. L. 2020, p. 82, § 1/SB 393; Ga. L. 2025, p. 1029, § 35(43)(A)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" at the beginning of this Code section.

35-3-4. Powers and duties of bureau generally.

(a) It shall be the duty of the bureau to:

(1) Take, receive, and forward fingerprints, photographs, descriptions, and measurements of persons in cooperation with the bureaus and departments of other states and of the United States;

(2) Exchange information relating to crime and criminals;

(3) Keep permanent files and records of such information procured or received;

(4) Provide for the scientific investigation of articles used in

committing crimes or articles, fingerprints, or bloodstains found at the scene of a crime;

(5) Provide for the testing and identification of weapons and projectiles fired therefrom;

(6) Acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(7) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the bureau shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(8) Exchange such records and information as provided in paragraphs (6) and (7) of this subsection with, and for the official use of, authorized officials of the federal government, the states, cities, counties, and penal and other institutions. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies;

(9) Identify and investigate violations of Article 4 of Chapter 7 of Title 16;

(10) Identify and investigate violations of Part 2 of Article 3 of Chapter 12 of Title 16, relating to offenses related to minors;

(11) Identify and investigate violations of Article 8 of Chapter 9 of Title 16;

(12) Identify and investigate violations of Article 5 of Chapter 8 of Title 16;

(13) Identify and investigate violations of Code Section 16-5-46;

(14) Identify and investigate violations of Article 8 of Chapter 5 of Title 16;

(15)(A) Upon request, provide to the board an analysis of criminal history record information to assist the board in determining a sexual offender's risk assessment classification in accordance with the board's duties as specified in Code Section 42-1-14.

(B) As used in this paragraph, the term:

(i) "Board" means the Sexual Offender Risk Review Board.

(ii) "Criminal history record information" has the same meaning as set forth in Code Section 35-3-30.

(iii) "Risk assessment classification" means the level into which a sexual offender is placed based on the board's assessment.

(iv) "Sexual offender" has the same meaning as set forth in Code Section 42-1-12;

(16) Identify and investigate violations of Chapter 2 of Title 21 involving elections which if established are sufficient to change or place in doubt the results of an election; and

(17) Attorneys employed by the Legal Division of the bureau may serve at the request of a district attorney, solicitor-general, or United States Attorney in the prosecution of any civil or criminal case within the jurisdiction of such district attorney, solicitor-general, or United States Attorney and, while providing such assistance to such district attorney, solicitor-general, or United States Attorney, such attorneys shall have the same authority and power as an attorney employed by such district attorney, solicitor-general, or United States Attorney.

(b) In addition to the duties provided in subsection (a) of this Code section, the members of the bureau shall have and are vested with the same authority, powers, and duties as are possessed by the members of the Uniform Division of the department under this title.

History.

Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1941, p. 277, § 4; Ga. L. 1974, p. 109, § 2; Ga. L. 1977, p. 752, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1984, p. 690, § 2; Ga. L. 1985, p. 149, § 35; Ga. L. 1996, p. 416, § 9; Ga. L. 2007, p. 283, § 3/SB 98; Ga. L. 2008, p. 601, § 2/SB 388; Ga. L. 2010, p. 1162, § 2/SB 371; Ga. L. 2011, p. 217, § 9/HB 200; Ga. L. 2012, p. 351, § 5/HB 1110; Ga. L. 2012, p. 985, § 1/HB 895; Ga. L. 2013, p. 524, § 3-5/HB 78; Ga. L. 2013, p. 1056, § 3/HB 122; Ga. L. 2020, p. 82, § 2/SB 393; Ga. L. 2021, p. 417, § 1/HB 495; Ga. L. 2022, p. 121, § 10/SB 441; Ga. L. 2023, p. 637, § 5-1/HB 188, effective May 4, 2023; Ga. L. 2025, p. 1029, § 35(42)(Q)/SB 153, effective July 1, 2025.

Amendments.

The 2023 amendment, effective May 4, 2023, substituted "Sexual Offender Risk Review Board" for "Sexual Offender Registration Review Board" in division (a)(15)(B)(i).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in subsection (b).

Cross references.

Delivery to board of certain unclaimed bodies, § 31-21-21 et seq.

Authority of director of forensic sciences division to make facilities of division available for post-mortem examinations and autopsies and to authorize licensed physicians or pathologists to act as medical examiners in performing post-mortem examinations or autopsies, § 45-16-22.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, paragraph (a)(14), as enacted by Ga. L. 2012, p. 985, § 1/HB 895, was redesignated as paragraph (a)(15), "and" was deleted at the end of paragraph (a)(13), and "; and" was substituted for a period at the end of paragraph (a)(14).

Editor's notes.

Ga. L. 2022, p. 121, § 1/SB 441, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) The state's current system for sharing criminal case data is not adequate to

provide to all appropriately interested parties, including, but not limited to, law enforcement agencies and officers, courts, crime victims and other impacted individuals, housing providers, and employers, complete criminal case data;

"(2) One recent report indicates there may be as many as 7 million criminal charges without a final disposition indicated, and, of those, as many as 5.4 million criminal charges have languished for years;

"(3) Georgia's citizens and businesses are harmed by incomplete criminal case data. For example, in thousands of cases, as a result of incomplete criminal case data, citizens' employability and housing opportunities have been negatively impacted; and

"(4) A more uniform, modern system and framework for handling criminal case data will support the state in meeting its obligations to victims to keep them informed as their perpetrators make their way through the criminal justice system.

"(b) It is the intent of the General Assembly that criminal case data be complete and accurately reported to the appropriate state data base and be accessible to state and local criminal justice agencies, employers, housing providers, victims, and all citizens."

Ga. L. 2022, p. 121, § 2/SB 441, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Criminal Records Responsibility Act.'"

Ga. L. 2023, p. 637, § 1-1/HB 188, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Mariam's Law.'"

Ga. L. 2023, p. 637, § 7-1/HB 188, not codified by the General Assembly, provides that the amendment to division (a)(15)(B)(i) shall apply to all offenses committed on and after July 1, 2023.

Law reviews.

For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 131 (2011).

For article, "Crimes and Offenses: Crimes Against the Person," see 28 Ga. St. U. L. Rev. 131 (2011).

For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

For article, "SB 441: Criminal Records Responsibility Act," see 39 Ga. St. U.L. Rev. 105 (2022).

JUDICIAL DECISIONS

Investigation of missing persons. — State proved that the false statement alleged in the indictment was made in a matter within the jurisdiction of the Georgia Bureau of Investigation (GBI) because the GBI was actively investigating a missing person case; because two videos contained clues referencing a Georgia missing person and the location of a missing person's body parts in Augusta, and it was then determined that the computer from which the videos were being posted was in Georgia, the jury could reasonably infer that the other missing person cases referenced in the first video would have a Georgia connection, giving the GBI jurisdiction to investigate the cases. Haley v. State, 289 Ga. 515, 712 S.E.2d 838, 2011 Ga. LEXIS 556 (2011), cert. denied, 567 U.S. 952, 133 S. Ct. 60, 183 L. Ed. 2d 711, 2012 U.S. LEXIS 4896 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Power to contract for district headquarters. — Director of Georgia Bureau of Investigation has same power to contract with local governments for district headquarters as Commissioner of Public Safety. 1983 Op. Att'y Gen. No. 83-39.

Discovery requests for criminal investigation records of the Georgia Bureau of Investigation should be coordinated with the prosecuting attorney who should be the primary source for determining the response. 1998 Op. Att'y Gen. No. 98-15.

Bureau cannot destroy records pursuant to court order when not

party litigant. — Department (now bureau) is neither authorized nor required to destroy the department's criminal identification records pursuant to an order entered in a case in which the department (now bureau) was not a party litigant. 1970 Op. Att'y Gen. No. 70-158.

Prohibited employment. — Individual may not be employed by the Georgia Bureau of Investigation Division of Forensic Sciences at the same time that the individual is a county deputy coroner. 1997 Op. Att'y Gen. No. 97-21.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, §§ 227, 229, 237.

C.J.S.

63 C.J.S., Municipal Corporations, §§ 627 et seq., 634 et seq., 643 et seq. 67 C.J.S., Officers and Public Employees, § 312 et seq.

ALR.

Fingerprints, palm prints, or bare footprints as evidence, 28 A.L.R.2d 1115.

Admissibility of bare footprint evidence, 45 A.L.R.4th 1178.

35-3-4.1. Subpoena authority for records relating to computer or electronic device used in furtherance of certain offenses.

(a)(1) The director, assistant director of the bureau, or deputy director for investigations of the bureau shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of electronic communication service or remote computing service records or other information pertaining to a subscriber or customer of such service, exclusive of contents of communications, in any investigation of a violation of:

(A) Code Section 16-12-100, 16-12-100.1, or 16-12-100.2 involving the use of a computer or an electronic device in furtherance of an act related to a minor;

(B) Article 8 of Chapter 9 of Title 16; or

(C) Code Section 16-9-93, 16-10-28, 16-11-37, 16-11-39.1, or 16-11-221.

(2) A provider of electronic communication service or remote computing service shall disclose to the bureau the following as relative to the subscriber or customer of such service:

(A) Name;

(B) Address;

(C) Local and long distance telephone connection records, or records of session times and durations;

(D) Length of service, including the start date, and types of service utilized;

(E) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) Means and source of payment for such service, including any credit card or bank account number.

(3) A provider of electronic communication service or remote computing service shall not provide notification of the subpoena issued pursuant to paragraph (1) of this subsection to the subscriber or customer of such service.

(b) Upon failure of a person without lawful excuse to obey a subpoena, the director, assistant director of the bureau, or the deputy director for investigations of the bureau, through the Attorney General or district attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court.

(c) The Attorney General may request that a natural person who refuses to produce relevant matter included in a subpoena issued pursuant to this Code section on the ground that the production of such records may incriminate such person be ordered by the court to provide such records. With the exception of a prosecution for perjury, a natural person who complies with the court order to provide such records asserting a privilege against self-incrimination to which he or she is entitled by law shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise.

(d)(1) The issuance of a subpoena pursuant to this Code section shall not be made public during any pending investigation or prosecution of criminal or unlawful activity beyond the extent necessary for the issuance and compliance of the subpoena and compliance with Chapter 16 of Title 17.

(2) Information obtained pursuant to a subpoena enforced by this Code section shall not be made public or, except as authorized in paragraph (3) of this subsection, disclosed by the director of the bureau, assistant director, deputy director for investigations of the bureau, or the director's employees beyond the extent necessary for the enforcement of this Code section.

(3) The director, assistant director of the bureau, deputy director

for investigations of the bureau, or the director's employees shall be authorized to provide to any federal, state, or local law enforcement agency any information acquired under this Code section in furtherance of a criminal investigation.

(e) As used in this Code section, the terms "electronic communication service" and "remote computing service" shall have the same meaning as set forth in Code Section 16-9-92.

History.

Code 1981, § 35-3-4.1, enacted by Ga. L. 2007, p. 283, § 4/SB 98; Ga. L. 2008, p. 601, § 3/SB 388; Ga. L. 2018, p. 507, § 1-1/SB 336; Ga. L. 2025, p. 224, § 1-1/HB 161, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, rewrote paragraph (a)(1), which read: "In any investigation of a violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2 involving the use of a computer or an electronic device in furtherance of an act related to a minor, or any investigation of a violation of Article 8 of Chapter 9 of Title 16, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of electronic communication service or remote communication service records or other information pertaining to a subscriber or customer of such service, exclusive of contents of communications."; added "following as relative to the subscriber or customer of such service" at the end of paragraph (a)(2); deleted "of a subscriber to or customer of such service" at the end of subparagraph (a)(2)(F); in subsection (b), inserted "of the bureau" twice and added the last sentence; in subsection (c), inserted "included in a subpoena issued pursuant to this Code section" and substituted "of such records" for "of records" in the first sentence; in subsection (d), added paragraph (d)(1) and redesignated former paragraphs (d)(1) and (d)(2) as present paragraphs (d)(2) and (d)(3), respectively; in paragraph (d)(2), substituted "paragraph (3)" for "paragraph (2)" and inserted "of the bureau" twice; and in paragraph (d)(3), inserted "of the bureau" twice and deleted "in violation of Code Section 16-12-100, 16-12-100.1, or 16-12-100.2" at the end.

Cross references.

Computer or electronic pornography and child exploitation prevention, § 16-12-100.2.

Law reviews.

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 119 (2018).

35-3-4.2. Subpoena authority for investigating fraudulent real estate transactions.

(a) In any investigation of a violation of Article 5 of Chapter 8 of Title 16 or other criminal violations involving fraudulent real estate transactions, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device.

(b) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may

apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court.

History.
Code 1981, § 35-3-4.2, enacted by Ga. L. 2010, p. 1162, § 3/SB 371.

Law reviews.
For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

35-3-4.3. Subpoena authority for investigating incidents of labor or sex trafficking.

(a) In any investigation of a violation of Code Section 16-5-46 involving trafficking of persons for labor or sexual servitude, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device.

(b) A provider of electronic communication service or remote computing service shall not provide notification of the subpoena issued pursuant to subsection (a) of this Code section to the subscriber or customer of such service.

(c) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court.

History.
Code 1981, § 35-3-4.3, enacted by Ga. L. 2011, p. 217, § 10/HB 200; Ga. L. 2018, p. 507, § 1-2/SB 336.

Cross references.
Defense available for crimes committed while being trafficked, § 16-3-6.

Law reviews.
For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 131 (2011).

For article, "Crimes and Offenses: Crimes Against the Person," see 28 Ga. St. U. L. Rev. 131 (2011).

35-3-4.4. Subpoena authority for investigating abuse, neglect, or exploitation of disabled adult or elder person.

(a) In any investigation of a violation of Article 8 of Chapter 5 of Title 16 or other criminal violation involving the abuse, neglect, or exploitation of a disabled adult, elder person, or resident, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device, unless such records are wholly owned by the federal government.

(b) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or deputy director for investigations, through the prosecuting attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on the grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court.

History.
Code 1981, § 35-3-4.4, enacted by Ga. L. 2018, p. 602, § 5/HB 635.

35-3-4.5. Subpoena authority for investigating election violations.

(a) In any investigation of a violation of Chapter 2 of Title 21 involving elections, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible items, including records and documents contained within or generated by a computer or any other electronic device, unless such records are wholly owned by the federal government, and to undertake, at the discretion of the bureau, an audit of materials produced in response to such subpoena in a form deemed necessary by the bureau.

(b) Upon failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or deputy director for investigations, through the prosecuting attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on the grounds that it fails to comply with this Code section or upon any constitutional or other legal right or

privilege of such person. The court may issue an order modifying or setting aside such subpoena or directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court.

History.

Code 1981, § 35-3-4.5, enacted by Ga. L. 2022, p. 121, § 11/SB 441.

Editor's notes.

Ga. L. 2022, p. 121, § 1/SB 441, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) The state's current system for sharing criminal case data is not adequate to provide to all appropriately interested parties, including, but not limited to, law enforcement agencies and officers, courts, crime victims and other impacted individuals, housing providers, and employers, complete criminal case data;

"(2) One recent report indicates there may be as many as 7 million criminal charges without a final disposition indicated, and, of those, as many as 5.4 million criminal charges have languished for years;

"(3) Georgia's citizens and businesses are harmed by incomplete criminal case data. For example, in thousands of cases, as a result of incomplete criminal case data, citizens' employability and housing opportunities have been negatively impacted; and

"(4) A more uniform, modern system and framework for handling criminal case data will support the state in meeting its obligations to victims to keep them informed as their perpetrators make their way through the criminal justice system.

"(b) It is the intent of the General Assembly that criminal case data be complete and accurately reported to the appropriate state data base and be accessible to state and local criminal justice agencies, employers, housing providers, victims, and all citizens."

Ga. L. 2022, p. 121, § 2/SB 441, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Criminal Records Responsibility Act.'"

Cross references.

Voting and elections, Ga. Const. 1983, Art. II.

35-3-5. Creation of director; appointment and removal; powers and duties.

(a) There is created the position of director.

(b) The director shall be the chief administrative officer and shall be both appointed and removed by the board with the approval of the Governor.

(c) The director shall coordinate and supervise the work of the Georgia Child Fatality Review Panel created by Code Section 19-15-4 or shall designate a person from within the bureau to serve as the coordinator and supervisor and shall provide such staffing and administrative support to the Georgia Child Fatality Review Panel as may be necessary to enable it to carry out its statutory duties.

(d) The director shall report the death of any child to the chairperson of the review committee, as such term is defined in Code Section 19-15-1, for the county in which such child resided at the time of death, unless the director or his or her designee has knowledge that such death has been reported by the county medical examiner or coroner,

pursuant to Code Section 19-15-3, and shall provide such review committee access to any records of the bureau relating to such child.

(e) Except as otherwise provided by this chapter, and subject to the general policy established by the board, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the bureau by this chapter.

History.

Ga. L. 1974, p. 109, § 2; Ga. L. 2005, p. 599, § 2/SB 146; Ga. L. 2014, p. 34, § 2-8/SB 365; Ga. L. 2025, p. 1029, § 35(11)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "board" for "Board of Public Safety" in subsection (b).

Editor's notes.

Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides: "This part shall be known and may be cited as the 'Journey Ann Cowart Act.'"

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides: "It is the intent of the General Assembly to provide for transparency relative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state."

Law reviews.

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 25 (2014).

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, § 231 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, §§ 627 et seq., 643. 67 C.J.S., Officers and Public Employees, § 312 et seq.

35-3-6. Director classification and compensation.

The director shall be in the unclassified service as defined by Code Section 45-20-2 and his or her compensation shall be fixed by the board.

History.

Ga. L. 1974, p. 109, § 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-50/HB 642.

Cross references.

State merit system generally, § 45-20-1 et seq.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 258 et seq., 276 et seq., 432.

C.J.S.
63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, § 365 et seq.

35-3-7. Agreements by director and commissioner for provision of services and material.

The director and the commissioner are authorized to enter into agreements, subject to approval of the board, for the provision of such services, material, or combination thereof as may be useful in the performance of the official duties of the bureau or the department.

History.
Ga. L. 1974, p. 109, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 2005, p. 599, § 3/SB 146; Ga. L. 2025, p. 1029, § 35(12)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted "of public safety" following "commissioner" near the beginning, and substituted "board" for "Board of Public Safety" in the middle of this Code section.

Law reviews.
For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

For article, "The Emory Law Volunteer Clinic for Veterans: Serving Those Who Served," see 19 Ga. St. B.J. 26 (Feb. 2014).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 227, 229, 237.

C.J.S.
67 C.J.S., Officers and Public Employees, § 312 et seq.

35-3-8. Powers of agents of bureau relative to certain substances.

(a) All properly appointed agents of the bureau shall have the powers, including the power of making arrests and appearing in court, for the enforcement of all criminal statutes pertaining to the manufacture, transportation, distribution, sale, or possession of liquor, wine, beer, alcoholic beverages, cigars, cigarettes, little cigars, cheroots, stogies, and loose or smokeless tobacco and shall concurrently with agents and enforcement officers appointed by the state revenue commissioner have the authority throughout the state to:

(1) Obtain and execute warrants for the arrest of persons charged with violations of such laws;

(2) Obtain and execute search warrants in the enforcement of such laws;

(3) Arrest without warrant any person found in violation of such laws, or endeavoring to escape, or if for other cause there is likely to

be a failure of enforcement of such laws for want of an officer to issue a warrant;

(4) Make investigations in the enforcement of such laws and in connection therewith to go upon any property outside of buildings, posted or otherwise, in the performance of such duties;

(5) Seize and take possession of all property which is declared contraband under such laws; and

(6) Carry firearms while performing their duties.

(b) The enforcement powers conferred in this Code section upon agents of the bureau shall relate only to the enforcement of the criminal provisions relating to the manufacture, transportation, distribution, sale, or possession of liquor, wine, beer, alcoholic beverages, cigars, cigarettes, little cigars, cheroots, stogies, and loose or smokeless tobacco and shall not extend to regulatory matters with respect to such products under the jurisdiction of the state revenue commissioner.

History.

Ga. L. 1980, p. 420, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 2003, p. 665, § 42.

Cross references.

Powers and duties of state revenue commissioner relating to enforcement of laws pertaining to manufacture or transportation of alcoholic beverages, § 3-2-30 et seq.

Authority of agents of bureau with regard to laws pertaining to operation of vessels or boats upon waters of state, § 27-1-24.

Powers and duties of state revenue commissioner relating to enforcement of laws pertaining to manufacture or transportation of cigars, cigarettes, and little cigars, § 48-11-19.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

RESEARCH REFERENCES

Am. Jur. 2d.

5 Am. Jur. 2d, Arrest, §§ 42, 43. 63C Am. Jur. 2d, Public Officers and Employees, §§ 227, 229, 237. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 31 et seq.

C.J.S.

48A C.J.S., Intoxicating Liquors, § 761 et seq. 63 C.J.S., Municipal Corporations, §§ 473 et seq., 479 et seq., 503. 67 C.J.S., Officers and Public Employees, § 312 et seq.

35-3-8.1. Power of bureau to assist other law enforcement agencies; jurisdiction in terrorism cases.

(a) Upon request of the governing authority or chief law enforcement officer of any municipality, the sheriff of any county, the chief of the county police force of any county having a population of more than 100,000 according to the United States decennial census of 1970 or any future such census, a judge of the superior court of any county of this

state, or the Governor, the director, in unusual circumstances, may, and in the case of a request by the Governor, shall, direct the bureau to render assistance in any criminal case, in the prevention or detection of violations of law, or in the detection or apprehension of persons violating the criminal laws of this state, any other state, or the United States.

(b) The bureau shall be authorized to work independently, work concurrently with other law enforcement agencies, and request the assistance of other law enforcement agencies when, in the sole discretion of the director, such independent work, concurrent work, or request for assistance would not compromise the successful completion of cases involving the identification, investigation, arrest, and prosecution of an individual or groups of individuals for violation of laws concerning domestic, cyber, biological, chemical, and nuclear terrorism.

History.

Code 1981, § 35-3-8.1, enacted by Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 2023, p. 243, § 2/SB 11, effective May 1, 2023.

Amendments.

The 2023 amendment, effective May 1, 2023, added the subsection (a) designation, and substituted "a judge" for "the judge" in subsection (a); and added subsection (b).

Editor's notes.

Ga. L. 2023, p. 243, § 1/SB 11, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Fights Terrorism Act.'"

JUDICIAL DECISIONS

O.C.G.A. § 35-3-13 is not the exclusive list of who may request investigative assistance from the bureau. Bureau officers are peace officers with the duty to assist and cooperate in the prevention and detection of violations of the laws of this state. Owens v. State, 251 Ga. 313, 305 S.E.2d 102, 1983 Ga. LEXIS 766 (1983).

Investigation of missing person cases. — State proved that the false statement alleged in the indictment was made in a matter within the jurisdiction of the Georgia Bureau of Investigation (GBI) because: the GBI was actively investigating a missing person case; two videos contained clues referencing a Georgia missing person and the location of a missing person's body parts in Augusta; and, the computer from which the videos were being posted was in Georgia. Therefore, the jury could reasonably infer that the other missing person cases referenced in the first video would have a Georgia connection, giving the GBI jurisdiction to investigate the cases. Haley v. State, 289 Ga. 515, 712 S.E.2d 838, 2011 Ga. LEXIS 556 (2011), cert. denied, 567 U.S. 952, 133 S. Ct. 60, 183 L. Ed. 2d 711, 2012 U.S. LEXIS 4896 (2012).

35-3-9. Narcotics agents.

(a) The director is authorized to retain on a contractual basis such persons as he or she shall deem necessary to detect and apprehend violators of the criminal statutes of this state pertaining to the possession, sale, or use of narcotics or other dangerous drugs.

(b) Those persons contracting with the director pursuant to subsection (a) of this Code section shall be known as narcotics agents.

(c) The investigative services provided for in this Code section shall be designed to support local law enforcement efforts. The director shall, with the advice and consent of the board, appoint a three-member priority committee composed of a representative from the Georgia Sheriffs Association, the Georgia Association of Chiefs of Police, and the District Attorneys Association. The committee shall establish priorities for use of investigative resources and determine the bona fide nature of requests for assistance. The recommendations of the committee shall be followed by the director except where otherwise expressly authorized by the board.

(d) Narcotics agents shall have all powers necessary and incidental to the fulfillment of their contractual obligations, including the power of arrest when authorized by the director.

(e) No person shall be a narcotics agent unless he is at least 18 years of age.

(f) The director shall conduct a background investigation of all potential narcotics agents. If the background investigation discloses a criminal record, the applicant shall not be retained without the express approval of the board.

(g) Any matters pertaining to narcotics agents shall be exempt from Chapter 14 of Title 50, relating to meetings open to the public.

(h) Persons retained as narcotics agents shall be considered persons in the service of the bureau under a contract of hire with that agency whose employment of those persons as narcotics agents shall be considered an employment in the usual course of the business of that agency. Persons retained by the bureau as narcotics agents shall have all the rights and privileges of other employees of the bureau; provided, however, that such persons shall be in the unclassified service as defined by Code Section 45-20-2 and therefore shall not be governed by any rules of position, classification, appointment, promotion, demotion, transfer, dismissal, qualification, compensation, seniority privileges, tenure, or other such matters concerning their employment established by the State Personnel Board or any successor boards or agencies.

(i) The director shall have all powers necessary and incidental to the effective operation of this Code section.

History.

Ga. L. 1973, p. 544, § 1; Ga. L. 1976, p. 392, § 1; Ga. L. 1978, p. 1646, § 1; Ga. L. 1987, p. 3, § 35; Ga. L. 1990, p. 540, § 2; Ga. L. 2001, p. 1058, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-51/HB 642.

Cross references.

Possession, sale, and use of controlled substances, § 16-13-1 et seq.

State merit system generally, § 45-20-1 et seq.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

OPINIONS OF THE ATTORNEY GENERAL

Retirement credit for former service as narcotics agent. — Employees of the Georgia Bureau of Investigation, who are members of the Employees Retirement System, may purchase prior service credit under O.C.G.A. § 47-2-93 for former service as a narcotics agent pursuant to O.C.G.A. § 35-3-9. 1992 Op. Att'y Gen. No. 92-17.

Narcotics agents employed by the Georgia Bureau of Investigation may purchase prior service credit under the Peace Officers and Annuity Benefit Fund, pursuant to Act No. 849, passed in the 1992 General Assembly session, which amended O.C.G.A. § 47-17-44 by rewriting subsection (c). 1992 Op. Att'y Gen. No. 92-18.

RESEARCH REFERENCES

Am. Jur. 2d.

15A Am. Jur. 2d, Civil Service, §§ 16, 18. 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 17, 19, 21, 23, 40. 63C Am. Jur. 2d, Public Officers and Employees, §§ 227, 229, 237.

C.J.S.

28 C.J.S., Drugs and Narcotics, § 219. 63 C.J.S., Municipal Corporations, § 607. 67 C.J.S., Officers and Public Employees, §§ 67 et seq., 228 et seq.

35-3-10. Participation by bureau personnel and director in Employees' Retirement System of Georgia.

All personnel and the director of the bureau are authorized to be members of the Employees' Retirement System of Georgia, as established by Chapter 2 of Title 47. All rights, credits, and funds in the retirement system which are possessed by any personnel of the bureau, including the director, at the time of employment in the bureau are continued; and it is the intention of the General Assembly that such personnel and the director shall not lose any rights, credits, or funds to which they were entitled prior to being employed with the bureau.

History.

Ga. L. 1974, p. 109, § 2; Ga. L. 2001, p. 1058, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1074, 1088.
C.J.S.
63 C.J.S., Municipal Corporations, § 670 et seq. 67 C.J.S., Officers and Public Employees, § 412 et seq.
ALR.
Construction and application of Employee Retirement Income Security Act of 1974 (29 USCA § 1001 et seq.) by United States Supreme Court, 150 A.L.R. Fed. 441.

35-3-11. Applicability of merit system to agents of bureau; retention of badge and weapon by disabled agent.

(a) All agents of the bureau shall be governed by such rules of position, classification, appointment, promotion, demotion, transfer, dismissal, qualification, compensation, seniority privileges, tenure, and other employment standards as may now or hereafter be established under such merit system controls as may be authorized by Chapter 20 of Title 45.

(b) This Code section shall not apply to narcotics agents as provided for in Code Section 35-3-9.

(c) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a law enforcement officer. When an agent of the bureau leaves the bureau as a result of a disability arising in the line of duty, such agent shall be entitled as part of such agent's compensation to retain his or her weapon and badge pursuant to regulations promulgated by the director.

History.
Ga. L. 1974, p. 109, § 2; Ga. L. 2004, p. 1058, § 4; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-52/HB 642.
Editor's notes.
Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.
Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d.
15A Am. Jur. 2d, Civil Service, §§ 14, 41 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 258 et seq., 276 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 41 et seq.
C.J.S.
63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, §§ 76, 91 et seq., 372 et seq.

35-3-12. Payment of medical and similar expenses of members injured in line of duty; procedure.

The bureau is authorized to pay all medical, surgical, hospital, nursing, and other similar expenses incurred by any member of the bureau as a result of injuries received in the line of duty. The bureau is authorized to make such payments in addition to any award made by the State Board of Workers' Compensation based on such injuries. Such payments shall be made only upon proper presentation of bills to the bureau. The bureau and the injured party shall together ascertain the correctness of all bills presented. No payments shall be made without the approval of the bureau.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 392, § 1.

Cross references.
Workers' compensation generally, § 34-9-1 et seq.
Insuring and indemnification of public officers and employees, § 45-9-1 et seq.
State Employees' Health Insurance Plan, § 45-18-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Members paid for medical expenses for injuries in line of duty. — Members of the Georgia Bureau of Investigation may receive payments for medical expenses incurred as a result of injuries received in the line of duty. 1974 Op. Att'y Gen. No. 74-80.

35-3-13. Requests for investigation of criminal matters and crime related fires; access to local services and records.

(a) Any district attorney of this state may request the assistance of the bureau to conduct and exercise its lawful powers and authorities in the investigation of any criminal matter.

(b) Any head of a municipal or county fire department may request the assistance of the bureau to conduct and exercise its lawful powers and authorities in the investigation of any crime related fires.

(c) In the event the bureau acts in cooperation with a municipality or other political subdivision of the state, the services and records of such municipality or other subdivision shall be accessible and available to the bureau at all times.

History.
Ga. L. 1937, p. 322, art. 3, § 1; Ga. L. 1941, p. 277, § 4; Ga. L. 1977, p. 752, § 1; Ga. L. 1978, p. 254, § 2.

JUDICIAL DECISIONS

O.C.G.A. § 35-3-13 is not the exclusive list of who may request investigative assistance from the bureau. Bureau officers are peace officers with the duty to assist and cooperate in the prevention and detection of violations

of the laws of this state. Owens v. State, 251 Ga. 313, 305 S.E.2d 102, 1983 Ga. LEXIS 766 (1983).

Investigation of missing persons cases. — State proved that the false statement alleged in the indictment was made in a matter within the jurisdiction of the Georgia Bureau of Investigation (GBI) because: the GBI was actively investigating a missing person case; two videos contained clues referencing a Georgia missing person and the location of a missing person's body parts in Augusta; and, the computer from which the videos were being posted was in Georgia. Therefore, the jury could reasonably infer that the other missing person cases referenced in the first video would have a Georgia connection, giving the GBI jurisdiction to investigate the cases. Haley v. State, 289 Ga. 515, 712 S.E.2d 838, 2011 Ga. LEXIS 556 (2011), cert. denied, 567 U.S. 952, 133 S. Ct. 60, 183 L. Ed. 2d 711, 2012 U.S. LEXIS 4896 (2012).

Violation not grounds for suppression of evidence. — Violation of O.C.G.A. § 35-3-13 is not grounds for the suppression of evidence. Owens v. State, 251 Ga. 313, 305 S.E.2d 102, 1983 Ga. LEXIS 766 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Governor may authorize bureau to conduct investigations and make arrests. — Governor has the power and the authority to authorize the Georgia Bureau of Investigation to conduct investigations and make arrests in any criminal case in any county or municipality of this state. 1963-65 Ga. Op. Att'y Gen. 532.

RESEARCH REFERENCES

ALR.

Admissibility, in criminal case, of evidence discovered by warrantless search in connection with fire investigation — post-Tyler cases, 31 A.L.R.4th 194.

35-3-14. Posting of information relating to certain persons released from federal custody within state.

To the extent permitted by federal law, the bureau shall post on its public website the information of persons who are aliens and who have been released from federal custody within the boundaries of this state, as such information is presented within the Law Enforcement Notification System of the Enforcement Integrated Database of the United States Department of Homeland Security or the National Law Enforcement Telecommunications System as received by the Georgia Information Sharing and Analysis Center within the bureau or any replacement agency. Within 12 hours of receiving such information, the bureau shall post such information as required by this Code section and electronically send a copy of such information to the Georgia Sheriffs' Association. The bureau shall promulgate rules and regulations for the implementation of this Code section.

History.

Code 1981, § 35-3-14, enacted by Ga. L. 2017, p. 536, § 5-2/HB 452.

Editor's notes.

The former Code section, relating to reimbursement of the director of Division of Forensic Sciences for use of the director's private aircraft, was based on Ga. L. 1974, p. 563, § 1, and was repealed

by Ga. L. 1997, p. 1421, § 2, effective May 1, 1997.

Ga. L. 2017, p. 536, § 1-1/HB 452, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Protect Georgia Act.'"

Law reviews.

For article on the 2017 enactment of this Code section, see 34 Ga. St. U. L. Rev. 17 (2017).

ARTICLE 2

GEORGIA CRIME INFORMATION CENTER

Cross references.

Records checks for applicants for employment with Department of Human Resources or health agencies, § 49-2-14.

Records checks for employees of day-care centers, § 49-5-60 et seq.

Records checks for persons exercising supervisory or disciplinary power over children, § 49-5-110 et seq.

Notification to Department of Corrections, Uniform Superior Court Rules, Rule 35.1.

Filing requirements in criminal cases, Uniform Superior Court Rules, Rule 36.13.

Administrative rules and regulations.

Organization, practices, and procedures of the Georgia Crime Information Center, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Center Council, Rule 140-1-.01 et seq and Rule 140-2-.01 et seq.

Law reviews.

For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine," see 40 Mercer L. Rev. 1 (1988).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Council may direct center to furnish data for pre-employment checks for criminal justice purposes. — Georgia Crime Information Center Council may direct the Georgia Crime Information Center to furnish criminal history data to state agencies and political subdivisions, or federal agencies, for their use in preemployment checks but only if the council feels that such information is being furnished for the prevention or detection of crime or the apprehension of criminal offenders. 1976 Op. Att'y Gen. No. 76-110.

35-3-30. Definitions.

As used in this article, the term:

(1) "Career criminal" means any person who has been previously convicted three times under the laws of this state of felonies or under the laws of any other state or the United States of crimes which would be felonies if committed within this state.

(1.1) "Center" means the Georgia Crime Information Center.

(2) "Council" means the Georgia Crime Information Center Council.

(3) "Criminal justice agencies" means those public agencies at all levels of government which perform as their principal function

activities relating to the apprehension, prosecution, adjudication, or rehabilitation of criminal offenders.

(4) "Criminal justice information" means the following classes of information:

(A) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. Such term also includes the age and sex of each victim as provided by criminal justice agencies. The term does not include identification information, such as fingerprint records, to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(B) "Restricted data" means data which contains information relating to data-gathering techniques, distribution methods, manuals, and forms.

(C) "Secret data" means data which includes information dealing with those operational and programming elements which prevent unlawful intrusion into the Georgia Crime Information Center/Criminal Justice Information System computer system, the communications network, and satellite computer systems handling criminal justice information.

(D) "Sensitive data" means data which contains statistical information in the form of reports, lists, and documentation, which information may identify a group characteristic. It may apply to groups of persons, articles, vehicles, etc., such as white males or stolen guns.

(5) "Criminal justice information system" means all those agencies, procedures, mechanisms, media, and forms, as well as the information itself, which are or which become involved in the origination, transmittal, storage, retrieval, and dissemination of information related to reported offenses, offenders, and the subsequent actions related to such events or persons.

(6) "Law enforcement agency" means a governmental unit of one or more persons employed full time or part time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(7) "Offense" means an act which is a felony, a misdemeanor, or a violation of a county or municipal ordinance.

History.
Ga. L. 1973, p. 1301, § 1; Ga. L. 1976, p. 617, § 1; Ga. L. 1982, p. 952, §§ 1, 3; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 149, § 35; Ga. L. 2006, p. 379, § 23/HB 1059.
Editor's notes.
Ga. L. 2006, p. 379, § 30(c)/HB 1059, not codified by the General Assembly, provides: "The provisions of this Act shall not affect or abate the status as a crime of any such act or omission which occurred prior to the effective date of the Act repealing, repealing and reenacting, or amending such law, nor shall the prosecution of such crime be abated as a result of such repeal, repeal and reenactment, or amendment."
Law reviews.
For comment, "Confidentiality and Dissemination of Personal Information: An Examination of State Laws Governing Data Protection," see 41 Emory L.J. 1185 (1992).
For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 11 (2006).

35-3-31. Creation; staff and equipment generally; State Personnel Board status of personnel.

(a) There is established for the state, within the bureau, a system for the intrastate communication of vital information relating to crimes, criminals, and criminal activity, to be known as the Georgia Crime Information Center.

(b) Central responsibility for the development, maintenance, and operation of the center shall be vested with the director of the center with the assistance and guidance of the Georgia Crime Information Council, the establishment of which is provided for in Code Section 35-3-32.

(c) The director of the center shall maintain the necessary staff along with support services to be procured within the Georgia state government, such as computer services from the Department of Administrative Services, physical space and logistic support from the department, and other services or sources as necessary, to enable the effective and efficient performance of the duties and responsibilities ascribed to the center in this article.

(d) All personnel of the center shall be administered according to appropriate special and standard schedules issued pursuant to the rules of the State Personnel Board with due recognition to be given by the latter to the special qualifications and availability of the types of individuals required in such an agency.

History.
Ga. L. 1973, p. 1301, § 2; Ga. L. 1974, p. 109, § 2; Ga. L. 1976, p. 617, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-53/HB 642; Ga. L. 2025, p. 1029, § 35(13)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" in subsection (a) and substituted "department" for "Department of Public Safety," in subsection (c).
Editor's notes.
Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State

Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

35-3-32. Establishment of council; composition; duties and responsibilities of council generally.

(a) There is created the Georgia Crime Information Center Council.

(b) The duties and responsibilities of the council are to:

(1) Advise and assist in the establishment of policies under which the center is to be operated;

(2) Advise and assist in updating the policies under which the center is to be operated, to the extent that such policies are necessary to comply with the uniform standards promulgated pursuant to paragraph (5) of subsection (h) of Code Section 15-5-24.1;

(3) Ensure that the information obtained pursuant to this article shall be restricted to the items specified in this article and ensure that the center is administered so as not to accumulate any information or distribute any information that is not specifically approved in this article;

(4) Ensure that adequate security safeguards are incorporated so that the data available through this system is used only by properly authorized persons and agencies;

(5) Establish appropriate disciplinary measures to be taken by the center in the instance of violations of data reporting or dissemination of laws, rules, and regulations by criminal justice agencies or members thereof covered by this article; and

(6) Establish other policies which provide for the efficient and effective use and operation of the center under the limitations imposed by the terms of this article.

(c) The members of the board shall serve ex officio as members of the council and shall constitute the council.

History.

Ga. L. 1973, p. 1301, § 5; Ga. L. 1976, p. 617, § 7; Ga. L. 1979, p. 613, § 1; Ga. L. 1987, p. 3, § 35; Ga. L. 2022, p. 121, § 12/SB 441; Ga. L. 2023, p. 294, § 10/SB 272, effective May 1, 2023.

Amendments.

The 2023 amendment, effective May 1, 2023, substituted "Code Section 15-5-24.1" for "Code Section 15-6-50.3 issued by The Council of Superior Court Clerks of Georgia" at the end of paragraph (b)(2).

Editor's notes.

Ga. L. 2022, p. 121, § 1/SB 441, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) The state's current system for shar-

ing criminal case data is not adequate to provide to all appropriately interested parties, including, but not limited to, law enforcement agencies and officers, courts, crime victims and other impacted individuals, housing providers, and employers, complete criminal case data;

"(2) One recent report indicates there may be as many as 7 million criminal charges without a final disposition indicated, and, of those, as many as 5.4 million criminal charges have languished for years;

"(3) Georgia's citizens and businesses are harmed by incomplete criminal case data. For example, in thousands of cases, as a result of incomplete criminal case data, citizens' employability and housing opportunities have been negatively impacted; and

"(4) A more uniform, modern system and framework for handling criminal case data will support the state in meeting its obligations to victims to keep them informed as their perpetrators make their way through the criminal justice system.

"(b) It is the intent of the General Assembly that criminal case data be complete and accurately reported to the appropriate state data base and be accessible to state and local criminal justice agencies, employers, housing providers, victims, and all citizens."

Ga. L. 2022, p. 121, § 2/SB 441, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Criminal Records Responsibility Act.'"

Law reviews.

For article, "SB 441: Criminal Records Responsibility Act," see 39 Ga. St. U.L. Rev. 105 (2022).

OPINIONS OF THE ATTORNEY GENERAL

Functions of the Georgia Crime Information Center Council include functions which are clearly executive functions within the meaning of the Constitution. 1975 Op. Att'y Gen. No. 75-142.

Former provision including judges as council members void. — Former statutory mandate that the council include a member of the Georgia Council of Superior Court Judges and a member of the Georgia Association of Municipal Judges is in conflict with the Constitution and is therefore void. 1975 Op. Att'y Gen. No. 75-142.

RESEARCH REFERENCES

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, § 108 et seq.

35-3-33. Powers and duties of center generally.

(a) The center shall:

(1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(A) Have been or are hereafter arrested or taken into custody in this state:

(i) For an offense which is a felony;

(ii) For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a

child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sexual offenses where children are victims, or worthless checks;

(iii) For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under division (ii) of this subparagraph;

(iv) As a fugitive from justice; or

(v) For any other offense designated by the Attorney General;

(B) Are or become career criminals, well-known offenders, or habitual offenders;

(C) Are currently or become confined to any prison, penitentiary, or other penal institution;

(D) Are unidentified human corpses found in this state;

(E) Are children who are charged with an offense that if committed by an adult would be a felony or are children whose cases are transferred from a juvenile court to another court for prosecution; or

(F) Are individuals for whom fingerprint based criminal history checks are authorized by this state's or federal law for the purpose of determining suitability or fitness for employment, placement, registration, a permit, or a license for an agency or qualified entity which is participating in the federal program that allows an ongoing and continuing review of such individual's criminal history; provided, however, that such fingerprints shall be retained and maintained securely and separately from records relating to the identification of criminals, and provided, further, that the center shall not file or retain fingerprints submitted for the purpose of obtaining or renewing a weapons carry license, as such term is defined in Code Section 16-11-125.1;

(2) Compare all fingerprint and other identifying data received with those already on file and, whether or not a criminal record is found for a person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information;

(3) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state, as defined and provided for in this article;

(4) Periodically conduct audits of crime reporting practices of criminal justice agencies to ensure compliance with the standards of national and state uniform crime reporting systems and to ensure reporting of criminal arrests, dispositions, and custodial information;

(5) Develop, operate, and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this article consistent with those principles of scope, security, and responsiveness prescribed by this article;

(6) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards, and related training assistance necessary for the uniform operation of the center;

(7) Offer assistance and, when practicable, instruction to all criminal justice agencies in establishing efficient local records systems;

(8) Compile statistics on the nature and extent of crime in the state and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons, and make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual, written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by the center;

(9) Periodically publish in print or electronically statistics, no less frequently than annually, that do not identify persons and report such information to the Governor, the General Assembly, state and local criminal justice agencies, and the general public. Such information shall accurately reflect the level and nature of crime in the state and the operations in general of the different types of agencies within the criminal justice system;

(10) Make available, upon request, to all local and state criminal justice agencies, all federal criminal justice agencies, and criminal justice agencies in other states any information in the files of the center which will aid these agencies in the performance of their official duties, including but not limited to final disposition of offenses; sentencing information and conditions; orders modifying an earlier disposition; orders relating to probation, including modification, tolling, completion of active probation supervision, termination, revocation, or completion of orders entered pursuant to Article 3 of Chapter 8 of Title 42; and orders relating to parole, including

modification, tolling, termination, and revocation. For this purpose the center shall operate on a 24 hour basis, seven days a week. Such information when authorized by the council may also be made available to any other agency of the state or political subdivision of the state and to any other federal agency upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders;

(11) Cooperate with other agencies of the state, the crime information agencies of other states, and the Uniform Crime Reports and National Crime Information Center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national, and international system of criminal identification, records, and statistics;

(12) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for in this article and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual;

(13) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this article. Such security measures must meet standards to be set by the council as well as those set by the nationally operated systems for interstate sharing of information;

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to criminal justice agencies;

(15) Receive and process fingerprints from the Supreme Court of Georgia Office of Bar Admissions for the purpose of determining whether or not an applicant for admission to the State Bar of Georgia has a criminal record. The processing shall include submission of fingerprints to the bureau and the Federal Bureau of Investigation for comparison to each of their respective files and data bases;

(16) Provide The Council of Superior Court Clerks of Georgia the data set forth in Code Section 21-2-231, without charge and in the electronic format requested;

(16.1) Provide at least quarterly to each clerk of superior court in this state, and upon request by any such clerk, a report detailing the number of open criminal charges, time expired restricted charges, and closed criminal charges for each county, respectively. Such report shall also be provided to any judge or prosecuting attorney of this state, upon request. Such report may be transmitted electronically or by mail in the discretion of the director of the center.

(17) Notify the appropriate clerk of court that a defendant has completed his or her first offender sentence or was exonerated of guilt and discharged pursuant to subsection (g) of Code Section 42-8-60 within five days of such completion or exoneration;

(18) Submit fingerprints obtained pursuant to subparagraph (F) of paragraph (1) of this subsection to the Federal Bureau of Investigation for retention under the rules established by the United States Department of Justice for processing and identification of records. Such fingerprints shall be searched by future submissions to the Federal Bureau of Investigation and the center shall send appropriate responses to submitting and subscribing entities;

(19) Remove fingerprints obtained pursuant to subparagraph (F) of paragraph (1) of this subsection within ten days of being notified that an individual whose fingerprints were retained under such program is no longer employed by, volunteering for, placed by, or registered, licensed, or permitted by the participating agency or qualified entity. It shall also remove such fingerprints when such agency or qualified entity is no longer participating in such program. The center shall also notify the Federal Bureau of Investigation of such information; and

(20) Be authorized to charge an annual subscriber fee not to exceed $500.00 to any entity which is not a state agency that desires to participate in the program described in subparagraph (F) of paragraph (1) of this subsection.

(b) Criminal justice agencies shall furnish upon written request and without charge to any local fire department in this state a copy, processed under purpose code "E", of the criminal history record information of an applicant for employment.

(c) The provisions of this article notwithstanding, information and records of children shall only be inspected and disclosed as provided in Code Sections 15-11-702 and 15-11-708. Such records and information shall be sealed or destroyed according to the procedures outlined in Code Sections 15-11-701 and 15-11-709.

History.
Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 617, § 5; Ga. L. 1980, p. 394, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 952, §§ 2,

4; Ga. L. 1984, p. 22, § 35; Ga. L. 1986, p. 513, § 1; Ga. L. 1992, p. 6, § 35; Ga. L. 1998, p. 842, § 7; Ga. L. 2000, p. 20, § 21; Ga. L. 2000, p. 1549, § 1; Ga. L. 2003, p. 334, § 2; Ga. L. 2007, p. 43, § 1/SB 62; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2013, p. 294, § 4-44/HB 242; Ga. L. 2014, p. 451, § 11/HB 776; Ga. L. 2016, p. 443, § 6B-2/SB 367; Ga. L. 2016, p. 864, § 35/HB 737; Ga. L. 2017, p. 622, § 2/SB 95; Ga. L. 2018, p. 507, §§ 1A-1, 1A-2/SB 336; Ga. L. 2022, p. 121, § 13/SB 441; Ga. L. 2025, p. 1029, § 35(43)(B)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" in the second sentence of paragraph (a)(15).

Editor's notes.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2022, p. 121, § 1/SB 441, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) The state's current system for sharing criminal case data is not adequate to provide to all appropriately interested parties, including, but not limited to, law enforcement agencies and officers, courts, crime victims and other impacted individuals, housing providers, and employers, complete criminal case data;

"(2) One recent report indicates there may be as many as 7 million criminal charges without a final disposition indicated, and, of those, as many as 5.4 million criminal charges have languished for years;

"(3) Georgia's citizens and businesses are harmed by incomplete criminal case data. For example, in thousands of cases, as a result of incomplete criminal case data, citizens' employability and housing opportunities have been negatively impacted; and

"(4) A more uniform, modern system and framework for handling criminal case data will support the state in meeting its obligations to victims to keep them informed as their perpetrators make their way through the criminal justice system.

"(b) It is the intent of the General Assembly that criminal case data be complete and accurately reported to the appropriate state data base and be accessible to state and local criminal justice agencies, employers, housing providers, victims, and all citizens."

Ga. L. 2022, p. 121, § 2/SB 441, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Criminal Records Responsibility Act.'"

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 175 (2003).

For article, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic Misdemeanor Offenses?," see 22 Ga. St. U.L. Rev. 313 (2005).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 119 (2018).

For article, "SB 441: Criminal Records Responsibility Act," see 39 Ga. St. U.L. Rev. 105 (2022).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Fingerprintable Offenses Illustrated
Disclosure

General Consideration

Recording of crimes necessary to establish and maintain uniform system. — This article empowers the Georgia Crime Information Center to record crime as the center deems necessary to establish and maintain a uniform system of crime reporting. 1976 Op. Att'y Gen. No. 76-33.

Limit on data gathered. — Center limits the center's gathering of data to information concerning arrests and convictions. 1976 Op. Att'y Gen. No. 76-11.

For updates of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1995 Op. Att'y Gen. Nos. 95-15, 95-16, 95-17, and 95-37; 1996 Op. Att'y Gen. No. 96-17; 1991 Op. Att'y Gen. No. 91-35.

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file fingerprints, see 1997 Op. Att'y Gen. No. 97-33; 1999 Op. Att'y Gen. No. 99-17.

Center identifies persons charged with crime, generally not persons charged with disorderly conduct. — Center is authorized to maintain records of reported crime and, in some instances, to record information identifying persons charged with the commission of crime; however, the center is not generally authorized to maintain records identifying persons charged with disorderly conduct. 1976 Op. Att'y Gen. No. 76-33.

Law enforcement agencies obtain fingerprints from arrested persons and forward prints to center. — This article requires persons in charge of law enforcement agencies to obtain fingerprints each time a person is arrested or taken into custody and to forward such prints to the center. 1975 Op. Att'y Gen. No. U75-34.

Metropolitan Atlanta Crime Commission should not be considered a governmental agency in the context of paragraph (a)(8) of O.C.G.A. § 35-3-33. 1982 Op. Att'y Gen. No. 82-57.

First offender probationer to be recorded, maintained, and reported. — Person who has been placed on or discharged from first offender probation is in a disposition to be accurately recorded, maintained, and reported by the center. 1975 Op. Att'y Gen. No. 75-110.

Fingerprintable Offenses Illustrated

Updating of crimes and offenses for which Georgia Crime Information Center is authorized to collect and file fingerprints. — Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. §§ 16-11-130.2, 16-11-90(b), 16-8-14.1(a), 16-8-22, and 33-24-53, are designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. § 7-1-696 and O.C.G.A. § 7-1-709, are not at this time designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

Fingerprintable offenses designated see 1979 Op. Att'y Gen. No. 79-56.

Hunting on land of another. — Hunting on the land of another without permission is not designated as an offense for which those charged with a violation must be fingerprinted, except to the extent mandated by statute. 1987 Op. Att'y Gen. No. 87-21.

Violation of any of the provisions of the Georgia Animal Protection Act,

Fingerprintable Offenses Illustrated (Cont'd)

O.C.G.A. T. 4, C. 11, are offenses for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Distributing products having appearance of controlled substances. — Manufacture, distribution, or possession with intent to distribute products which resemble the appearance of controlled substances or which otherwise would lead a reasonable person to believe that the products would have an effect similar to those of controlled substances is designated as an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Driving under the influence of alcohol or drugs, in violation of O.C.G.A. § 40-6-391, is an offense for which persons charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Operating watercraft while under the influence of alcohol or drugs, in similar terms as those which apply to the operation of motor vehicles, is an offense for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Using a law enforcement vehicle for personal use, unless the colored lights and lettering have been removed, is an offense for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Using trucks whose suspension system has been altered in excess of the limitations set forth in O.C.G.A. § 40-8-6.1 is an offense for which persons charged with a violation shall be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Applying opaque material to automobile glass. — Offense in O.C.G.A. § 40-8-73.1, which provides that a resident who operates a motor vehicle in this state that has material applied to the windshield or front windows that restricts the amount of light entering the vehicle shall be guilty of a misdemeanor, is designated as an offense for which persons charged with a violation shall be fingerprinted. 1984 Op. Att'y Gen. No. 84-44.

Improper use of handicapped parking privileges. — Offense set forth in O.C.G.A. § 40-6-225, which prohibits the improper use of a handicapped parking space, permit, or license plate, does not fall within any of the categories set forth by the General Assembly requiring fingerprinting, and the Attorney General has not so designated that offense. 1984 Op. Att'y Gen. No. 84-44.

Failure to remain at accident scene. — Failure of persons involved in a vehicle accident resulting in death, injury, or property damage to stop and remain at the scene of the accident is an offense for which persons charged are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Placing waste materials in a public sewer system without the express written permission of the governmental body which owns the system is an offense for which those charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Discharge of sewage from lake vessels. — Violation of O.C.G.A. § 52-7-8.1, which prohibits the discharge of sewage from vessels on certain specified lakes, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Failure of embalmer, funeral director, or other to report diseased deceased. — Failure of an embalmer, funeral director, or other such person to be given notice after a person has been diagnosed as having certain diseases is not an offense for which the person who failed to make the notice is to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Hunting of alligators outside season and in excess of statutory limits is designated as an offense for which those charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Knowingly and willfully destroying, altering, or falsifying patient's health record with intent to

conceal a material fact relating to a potential claim or cause of action is designated as an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Counterfeit or false proof of insurance. — Violation of O.C.G.A. § 16-9-5, which prohibits the manufacture, sale, distribution, or possession of a counterfeit or false proof of insurance document, is designated as an offense for which persons charged with a violation shall be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Performance, display, or exhibit of specified sexual acts or portions of human body on premises licensed to sell or dispense alcoholic beverages for consumption on the premises is designated as an offense for which persons charged are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Operation of a "bath house" is an offense for which persons charged are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Failure to disclose campaign contributions. — Failure of applicants for rezoning actions and local government officials and their families to disclose campaign contributions or other gifts is an offense for which persons charged with a violation are to be fingerprinted. 1986 Op. Att'y Gen. No. 86-30.

Battery. — Violation of O.C.G.A. § 16-5-23.1, which establishes the offense of battery, is an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Sexual battery. — Violation of the offense defined by O.C.G.A. § 16-6-22.1, which defines "sexual battery," is designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Cruising in merchant's parking area. — Offense of "cruising" in a merchant's parking area is an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Failure to display official rating on video movies. — Failure of persons selling or renting video movies to display the official rating of the motion picture on the covering of the video movie is not designated as an offense which requires that persons charged with its violation be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Operation of credit repair services organization is an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Possession of alcoholic beverage by jail inmate. — Violation of O.C.G.A. § 42-4-13(c), which provides that it is a misdemeanor for an inmate of a jail to possess any alcoholic beverage, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Sale of tobacco products to or possession of tobacco by minors. — Provision of cigarettes or other tobacco products to minors, and the possession of tobacco products by minors, are not designated as offenses which require fingerprinting. 1987 Op. Att'y Gen. No. 87-21.

Substitution of generic for brand-name drugs. — Offenses prohibited in O.C.G.A. §§ 26-4-80 and 26-4-83, as revised in 1987, which regulate the substitution of generic drugs for brand-name prescription drugs by pharmacists, are offenses required to be fingerprinted by O.C.G.A. § 35-3-33 (a)(1)(A)(ii), which requires the fingerprinting of persons charged with an offense involving dangerous drugs and narcotics. 1987 Op. Att'y Gen. No. 87-21.

Tattooing within one inch of eyesocket. — Violation of O.C.G.A. § 16-12-5, which prohibits tattooing within one inch of a person's eyesocket, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Tattooing minors. — Tattooing a person under the age of 16 is an offense for which those charged with its violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Theft by shoplifting. — O.C.G.A. § 36-32-9, which addresses the

Fingerprintable Offenses Illustrated (Cont'd)

jurisdiction of cases in which a person is charged with a first or second offense of theft by shoplifting when the property taken was valued at $100.00 or less, does not require any modification in the designation of theft by shoplifting as an offense for which persons charged with a violation of are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Resisting or obstructing firefighter in lawful discharge of official duties is an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Soliciting calls to telephone numbers with pre-call fees. — Use of automatic telephone dialing equipment and dissemination of pre-recorded messages, or the use of the United States mails, for the purpose of soliciting calls to "976" telephone numbers for which there are pre-call fees, is an offense for which persons charged are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Use of automatic dialing and recorded message equipment. — Prohibited use of automatic dialing and recorded message equipment is not designated as an offense which requires that persons charged with its violation be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Unsolicited fax machine advertising. — Violation of O.C.G.A. § 46-5-25, which prohibits the transmission of unsolicited facsimile messages for the purpose of advertising or offering for sale or lease goods, services, or property, is not designated as an offense which requires fingerprinting. 1990 Op. Att'y Gen. No. 90-22.

Violation of any section in O.C.G.A. § 4-4-80 et seq., regulating live poultry dealers, brokers, and market operators, is an offense for which those charged with a violation of are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

Destruction of animal facility or animal valued at $500.00 or less. — Violation of O.C.G.A. § 4-11-32(c), which proscribes damage to or destruction of an animal facility or animal valued at $500.00 or less, or entering a facility with the intent to disrupt or damage the enterprises conducted at that facility, is designated as an offense for which those charged with a violation are to be fingerprinted in order to promote consistency in the treatment of offenders. 1990 Op. Att'y Gen. No. 90-22.

Packaging of non-pure honey. — Violation of O.C.G.A. § 26-2-32, which provides that the packaging of a product as "honey" is unlawful unless the product is, in fact, pure honey manufactured by honeybees, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Subjecting a student to activities which endanger a student's physical health in connection with or as a condition to joining or participating in a school organization is designated as an offense for which those charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Required reporting of students committing prohibited acts. — Violation of O.C.G.A. § 20-2-1184, which requires the reporting of students committing prohibited acts, is not designated as an offense for which those charged with a violation are to be fingerprinted. 1990 Op. Att'y Gen. No. 90-22.

Unlawful inducement to sublease motor vehicle. — Unlawful inducement of a motor vehicle buyer or lessee under a contract to sublease the vehicle without written consent of the holder of the contract or the lessor, and unlawful offering of a vehicle for hire by a sublessee, is designated as an offense for which persons charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Violating provisions of domestic violence order which excludes or evicts a person from a residence or household is designated as an offense for which those charged with a violation are to be fingerprinted. 1988 Op. Att'y Gen. No. 88-19.

Disclosure

Disseminations to private, nongovernmental individuals is not

authorized. — See 1975 Op. Att'y Gen. No. 75-144.

Center can provide information to court in connection with civil election contests. — Georgia Crime Information Center and other criminal justice agencies can, in connection with civil election contests between private parties, provide criminal history record information to the court. 1975 Op. Att'y Gen. No. 75-144.

Candidate information to be provided to district attorneys and state court solicitors. — Center and all criminal justice agencies should disseminate to district attorneys and state court solicitors appropriate criminal history record information concerning any past or present candidate for public office. 1975 Op. Att'y Gen. No. 75-144.

Supplying information to State Election Board. — Since the State Election Board is empowered to investigate and enforce violations by civil actions, it would be entitled to receive criminal history record information in connection with any such investigation or litigation for offenses under former Code 1933, § 34-107 (see now O.C.G.A. § 21-2-8). 1975 Op. Att'y Gen. No. 75-144.

Limitations on the center are not applicable to blood alcohol reports. 1976 Op. Att'y Gen. No. 76-11.

Administrative discretion determines when sufficient information received for record's dissemination. — It is a matter of administrative discretion to determine when sufficient identification has been received for dissemination of the proper record. 1975 Op. Att'y Gen. No. 75-144.

Center should purge the center's records only when the records are inaccurate. 1975 Op. Att'y Gen. No. 75-110.

Metropolitan Atlanta Crime Commission is not entitled to receive certain identifying information. — Metropolitan Atlanta Crime Commission is not entitled to receive crime data from Georgia Crime Information Center in a format identifying the individual law enforcement agencies which have contributed data to the Georgia Crime Information Center. 1982 Op. Att'y Gen. No. 82-57.

RESEARCH REFERENCES

C.J.S.

73 C.J.S., Public Administrative Law and Procedure, § 108 et seq.

ALR.

Right to take fingerprints and photographs of accused before trial, or to retain same in police record after acquittal or discharge of accused, 83 A.L.R. 127.

35-3-34. Disclosure and dissemination of criminal records to private persons and businesses; resulting responsibility and liability of issuing center; provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting criminal history records shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed consent of the person whose records are requested on a form

prescribed by the center which shall include such person's full name, address, social security number, and date of birth;

(B)(i) The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 and has been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1. The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced as provided in Code Section 15-1-20, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1.

(ii) During the period of time after a defendant, who has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, has completed active probation supervision through the remainder of such sentence, the center shall not provide records of arrests, charges, or sentences except as specifically authorized by Code Section 42-8-63.1.

(iii) The center may provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, as specifically authorized by Code Section 42-8-63.1, while a defendant is under active probation supervision for such offense, or as provided in a court order;

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested; and

(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2, 35-3-37, or 42-8-62.1; or

(2) Make criminal history records of the defendant or witnesses in a criminal action available to counsel for the defendant upon receipt of a written request from the defendant's counsel under the following conditions:

(A) Such request shall contain the style of the case and the name and identifying information for each person whose records are requested. Such request shall be submitted to the center;

(B) In cases where the court has determined the defendant to be indigent, any fees authorized by law shall be waived; and

(C) Disclosure of criminal history information to the defendant's counsel as provided in this paragraph shall be solely in such counsel's capacity as an officer of the court. Any use of such information in a manner not authorized by law or the court in which such action is pending where the records were disclosed shall constitute a violation of Code Section 35-3-38; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate criminal history records, without fingerprint comparison or prior contact with the center, to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations.

(d.1) Reserved.

(d.2) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences unless such records are restricted pursuant to Code Section 35-3-37, except as specifically authorized by Code Section 42-8-63.1, without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.3) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(d.4) The center shall place a high priority on inquiries from any nuclear power facility requesting a criminal history and shall respond to such requests as expeditiously as possible, but in no event shall a response be made more than two business days following receipt of the request.

(e)(1) The Georgia Crime Information Center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the bureau to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of

Superior Court Clerks of Georgia and the bureau to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

(3)(A) The records of the center shall include information as to whether a person has been involuntarily hospitalized. In order to carry out the provisions of Code Section 16-11-129, the center shall be provided such information and no other mental health information from the records of the probate and superior courts ordering persons to be involuntarily hospitalized. With respect to probate court records, such information shall be provided in a manner agreed upon by the Probate Judges Training Council and the bureau. With respect to superior court records, such information shall be provided in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the bureau. Such records shall be provided in a manner so as to preserve the confidentiality of patients' rights in all other respects.

(B) In order to carry out the provisions of Code Section 16-11-129, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or has been found not guilty by reason of insanity at the time of the crime. The clerk of court shall report such information to the center immediately but in no case later than ten days after such adjudication of mental incompetence or finding of not guilty by reason of insanity.

(f) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section.

History.

Ga. L. 1973, p. 1301, § 3; Ga. L. 1976, p. 1401, § 2; Ga. L. 1977, p. 1243, § 1; Ga. L. 1978, p. 1981, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1988, p. 203, § 1; Ga. L. 1989, p. 1080, § 2; Ga. L. 1994, p. 1895, § 12; Ga. L. 1995, p. 139, § 3; Ga. L. 1995, p. 633, §§ 1, 2; Ga. L. 1996, p. 6, § 35; Ga. L. 2000, p. 1206, § 1; Ga. L. 2003, p. 840, § 1; Ga. L. 2005, p. 613, § 2/SB 175; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 812, § 4/SB 532; Ga. L. 2012, p. 899, § 6-1/HB 1176; Ga. L. 2014, p. 599, § 1-13/HB 60; Ga. L. 2016, p. 443, § 6B-3/SB 367; Ga. L. 2020, p. 753, § 2-4/SB 288; Ga. L. 2025, p. 1029, § 35(43)(C)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" twice in paragraph (e)(2).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1995, subsections (d.1) and (d.2), enacted

by Ga. L. 1995, p. 633, § 2, were redesignated as subsections (d.2) and (d.3).

Pursuant to Code Section 28-9-5, in 1995, "subparagraph (a)(1)(B)" was substituted for "subparagraph (B) of paragraph (1) of subsection (a)" in the undesignated paragraph at the end of subsection (d.2).

Pursuant to Code Section 28-9-5, in 2005, the single quotes were deleted from "Brady Handgun Violence Prevention Act" at the end of paragraph (e)(1).

Editor's notes.

Ga. L. 1995, p. 139, § 7, not codified by the General Assembly, provides that no local ordinance which was in effect on March 22, 1995, shall be affected by Code Section 16-11-184 until January 1, 1996, at which time, unless enacted subsequent to March 22, 1995, as provided by that Code section, any such ordinance shall be of no further force or effect, and further provides that no ordinance or regulation attempting to regulate firearms in any manner shall be enacted by any county, city, or municipality after July 1, 1995.

Ga. L. 2012, p. 899, § 9-1/HB 1176, not codified by the General Assembly, provides that Part VI of this Act, which amended this Code section, shall become fully effective on July 1, 2013; provided, however, that for the purpose of preparing for implementation of Part VI of this Act, said part shall become effective on July 1, 2012.

Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Law reviews.

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 137 (1994).

For note on the 1995 amendment of this Code section and § 35-3-37, see 12 Ga. St. U.L. Rev. 118 (1995).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 179 (2003).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 47 (2014).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

JUDICIAL DECISIONS

Defendant must request criminal history of witnesses. — State did not commit a due process violation under O.C.G.A. § 35-3-34(a)(2) by not providing information of the 1997 arrest of a witness to the defense during the trial rather than before trial because § 35-3-34 made criminal history records of witnesses in criminal cases available to the defendant upon written request, and the Georgia Supreme Court has held that Brady did not require the prosecution to turn over to the defense the criminal records of the state's witnesses. Jackson v. State, 306 Ga. 69, 829 S.E.2d 142, 2019 Ga. LEXIS 392 (2019).

OPINIONS OF THE ATTORNEY GENERAL

State free to maintain more or less restrictive access policy than contained in federal guidelines. — Recent changes in the federal Law Enforcement Assistance Administration regulations indicate that these rules are to be viewed as broad guidelines which set the outermost limits on the collection, storage, and dissemination of criminal history data; under this concept, the states would be free to maintain a more restrictive policy regarding public access to criminal history records, unless through legislation, ordinance, or executive or court order a state elects to adopt a more liberal policy in regard to the public's right to gain access to criminal history information. 1976 Op. Att'y Gen. No. 76-57.

General Assembly expressed desire to narrowly open access to criminal records to the private sector for the

limited purpose of making preemployment checks and job assignment decisions in certain circumstances, as well as to have such information to assist them in making a determination as to whether to prosecute persons apprehended on the premises who are engaged in a criminal act against the business. 1976 Op. Att'y Gen. No. 76-57.

Word "businesses," as used in paragraph (a)(1), is a general term, and is not restricted solely to profit motivated enterprises. 1976 Op. Att'y Gen. No. 76-57.

Employment agencies, credit corporations, and firms doing background checks not entitled to information. — Subparagraph (a)(1)(A) refers to those individuals directly involved in making the ultimate decision as to whether to hire or transfer an individual to a new job assignment; accordingly, employment agencies, retail credit corporations, and firms doing background checks would not be entitled to criminal history information under this section. 1976 Op. Att'y Gen. No. 76-57.

Private security agency member not entitled to information. — Private security agency member hired by a business to protect the business's property, or any other member of the security agency hired by a business, would not be entitled to the criminal history information on the individual the agency has apprehended, or the agency suspects of committing a crime, since the security agency is not the business against whom the crime or suspected crime has been committed. 1976 Op. Att'y Gen. No. 76-57.

Permissible to relax local querying requirement when adjudications of guilt on criminal suspects sought. — Furnishing of adjudications of guilt to the personnel of a business on persons apprehended or suspected of having committed a specific criminal act, in which the victim is the business, is more in the nature of a criminal justice dissemination for which time in furnishing such information may be of the essence, so as not to prolong any detention of the individual apprehended; accordingly, it would be permissible to relax the local querying requirement when adjudications of guilt are sought. 1976 Op. Att'y Gen. No. 76-57.

Involuntary hospitalizations after March 22, 1995 must be reported to the Bureau of Investigation, even though the information is to be applied only to sales or transfers after January 1, 1996. 1996 Op. Att'y Gen. No. 96-5.

RESEARCH REFERENCES

Am. Jur. 2d.

66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.

C.J.S.

76 C.J.S., Records, §§ 76, 82 et seq., 116, 130, 131, 152.

ALR.

Immunity of police or other law enforcement officer from liability in defamation action, 100 A.L.R.5th 341.

35-3-34.1. Circumstances when exonerated first offender's criminal record may be disclosed.

When a defendant has been exonerated and discharged without court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is authorized to provide the first offender's record of arrests, charges, or sentences to the employers and entities and under the conditions set forth in Code Section 42-8-63.1.

History.

Code 1981, § 35-3-34.1, enacted by Ga. L. 2003, p. 840, § 3; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2006, p. 164, § 1/HB 1335; Ga. L. 2009, p. 453, § 3-10/HB 228; Ga. L. 2011, p. 227, § 23/SB 178; Ga. L.

2013, p. 524, § 3-6/HB 78; Ga. L. 2016, p. 443, § 6B-4/SB 367.

Cross references.

Discharges disqualifying individuals from employment, § 42-8-63.1.

Law reviews.

For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 179 (2003).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

35-3-34.2. Exchange of national criminal history background checks on providers of care to children, the elderly, and persons with disabilities.

(a) It is the purpose of this Code section to authorize and facilitate, but not require, the exchange of national criminal history background checks with authorized agencies on behalf of qualified entities as authorized under federal law.

(b) As used in this Code section, the term:

(1) "Authorized agency" means any local government agency designated to report, receive, or disseminate information under the NCPA and the VCA.

(2) "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(3) "FBI" means the Federal Bureau of Investigation.

(4) "National criminal history background check" means a fingerprint based check of state and national criminal history files based on submission of a set of classifiable fingerprints and records fee.

(5) "NCPA" means the National Child Protection Act of 1993, 42 U.S.C. Sections 3759, 5101 note, 5119, and 5119a through 5119c.

(6) "ORI" means an originating agency identifier.

(7) "Provider" means:

(A) A person who:

(i) Is employed by or volunteers with a qualified entity;

(ii) Owns or operates a qualified entity; or

(iii) Has or may have unsupervised access to a person to whom the qualified entity provides care; and

(B) A person who:

(i) Seeks to be employed by or volunteer with a qualified entity;

(ii) Seeks to own or operate a qualified entity; or

(iii) Seeks to have or may have unsupervised access to a person to whom the qualified entity provides care.

(8) "Qualified entity" means a business or organization, whether public, private, for profit, not for profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

(9) "VCA" means the Volunteers for Children Act, 42 U.S.C. Sections 5101 note, 5119a, and 5119b.

(c) An authorized agency is responsible for the designation of qualified entities within its local jurisdiction and for the submission of national criminal history background checks as authorized under the NCPA and the VCA.

(d) An authorized agency, other than a criminal justice agency as defined in Code Section 35-3-30, must request an ORI from the FBI for the express purpose of submitting national criminal history background checks under this Code section. Requests shall be made in writing to the FBI through the center.

(e) National criminal history background checks shall be submitted directly to the center for a state records check; fingerprint cards shall then be forwarded to the FBI for a national check. The responses from both the state and national criminal history background checks shall be returned to the authorized agency.

(f) The authorized agency may provide directly to the qualified entity the state criminal history record provided as part of the national criminal history background check.

(g) An authorized agency shall be responsible for review of the national criminal history record provided as part of the national criminal history background check to determine whether the provider has been convicted of or is under indictment for a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and to convey that determination to the qualified entity.

(h) The qualified entity must obtain the fingerprints of the provider, communicate the fitness determination of the authorized agency to the provider, and notify the provider of his or her right to challenge the accuracy and completeness of any information contained in the national criminal history background check.

(i) Fees charged for a national criminal history background check shall be determined based on reasonable costs as allowed under federal law.

(j) The provisions of this Code section shall be supplementary to and not in place of any other law of this state which authorizes or requires background checks.

(k) Any person, authorized agency, or qualified entity, or any person who is an employee of an authorized agency or qualified entity, shall not disseminate any criminal history or any information concerning any criminal history except the determination of fitness which such person obtains pursuant to this Code section.

History.

Code 1981, § 35-3-34.2, enacted by Ga. L. 2005, p. 1196, § 1/SB 6.

Code Commission notes.

The enactment of Code Section 35-3-35.1 by Ga. L. 2005, p. 980, § 1, irreconcilably conflicted with and was treated as superseded by the enactment of Code Section 35-3-34.2 by Ga. L. 2005, p. 1196, § 1. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2005, in paragraph (b)(5), the quotation marks were deleted from "National Child Protection Act of 1993," and "5119, and 5119a through 5119c" was substituted for "5119, 5119(a) to 5119(c)"; and, in paragraph (b)(9), the quotation marks were deleted from "Volunteers for Children Act," and "5119a, and 5119b" was substituted for "5119(a) and 5119(b)".

35-3-35. Disclosure and dissemination of records to public agencies and political subdivisions; responsibility and liability of issuing center.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:

(A) Public agencies or political subdivisions shall, at the time of the request, provide the fingerprints of the person whose records are requested in such manner prescribed by the center, which may include the electronic imaging of a person's fingerprints, or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; provided, however, that the provisions of this paragraph shall supersede any other provision relating to the submission of fingerprints to the center;

(B)(i) The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 and has been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, including records relating to such

defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1. The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced as provided in Code Section 15-1-20, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1.

(ii) During the period of time after a defendant, who has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, has completed active probation supervision through the remainder of such sentence, the center shall not provide records of arrests, charges, or sentences except as specifically authorized by Code Section 42-8-63.1.

(iii) The center may provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, as specifically authorized by Code Section 42-8-63.1, while a defendant is under active probation supervision for such offense, or as provided in a court order;

(C) When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically criminal history records of in-state felony convictions, pleas, and sentences without:

(i) Fingerprint comparison; or

(ii) Consent of the person whose records are requested; and

(D) The center shall not provide records of arrests, charges, or dispositions when access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2, 35-3-37, or 42-8-62.1;

(1.1) Make criminal history records maintained by the center available to any county board of registrars or county board of registration and election. The making of an application for voter registration shall be deemed to be consent of the person making the application to release such records to the county board of registrars or county board of registration and election. Such records shall be requested for the sole purpose of verification of information provided on voter registration cards by registration applicants;

(1.2) Make criminal history records maintained by the center and national criminal history records maintained by the Federal Bureau

of Investigation, obtained by the center, available to the governing authority of any county or municipality, for any applicant or licensee in a specified occupation for which such local governing authority has adopted an ordinance or resolution requiring such applicants or licensees in a particular occupation or profession regulated by the governing authority to be fingerprinted as a condition of submitting an application or obtaining or renewing a license. The center shall establish a uniform method of obtaining criminal history records required under this paragraph. Such uniform method shall require the submission to the center of two complete sets of fingerprints and the records search fee. Upon receipt thereof, the center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the center shall notify the requesting local government authority in writing of any derogatory finding, including, but not limited to, any criminal record data regarding the fingerprint records check or if there is no such finding. Nothing in this paragraph shall prevent the local governing authority from obtaining national criminal history records directly from the Federal Bureau of Investigation, if an ordinance or resolution requiring the fingerprints of an applicant or licensee of a particular occupation or profession regulated by the local governing authority has been adopted by such governing authority of the county or municipality; and

(2) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event an employment or licensing decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, nor any other claim in connection with any dissemination pursuant to this Code section and shall be immune from suit based upon such claims.

(d) Local criminal justice agencies may disseminate criminal history records to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations.

(d.1) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences unless such records are restricted pursuant to Code Section 35-3-37, except as specifically authorized by Code Section 42-8-63.1, without:

(1) Fingerprint comparison;

(2) Prior contact with the center; or

(3) Consent of the person whose records are requested.

Such information may be disseminated to entities to which such records may be made available under subsection (d) of this Code section under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.2) No fee charged pursuant to this Code section may exceed $20.00 per person whose criminal history record is requested or be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section.

History.

Ga. L. 1978, p. 1981, § 1; Ga. L. 1988, p. 203, § 2; Ga. L. 1990, p. 1831, § 1; Ga. L. 1992, p. 1009, § 1; Ga. L. 1995, p. 633, §§ 3, 4; Ga. L. 2000, p. 1206, § 2; Ga. L. 2003, p. 840, § 2; Ga. L. 2007, p. 43, §§ 2, 3/SB 62; Ga. L. 2016, p. 443, § 6B-5/SB 367; Ga. L. 2020, p. 753, § 2-5/SB 288.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1995, "subparagraph (a)(1)(B)" was substituted for "subparagraph (B) of paragraph (1) of subsection (a)" in the undesignated paragraph at the end of subsection (d.1).

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 179 (2003).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

RESEARCH REFERENCES

Am. Jur. 2d.
66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.
C.J.S.
76 C.J.S., Records, §§ 76, 82 et seq., 116, 130, 131, 152.

ALR.
Immunity of police or other law enforcement officer from liability in defamation action, 100 A.L.R.5th 341.

35-3-35.1. Superseded.

Code Commission notes.
The enactment of Code Section 35-3-35.1 by Ga. L. 2005, p. 980, § 1/HB 501, irreconcilably conflicted with and was treated as superseded by the enactment of Code Section 35-3-34.2 by Ga. L. 2005, p. 1196, § 1/SB 6. See County of Butts v. Strahan, 151 Ga. 417 (1921).

35-3-36. Information to be submitted to center; uniform crime reports.

(a) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs when specifically requested, and other identifying data on persons who have been lawfully arrested or taken into custody in the state for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 and for persons in the categories enumerated in subparagraphs (a)(1)(B), (a)(1)(C), and (a)(1)(D) of Code Section 35-3-33.

(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, clerks of court, community supervision officers, county or Department of Juvenile Justice juvenile probation officers, probation officers and private probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, wardens or other persons in charge of penal and correctional institutions in this state, the Georgia Superior Court Clerks' Cooperative Authority, and the State Board of Pardons and Paroles to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

(c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation, full-face and profile photographs if photo equipment is available, and other available identifying data of each person arrested or taken into custody for an offense of a type designated in paragraph (1) of subsection (a) of Code Section 35-3-33, of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions; but photographs need not be taken if it is known that photographs of the type listed

taken within the previous year are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned or deleted, as applicable, if the fingerprint record was taken in error or upon court order, and such dispositions shall be reported to the center.

(d) Fingerprints and other identifying data required to be taken under subsection (c) of this Code section shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the center so requests.

(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If any such warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all such arrest warrants of this type which continue to be outstanding.

(f) All persons in charge of state penal and correctional institutions shall obtain fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation or as otherwise directed by the center and full-face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the center together with any other identifying data requested within ten days after the arrival at the institution of the person committed. At the time of release of any person committed to a correctional institution, the institution shall again obtain fingerprints as provided for in this subsection and forward them to the center within ten days along with any other related information requested by the center. Immediately upon release, the institution shall notify the center of the release of the person.

(g)(1) Criminal justice agencies within this state, all persons in charge of law enforcement agencies, clerks of court, municipal judges

when such judges do not have a clerk, magistrates, persons in charge of community supervision, juvenile probation, or Article 6 of Chapter 8 of Title 42 probation offices, and the State Board of Pardons and Paroles shall transmit to the center the information described in Code Section 35-3-33 within 30 days of the creation or receipt of such information, except as provided in subsection (d) of this Code section, on the basis of the forms and instructions to be provided by the center. Such forms and instructions shall not be inconsistent with the uniform standards promulgated pursuant to paragraph (5) of subsection (h) of Code Section 15-5-24.1.

(2) Compliance with the provisions in paragraph (1) of this subsection is mandatory, regardless of whether the center requests the information described in Code Section 35-3-33.

(h) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the center copies of identifying data, as required in accordance with center guidelines, in those files as will aid in establishing the nucleus of the state criminal identification file.

(i) All criminal justice agencies within the state shall submit to the center, periodically at a time and in such form as prescribed by the center, information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Such report shall be known as the "uniform crime report" and shall contain crimes reported and otherwise processed during the period preceding the period of report, including the number and nature of offenses committed, the disposition of such offenses, and such other information as the center shall specify, relating to the method, frequency, cause, and prevention of crime. The incident/complaint report forms used by criminal justice agencies shall, when applicable, include the identification of any victim who is a student and the name of the school attended by any such student.

(j) Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report provided for in subsection (i) of this Code section but which desires to submit a report shall be furnished with the proper forms by the center. When a report is received by the center from a governmental agency not required to make a report, the information contained therein shall be included within the periodic compilation provided for in paragraph (9) of subsection (a) of Code Section 35-3-33.

(k) Upon the request of the center, local law enforcement agencies shall periodically provide for audit samples of incident reports for the

preceding reporting period so that the center may help ensure agency compliance with national and state uniform crime reporting requirements.

(l) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery.

(n) Neither the center nor its employees shall be responsible for the accuracy of information contained in records representing wanted persons, missing persons, and stolen serial numbered property established in computerized files on the Georgia Criminal Justice Information System (CJIS) network or in computerized files maintained by the Federal Bureau of Investigation National Crime Information Center (NCIC). Criminal justice agencies establishing such records bear all responsibilities for entry, update, and removal as dictated by actions of criminal justice employees and officials.

History.

Ga. L. 1973, p. 1301, § 4; Ga. L. 1976, p. 617, § 6; Ga. L. 1980, p. 396, § 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 149, § 35; Ga. L. 1992, p. 1022, § 1; Ga. L. 2001, p. 1024, § 1; Ga. L. 2002, p. 415, § 35; Ga. L. 2003, p. 336, § 1; Ga. L. 2003, p. 840, § 3A; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2015, p. 422, § 5-54/HB 310; Ga. L. 2016, p. 443, § 6B-6/SB 367; Ga. L. 2016, p. 864, § 35/HB 737; Ga. L. 2022, p. 121, § 14/SB 441; Ga. L. 2023, p. 294, § 11/SB 272, effective May 1, 2023.

Amendments.

The 2023 amendment, effective May 1, 2023, substituted "Code Section 15-5-24.1" for "Code Section 15-6-50.3 issued by The Council of Superior Court Clerks of Georgia" at the end of paragraph (g)(1).

Editor's notes.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Ga. L. 2022, p. 121, § 1/SB 441, not codified by the General Assembly,

provides: "(a) The General Assembly finds that:

"(1) The state's current system for sharing criminal case data is not adequate to provide to all appropriately interested parties, including, but not limited to, law enforcement agencies and officers, courts, crime victims and other impacted individuals, housing providers, and employers, complete criminal case data;

"(2) One recent report indicates there may be as many as 7 million criminal charges without a final disposition indicated, and, of those, as many as 5.4 million criminal charges have languished for years;

"(3) Georgia's citizens and businesses are harmed by incomplete criminal case data. For example, in thousands of cases, as a result of incomplete criminal case data, citizens' employability and housing opportunities have been negatively impacted; and

"(4) A more uniform, modern system and framework for handling criminal case data will support the state in meeting its obligations to victims to keep them informed as their perpetrators make their way through the criminal justice system.

"(b) It is the intent of the General Assembly that criminal case data be complete and accurately reported to the appropriate state data base and be accessible to state and local criminal justice agencies, employers, housing providers, victims, and all citizens."

Ga. L. 2022, p. 121, § 2/SB 441, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Criminal Records Responsibility Act.'"

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 179 (2003).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

For article, "SB 441: Criminal Records Responsibility Act," see 39 Ga. St. U.L. Rev. 105 (2022).

JUDICIAL DECISIONS

Fingerprint record following nolle prosequi. — Defendant was not entitled to have fingerprint record returned following entry of nolle prosequi on charges for which record was made. Drake v. State, 170 Ga. App. 846, 318 S.E.2d 721, 1984 Ga. App. LEXIS 2057 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Recording of crimes necessary to establish and maintain uniform system. — This article empowers the Georgia Crime Information Center to record crime as the center deems necessary to establish and maintain a uniform system of crime reporting. 1976 Op. Att'y Gen. No. 76-33.

Law enforcement agencies obtain fingerprints from arrested persons and forward prints to center. — This article requires persons in charge of law enforcement agencies to obtain fingerprints each time a person is arrested or taken into custody and forward such prints to the center. 1975 Op. Att'y Gen. No. U75-34.

Language "or cleared of the offense through court proceedings" in subsection (c) of O.C.G.A. § 35-3-36 must not be viewed in isolation, but in the context of O.C.G.A. § 35-3-37 which provides for inspection, correction, and expungement of records. 1982 Op. Att'y Gen. No. 82-8.

Subsection (c) of O.C.G.A. § 35-3-36 is directed only at a fingerprint record, not at an arrest record. 1982 Op. Att'y Gen. No. 82-8.

RESEARCH REFERENCES

Am. Jur. 2d.
66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.
C.J.S.
76 C.J.S., Records, §§ 76, 82 et seq., 116, 130, 131, 152.

ALR.
Right to take fingerprints and photographs of accused before trial, or to retain same in police record after acquittal or discharge of accused, 83 A.L.R. 127.

35-3-37. Criminal history record information; review; corrections; restriction of access for certain dispositions.

(a) As used in this Code section, the term:

(1) "Drug court treatment program" means a treatment program operated by a drug court division in accordance with the provisions of Code Section 15-1-15.

(2) "Entity" means the arresting law enforcement agency, including county and municipal jails and detention centers.

(3) "Mental health treatment program" means a treatment program operated by a mental health court division in accordance with the provisions of Code Section 15-1-16.

(4) "Nonserious traffic offense" means any offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the laws of a state which would not be considered a serious traffic offense under the laws of this state if committed in this state.

(5) "Prosecuting attorney" means the Attorney General, a district attorney, or the solicitor-general who had jurisdiction where the criminal history record information is sought to be modified, corrected, supplemented, amended, or restricted. If the offense was a violation of a criminal law of this state which, by general law, may be tried by a municipal, magistrate, probate, or other court that is not a court of record, the term "prosecuting attorney" shall include the prosecuting officer of such court or, in the absence of such prosecuting attorney, the district attorney of the judicial circuit in which such court is located.

(6) "Restrict," "restricted," or "restriction" means that the criminal history record information of an individual relating to a particular offense shall be available only to judicial officials and criminal justice agencies for law enforcement or criminal investigative purposes or to criminal justice agencies for purposes of employment in accordance with procedures established by the center and shall not be disclosed or otherwise made available to any private persons or businesses pursuant to Code Section 35-3-34 or to governmental agencies or licensing and regulating agencies pursuant to Code Section 35-3-35.

(7) "Serious violent felony" shall have the same meaning as set forth in Code Section 17-10-6.1.

(8) "State" includes any state, the United States or any district, commonwealth, territory, or insular possession of the United States, and the Trust Territory of the Pacific Islands.

(9) "Veterans treatment program" means a treatment program operated by a veterans court division in accordance with the provisions of Code Section 15-1-17.

(10) "Youthful offender" means any offender who was less than 21 years of age at the time of his or her arrest.

(b) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity of this state to invade the privacy of any citizen as defined by the General Assembly or as defined by the courts other than to the extent provided in this article.

(c) The center shall make an individual's criminal history record information available for review by such individual or his or her designee upon written application to the center.

(d) If an individual believes his or her criminal history record information to be inaccurate, incomplete, or misleading, he or she may request a criminal history record information inspection at the center. The center at which criminal history record information is sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures or restrictions, including fingerprinting, as are reasonably necessary to assure the security of the criminal history record information, to verify the identities of those who seek to inspect such information, and to maintain an orderly and efficient mechanism for inspection of criminal history record information. The fee for inspection of criminal history record information shall not exceed $15.00, which shall not include the cost of the fingerprinting.

(e) If the criminal history record information is believed to be inaccurate, incomplete, or misleading, the individual may request that the entity having custody or control of the challenged information modify, correct, supplement, or amend the information and notify the center of such changes within 60 days of such request. In the case of county and municipal jails and detention centers, such notice to the center shall not be required. If the entity declines to act within 60 days of such request or if the individual believes the entity's decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the right to appeal to the court with original jurisdiction of the criminal offenses in the county where the entity is located.

(f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order from the court with original jurisdiction of the criminal offenses that the subject information be modified, corrected, supplemented, or amended by the entity with custody of such information. Notice of the appeal shall be provided to the entity and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient service on the entity having custody or control of the disputed criminal history record information. The court shall conduct a de novo review and, if requested by a party, the proceedings shall be recorded.

(g)(1) Should the court find by a preponderance of the evidence that the criminal history record information in question is inaccurate, incomplete, or misleading, the court shall order such information to be appropriately modified, corrected, supplemented, or amended as the court deems appropriate. Any entity with custody, possession, or control of any such criminal history record information shall cause each and every copy thereof in its custody, possession, or control to be altered in accordance with the court's order within 60 days of the entry of the order.

(2) To the extent that it is known by the requesting individual that an entity has previously disseminated inaccurate, incomplete, or misleading criminal history record information, he or she shall, by written request, provide to the entity the name of the individual, agency, or company to which such information was disseminated. Within 60 days of the written request, the entity shall disseminate the modification, correction, supplement, or amendment to the individual's criminal history record information to such individual, agency, or company to which the information in question has been previously communicated, as well as to the individual whose information has been ordered so altered.

(h) Access to an individual's criminal history record information, including any fingerprints or photographs of the individual taken in conjunction with the arrest, shall be restricted by the center for the following types of dispositions:

(1) Prior to indictment, accusation, or other charging instrument:

(A) The offense was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and:

(i) The offense against such individual is closed by the arresting law enforcement agency. It shall be the duty of the head of the arresting law enforcement agency to notify the center whenever a record is to be restricted pursuant to this division within 30 days of such decision. A copy of the notice shall be sent to the

accused and the accused's attorney, if any, by mailing the same by first-class mail within seven days of notifying the center; or

(ii) The center does not receive notice from the arresting law enforcement agency that the offense has been referred to the prosecuting attorney or transferred to another law enforcement or prosecutorial agency of this state, any other state or a foreign nation, or any political subdivision thereof for prosecution and the following period of time has elapsed from the date of the arrest of such individual:

(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated nature, two years;

(II) If the offense is a felony, other than a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, four years; or

(III) If the offense is a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this division, the center shall make such record available in accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive notice of a charging instrument within 30 days of the applicable time periods set forth in this division, such record shall be restricted by the center for noncriminal justice purposes;

(B) The offense was referred to the prosecuting attorney but was later dismissed;

(C) The grand jury returned two no bills; or

(D) The grand jury returned one no bill and the applicable time period set forth in division (ii) of subparagraph (A) of this paragraph has expired; and

(2) After indictment or accusation:

(A) Except as provided in subsection (i) of this Code section, all charged offenses were dismissed, nolle prossed, or reduced to a violation of a local ordinance;

(B) The individual was sentenced in accordance with the provisions of subsection (a) or subsection (c) of Code Section 16-13-2, and either the court ordered restriction upon sentencing as permitted in Code Section 16-13-2 or the individual successfully completed the terms and conditions of his or her probation;

(C) The individual pleaded guilty to or was found guilty of a violation of paragraph (2) or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in accordance with the provisions of subsection (c) of Code Section 3-3-23.1, and either the court ordered restriction upon sentencing as permitted in Code Section 3-3-23.1 or the individual successfully completed the terms and conditions of his or her probation;

(D) The individual successfully completed a drug court treatment program, mental health treatment program, or veterans treatment program, the individual's offense has been dismissed or nolle prossed, and he or she has not been arrested during such program, excluding any arrest for a nonserious traffic offense; or

(E) The individual was acquitted of all of the charged offenses by a judge or jury unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial court through clear and convincing evidence that the harm otherwise resulting to the individual is clearly outweighed by the public interest in the criminal history record information being publicly available because either:

(i) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine; or

(ii) The individual has been formally charged with the same or similar offense within the previous five years.

(i) After the filing of an indictment or accusation, an individual's criminal history record information shall not be restricted if:

(1) The prosecuting attorney affirmatively indicates that the offense was dismissed, nolle prossed, or reduced to a violation of a local ordinance because:

(A) Of a plea agreement resulting in a conviction of the individual for an offense arising out of the same underlying transaction or occurrence as the conviction;

(B) The prosecuting attorney was barred from introducing material evidence against the individual on legal grounds, including, without limitation, the granting of a motion to suppress or motion in limine;

(C) The conduct which resulted in the arrest of the individual was part of a pattern of criminal activity which was prosecuted in another court of the state or a foreign nation; or

(D) The individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution;

(2) The charged offenses were tried and some, but not all, of the offenses resulted in an acquittal; or

(3) The individual was acquitted of all charged offenses but it was later determined that the acquittal was the result of jury tampering or judicial misconduct.

(j)(1) When an individual had a felony charge dismissed or nolle prossed or was found not guilty of such charge but was convicted of a misdemeanor offense that was not a lesser included offense of the felony charge, such individual may petition the court in which he or she was accused or convicted, as applicable, or, if such charge was dismissed, the superior court in the county where the arrest occurred to restrict access to criminal history record information for the felony charge within four years of the arrest. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines that the misdemeanor conviction was not a lesser included offense of the felony charge and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(2) When an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the court in which he or she was convicted to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case, and the public's interest in the criminal history record information being publicly available.

(3) When an individual's charged offense has remained on the dead docket for more than 12 months, such individual may petition the

court in which the charged offense is pending to restrict access to criminal history record information for such charged offense. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the offense was placed on the dead docket; provided, however, that the court shall not grant such motion if an active warrant is pending for such individual.

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, provided that such conviction was not for any offense listed in subparagraph (B) of this paragraph, and such individual has completed the terms of his or her sentence and has not been convicted of any crime in any jurisdiction for at least four years prior to filing a petition under this subparagraph, excluding any conviction for a nonserious traffic offense, and provided, further, that he or she has no pending charged offenses, he or she may petition the court in which the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if it determines that the harm otherwise resulting to the individual clearly outweighs the public's interest in the criminal history record information being publicly available.

(B) Record restriction under this subsection shall not be appropriate if the individual was convicted of:

(i) Family violence simple assault in violation of subsection (d) of Code Section 16-5-20, unless the individual was a youthful offender;

(ii) Family violence simple battery in violation of subsection (f) of Code Section 16-5-23, unless the individual was a youthful offender;

(iii) Family violence battery in violation of subsection (f) of Code Section 16-5-23.1, unless the individual was a youthful offender;

(iv) Family violence stalking in violation of Code Section 16-5-90;

(v) Violating a family violence order in violation of Code Section 16-5-95;

(vi) Child molestation in violation of Code Section 16-6-4;

(vii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(viii) Improper sexual contact by employee or agent, improper sexual contact by a foster parent, and improper sexual contact by person in a position of trust in violation of Code Section 16-6-5.1;

(ix) Public indecency in violation of subsection (b) of Code Section 16-6-8;

(x) Keeping a place of prostitution in violation of Code Section 16-6-10;

(xi) Pimping in violation of Code Section 16-6-11;

(xii) Pandering by compulsion in violation of Code Section 16-6-12;

(xiii) Sexual battery in violation of Code Section 16-6-22.1;

(xiv) Obstructing or hindering persons making emergency telephone call in violation of Code Section 16-10-24.3;

(xv) Peeping Toms in violation of Code Section 16-11-61;

(xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of Chapter 12 of Title 16;

(xvii) Theft in violation of Chapter 8 of Title 16; provided, however, that such prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or

(xviii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

(C) An individual shall be limited to filing a petition under this paragraph to a lifetime maximum of requesting record restriction on two convictions for a misdemeanor or a series of misdemeanors arising from a single incident. For the purposes of this subparagraph, the conviction of two or more offenses charged in separate counts of one or more accusations consolidated for trial shall be deemed to be one conviction. If a petition under this subsection has been denied, an individual may file a subsequent petition on the same conviction for a misdemeanor or series of misdemeanors arising from a single incident after the expiration of two years from the date of the final order from the previous petition.

(5) When an individual was arrested on a fugitive from justice warrant as provided in Code Section 17-13-4, such individual may petition the superior court in the county where the arrest occurred to restrict access to criminal history record information for such warrant. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the arresting law enforcement agency and the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if the court determines that circumstances warrant restriction and that the harm otherwise resulting to the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(6)(A) A defendant convicted of an offense and sentenced, or a defendant who was sentenced pursuant to Code Section 42-8-60 or 16-13-2, while such individual was a victim of an offense of trafficking under Code Section 16-5-46 may petition the court imposing the sentence to restrict such conviction and the sentence or sentence imposed pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the jurisdiction, power, and authority to restrict such conviction and sentence.

(B) The defendant shall serve the petition provided for under paragraph (1) of this subsection upon the prosecuting attorney, and such petition:

(i) Shall be submitted on a form promulgated by the Attorney General; and

(ii) May include documentation of a defendant's status as a victim of an offense of trafficking under Code Section 16-5-46 at the time of the offense; provided, however, that official documentation shall not be required to obtain relief under this paragraph. Such documentation shall create a rebuttable presumption that the defendant was a victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the term "official documentation" includes, but is not limited to, the following:

(I) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding showing that the defendant was a victim of trafficking under Code Section 16-5-46;

(II) An affidavit, a letter, or sworn testimony from a member of the clergy, medical professional, member of a victim services organization, or certified, licensed, or regis-

tered professional from whom the defendant has sought assistance, counseling, or legal counsel related to his or her victimization; or

(III) Any other evidence that the court determines is of sufficient credibility or probative value.

(C) If the prosecuting attorney, to the court, consents in writing to the restriction of such conviction and sentence or the sentence imposed pursuant to Code Section 42-8-60 or 16-13-2 or fails to respond to such petition within 30 days of service, the court imposing the conviction and sentence or the sentence imposed pursuant to Code Section 42-8-60 or 16-13-2 shall, without notice or hearing, issue an order restricting access to criminal history record information for such offense.

(D) If the prosecuting attorney, to the court, objects in writing to the petition, the court shall determine, by a preponderance of the evidence, whether the defendant committed such offense while such individual was a victim of an offense of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the evidence, that the defendant committed such offense while such individual was a victim of an offense of trafficking under Code Section 16-5-46, the court may issue an order restricting access to criminal history record information for such offense. The court shall hold a hearing within 90 days of the filing of the petition to hear evidence for purposes of making a determination under this subparagraph or make a determination upon the pleadings or record.

(E) When the petition provided for under subparagraph (A) of this paragraph is filed, it shall be filed under seal.

(F) For purposes of considering such petition, testimony from the defendant or any other party may be taken by the court by remote electronic means.

(G) No fee shall be charged to an individual for restricting access to criminal history record information under this paragraph.

(7) When an individual was convicted in this state of an offense for which that individual has been granted a pardon from the State Board of Pardons and Paroles as provided in the Constitution and Code Section 42-9-42, provided that the offense was not a serious violent felony as such term is defined in Code Section 17-10-6.1 or a sexual offense as such term is defined in Code Section 17-10-6.2, and provided, further, that such individual has not been convicted of any crime in any jurisdiction, excluding any conviction for a nonserious traffic offense, since the pardon was granted, and provided, further,

that he or she has no pending charged offenses, he or she may petition the court in which the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall grant an order restricting such criminal history record information if it determines that the harm otherwise resulting to the individual clearly outweighs the public's interest in the criminal history record information being publicly available.

(k)(1) The center shall notify the arresting law enforcement agency of any criminal history record information, access to which has been restricted pursuant to this Code section, within 30 days of the date access to such information is restricted. Upon receipt of notice from the center that access to criminal history record information has been restricted, the arresting law enforcement agency or other law enforcement agency shall, within 30 days, restrict access to all such information maintained by such arresting law enforcement agency or other law enforcement agency for such individual's offense that has been restricted.

(2) An individual who has had criminal history record information restricted pursuant to this Code section may submit a written request to the appropriate county or municipal jail or detention center to have all records for such individual's offense that has been restricted maintained by the appropriate county or municipal jail or detention center restricted. Within 30 days of such request, the appropriate county or municipal jail or detention center shall restrict access to all such criminal history record information maintained by such appropriate county or municipal jail or detention center for such individual's offense that has been restricted.

(3) The center shall be authorized to unrestrict criminal history record information based on the receipt of a disposition report showing that the individual was convicted of an offense which was restricted pursuant to this Code section.

(l) If criminal history record information is restricted pursuant to this Code section and if the entity declines to restrict access to such information, the individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the entity shall be upheld only if it is determined by clear and convincing evidence that the individual did not meet the criteria set forth in subsection (h) or (j) of this Code section.

(m)(1) For criminal history record information maintained by the clerk of court, an individual who has a record restricted pursuant to this Code section may petition the court with original jurisdiction over the offenses in the county where the clerk of court is located for an order to seal all criminal history record information maintained by the clerk of court for such individual's charged offense. Notice of such petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient notice.

(2) The court shall order all criminal history record information in the custody of the clerk of court, including within any index, to be restricted and unavailable to the public if the court finds by a preponderance of the evidence that:

(A) The criminal history record information has been restricted pursuant to this Code section; and

(B) The harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(3) Within 60 days of the court's order, the clerk of court shall cause every document, physical or electronic, in its custody, possession, or control to be restricted.

(n)(1) Except as provided in subsection (j) of this Code section, as to arrests occurring before July 1, 2013, an individual may, in writing, request the arresting law enforcement agency to restrict the criminal history record information of an arrest, including any fingerprints or photographs taken in conjunction with such arrest. Reasonable fees shall be charged by the arresting law enforcement agency and the center for the actual costs of restricting such records, provided that such fee shall not exceed $50.00.

(2) Within 30 days of receipt of such written request, the arresting law enforcement agency shall provide a copy of the request to the prosecuting attorney. Within 90 days of receiving the request, the prosecuting attorney shall review the request to determine if the request meets the criteria set forth in subsection (h) of this Code section for record restriction, and the prosecuting attorney shall notify the arresting law enforcement agency of his or her decision within such 90 day period. If the prosecuting attorney denies such request, he or she shall cite with specificity the reason for such denial in writing and attach to such denial any relevant documentation in his or her possession used to make such denial. There shall be a presumption that the prosecuting attorney does not object to the request to restrict the criminal history record information if he or she fails to respond to the request for a determination within the 90 day

period set forth in this paragraph. The arresting law enforcement agency shall inform the individual of the prosecuting attorney's decision, and, if record restriction is approved by the prosecuting attorney, the arresting law enforcement agency shall restrict the criminal history record information within 30 days of receipt of the prosecuting attorney's decision.

(3) If a prosecuting attorney declines an individual's request to restrict access to criminal history record information, such individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the prosecuting attorney to decline a request to restrict access to criminal history record information shall be upheld unless the individual demonstrates by clear and convincing evidence that the arrest is eligible for record restriction pursuant to subsection (h) of this Code section and the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.

(4) To restrict criminal history record information at the center, an individual shall submit a prosecuting attorney's approved record restriction request or a court order issued pursuant to paragraph (3) of this subsection to the center. The center shall restrict access to such criminal history record information within 30 days of receiving such information.

(o) Nothing in this Code section shall give rise to any right which may be asserted as a defense to a criminal prosecution or serve as the basis for any motion that may be filed in any criminal proceeding. The modification, correction, supplementation, amendment, or restriction of criminal history record information shall not abate or serve as the basis for the reversal of any criminal conviction.

(p) Any application to the center for access to or restriction of criminal history record information made pursuant to this Code section shall be made in writing on a form approved by the center. The center shall be authorized to develop and publish such procedures as may be necessary to carry out the provisions of this Code section. In adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply.

(q) It shall be the duty of the entity to take such action as may be reasonable to prevent disclosure of information to the public which would identify any individual whose criminal history record information is restricted pursuant to this Code section.

(r) If the center has notified a firearms dealer that an individual is prohibited from purchasing or possessing a handgun pursuant to Part

5 of Article 4 of Chapter 11 of Title 16 and if the prohibition is the result of such individual being involuntarily hospitalized within the immediately preceding five years, upon such individual or his or her attorney making an application to inspect his or her records, the center shall provide the record of involuntary hospitalization and also inform the individual or attorney of his or her right to a hearing before the judge of the probate court or superior court relative to such individual's eligibility to possess or transport a handgun.

(s) The center shall be authorized to provide such individual's criminal history record information to the employers and entities and under the conditions set forth in subsections (u) and (v) of this Code section.

(t) In the course of a civil action and upon request, the court shall order that any relevant criminal history record information that has been restricted or sealed pursuant to this Code section for any witness in that civil action shall be provided to the parties in that proceeding for use only in that proceeding. Any information disclosed in such order shall not be published outside the proceedings and any subsequent appeal.

(u) A restriction or sealing pursuant to this Code section may be used to disqualify an individual for employment or appointment to office in the same manner that a discharge under Article 3 of Chapter 8 of Title 42 may be used to disqualify an individual from employment as set forth in Code Section 42-8-63.1, and such restriction or sealing shall not supersede any disclosure or consideration of criminal history record information required by federal law, including, but not limited to, those disclosures required by financial institutions, as such term is defined in Code Section 7-1-4.

(v)(1) Information restricted and sealed pursuant to this Code section shall always be available for inspection, copying, and use:

(A) For the purpose of imposing a sentence under Article 3 of Chapter 8 of Title 42;

(B) By the Judicial Qualifications Commission;

(C) By an attorney representing an accused individual who submits a sworn affidavit to the clerk of court attesting that such information is relevant to a criminal proceeding;

(D) By a prosecuting attorney or a public defender;

(E) Pursuant to a court order; and

(F) By an individual who is the subject of restricted criminal history record information or sealed court files.

(2) The confidentiality of such information shall be maintained insofar as practicable.

(w) This Code section shall apply to sentences imposed before, on, or after July 1, 2020.

History.

Code 1981, § 35-3-37, enacted by Ga. L. 2012, p. 899, § 6-2/HB 1176; Ga. L. 2013, p. 222, § 14/HB 349; Ga. L. 2014, p. 79, § 3/SB 320; Ga. L. 2014, p. 404, § 2-2/SB 382; Ga. L. 2016, p. 443, § 6B-7/SB 367; Ga. L. 2018, p. 550, § 2-8/SB 407; Ga. L. 2019, p. 912, § 4/SB 9; Ga. L. 2020, p. 90, § 3/SB 435; Ga. L. 2020, p. 245, § 2/HB 911; Ga. L. 2020, p. 753, § 1-1/SB 288; Ga. L. 2021, p. 516, § 3/SB 117; Ga. L. 2021, p. 922, § 35/HB 497; Ga. L. 2024, p. 421, § 3/HB 1201, effective April 24, 2024.

Amendments.

The 2024 amendment, effective April 24, 2024, in the first sentence in subparagraph (j)(6)(A), inserted ", or a defendant who was sentenced pursuant to Code Section 42-8-60 or 16-13-2," near the middle and added "and the sentence or sentence imposed pursuant to Code Section 42-8-60 or 16-13-2" at the end; in subparagraph (j)(6)(C), inserted "or the sentence imposed pursuant to Code Section 42-8-60 or 16-13-2" twice, and substituted "access to criminal history record information for such offense" for "the conviction and sentence" at the end; and substituted "access to criminal history record information for such offense" for "the conviction and sentence" at the end of the second sentence in subparagraph (j)(6)(D).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, a period was added at the end of paragraph (j)(3).

Pursuant to Code Section 28-9-5, in 2020, paragraph (j)(6) as added by Ga. L. 2020, p. 753, § 1-1/SB 288, was redesignated as paragraph (j)(7) given the addition of paragraph (j)(6) by Ga. L. 2020, p. 90, § 3/SB 435.

Editor's notes.

The former Code section, relating to inspection of criminal records, was based on Ga. L. 1973, p. 1301, § 6; Ga. L. 1995, p. 139, § 4; Ga. L. 1997, p. 1345, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 775, § 35/HB 942, and was repealed by Ga. L. 2012, p. 899, § 6-2/HB 1176, effective July 1, 2013.

Ga. L. 2012, p. 899, § 9-1/HB 1176, not codified by the General Assembly, provides, in part, that Part VI of this Act, which amended this Code section, shall become fully effective on July 1, 2013; provided, however, that for the purpose of preparing for implementation of Part VI of this Act, said part shall become effective on July 1, 2012.

Ga. L. 2013, p. 222, § 21/HB 349, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2013, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2013, shall be governed by the statute in effect at the time of such offense."

Ga. L. 2014, p. 79, § 1/SB 320, not codified by the General Assembly, provides: "The General Assembly recognizes that veterans have provided and continue to provide an invaluable service to our country and this state. In connection with a veteran's service, some servicemen and servicewomen have incurred physical, emotional, or mental impairments which cause or contribute to behaviors that may draw a veteran into the criminal justice system. The General Assembly has determined that having dedicated veterans court divisions is important to address the specialized treatment needs of veterans and that there are resources, services, and treatment options that are unique to veterans that may best facilitate a veteran's reentry into society."

Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Ga. L. 2020, p. 90, § 1/SB 435, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'The Survivors First Act.'"

Law reviews.

For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

For article, "Appeal and Error: Appeal or Certiorari by State in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014).

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 139 (2016).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

For article with annual survey on labor and employment law, see 73 Mercer L. Rev. 137 (2021).

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 61 (2024).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 35-3-37, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Application of amendments. — Recent amendments to Georgia's criminal history record information statute, O.C.G.A. § 35-3-37, are to be applied to information regarding arrests occurring prior to the amendments' effective date as the statute itself made clear that the statute does apply to information regarding arrests pre-dating the amendments, and such application presents no constitutional problem. Mosley v. Lowe, 298 Ga. 363, 782 S.E.2d 43, 2016 Ga. LEXIS 78 (2016).

County erred and should have granted the defendant's request to have the defendant's arrest record restricted pursuant to O.C.G.A. § 35-3-37(h) because it was undisputed that the 1996 assault charge against the defendant was nolle prossed and, as such, that disposition did not fall within any of the exceptions enumerated in paragraph (i)(1) of the statute and the defendant was eligible for record restriction under the current statute. Mosley v. Lowe, 298 Ga. 363, 782 S.E.2d 43, 2016 Ga. LEXIS 78 (2016).

Georgia Bureau of Investigation required to restrict record. — To the extent the trial court denied the defendant's motion as to the Georgia Bureau of Investigation, the order denying expungement was affirmed because the Georgia Crime Information Center was required to restrict the defendant's record and even if the record was not subject to automatic restriction, nothing in the statute permitted the state court to order the Georgia Crime Information Center/Georgia Bureau of Investigation to restrict a record that was not subject to an automatic restriction. Ledbetter v. State, 349 Ga. App. 154, 825 S.E.2d 530, 2019 Ga. App. LEXIS 120 (2019).

Investigatory case file open unless privacy invaded. — When "criminal history record information" has been incorporated by a law-enforcement agency into an investigatory case file, it should be open for public inspection unless its disclosure would constitute an invasion of privacy. Napper v. Georgia Television Co., 257 Ga. 156, 356 S.E.2d 640, 1987 Ga. LEXIS 728 (1987) (decided under former O.C.G.A. § 35-3-37).

Hearing was mandatory under former O.C.G.A. § 35-3-37(c). Strohecker v. Gwinnett County Police Dep't, 182 Ga. App. 853, 357 S.E.2d 305, 1987 Ga. App. LEXIS 1836 (1987) (decided under former O.C.G.A. § 35-3-37).

No modification following nolle prosequi. — Petitioner was not entitled to modification or expungement of criminal record to reflect entry of nolle prosequi on certain charges. Drake v. State, 170 Ga. App. 846, 318 S.E.2d 721, 1984 Ga. App. LEXIS 2057 (1984) (decided under former O.C.G.A. § 35-3-37).

Nolo contendere plea was conviction. — Trial court erred in ruling that a nolo contendere plea was not a conviction within the meaning of O.C.G.A.

§ 35-3-37(j)(4)(A), and that the defendant was, therefore, ineligible for record restriction, as a plea of nolo contendere differed from a plea of guilty only in that it could not be used in another case as an admission of guilt. Doe v. State, 362 Ga. App. 230, 867 S.E.2d 307, 2021 Ga. App. LEXIS 581 (2021).

Sealing clerk's records. — Because the provisions of O.C.G.A. § 35-3-37(m)(2) applied to arrests that pre-dated July 1, 2013, the trial court should have considered the merits of the defendant's motion to seal the clerk's records, and the order denying the defendant's motion to seal the clerk of court's records was vacated. Woodhouse v. State, 336 Ga. App. 880, 785 S.E.2d 429, 2016 Ga. App. LEXIS 233 (2016).

Trial court did not abuse the court's discretion by denying the defendant's motion to seal the clerk's file because the defendant did not testify at the hearing on the motion, there was not an affidavit from the defendant in the record, and the attorney's representations about what the defendant relayed to the attorney were not in evidence. Even assuming the representations were testified to by the defendant, the representations lacked sufficient detail and specificity to meet the burden of showing by a preponderance of the evidence that the defendant's privacy interests clearly outweighed the public's interest in the records. Rich v. State, 356 Ga. App. 492, 847 S.E.2d 850, 2020 Ga. App. LEXIS 472 (2020).

Sheriff's office's refusal to expunge subject to appeal to superior court. — Trial court erred in dismissing an indictee's appeal from the sheriff's office's refusal to expunge the indictee's record without determining whether the charges had been nolle prossed for a reason set forth in former O.C.G.A. § 35-3-37(d)(7)(A) through (G). If the charges had not been nolle prossed for one of these reasons, the refusal to expunge could not be affirmed. Grimes v. Catoosa County Sheriff's Office, 307 Ga. App. 481, 705 S.E.2d 670, 2010 Ga. App. LEXIS 1144 (2010) (decided under former O.C.G.A. § 35-3-37).

Proper procedure not followed. — Order denying the defendant's motion to restrict a criminal record under O.C.G.A. § 35-3-37 was affirmed as to the county sheriff's office, county police department, and any other entity as defined by § 35-3-37(a)(2) because nothing in the record showed that the defendant followed the proper procedure by first making a request of an appropriate entity. Ledbetter v. State, 349 Ga. App. 154, 825 S.E.2d 530, 2019 Ga. App. LEXIS 120 (2019).

Expungement not supported. — Former defendant's petition under O.C.G.A. § 35-3-37(j)(2) to expunge the defendant's record was denied; because the defendant had been tried twice already, and the child molestation victim and similar crimes witnesses did not wish to go through a third trial, the prosecutor decided not to press the charges after a reversal for ineffective assistance of counsel. Gibbs v. Bright, 330 Ga. App. 851, 769 S.E.2d 590, 2015 Ga. App. LEXIS 71 (2015).

Because imposition of a sentence upon a plea of nolo contendere was not a dismissal or a nolle prosse, O.C.G.A. § 35-3-37(h)(2)(A), providing for restriction of access to certain criminal history records, did not apply to an applicant's plea of nolo contendre to theft by taking; and the applicant's civil rights claim was barred by the statute of limitations, O.C.G.A. § 9-3-33. Nasir v. Gwinnett County State Court, 341 Ga. App. 63, 798 S.E.2d 695, 2017 Ga. App. LEXIS 143 (2017), cert. denied, No. S17C1482, 2017 Ga. LEXIS 808 (Ga. Sept. 13, 2017).

Discretionary appeal procedures. — Appeal of a superior court decision reviewing a decision of an agency denying a request to expunge criminal records requires the discretionary appeal procedures of O.C.G.A. § 5-6-35. Strohecker v. Gwinnett County Police Dep't, 182 Ga. App. 853, 357 S.E.2d 305, 1987 Ga. App. LEXIS 1836 (1987) (decided under former O.C.G.A. § 35-3-37).

Appeal to superior court. — By the former statute's express provisions, an appeal from the denial of a request to expunge a criminal record under former O.C.G.A. § 35-3-37(d)(6) was as provided in O.C.G.A. § 50-13-19. In such case, the review should be conducted by the court

without a jury and should be confined to the record. Grimes v. Catoosa County Sheriff's Office, 307 Ga. App. 481, 705 S.E.2d 670, 2010 Ga. App. LEXIS 1144 (2010) (decided under former O.C.G.A. § 35-3-37).

Appellate jurisdiction was in Court of Appeals absent viable constitutional challenge. — Because an appeal of the denial of a motion to seal a criminal record under O.C.G.A. § 35-3-37(m) failed to present a viable challenge to the statute's constitutionality, Ga. Const. 1983, Art. VI, Sec. VI, Para. II(1), because the challenge (a separation of powers argument, Ga. Const. 1983, Art. I, Sec. II, Para. III, based on the Supreme Court's record-keeping authority under Ga. Const. 1983, Art. VI, Sec. IX, Para. I, and Ga. Unif. Super. Ct. R. 21.4) was not raised below, jurisdiction was properly before the Court of Appeals, pursuant to O.C.G.A. § 5-6-34(a)(12). Doe v. State, 303 Ga. 237, 811 S.E.2d 413, 2018 Ga. LEXIS 126, transferred, 347 Ga. App. 246, 819 S.E.2d 58, 2018 Ga. App. LEXIS 501 (2018).

Applicability to inaccurate, incomplete, or misleading records. — If a criminal record is inaccurate, incomplete, or misleading, a superior court has three available remedies—expungement, modification, or supplementation—so long as the court finds the remedy to be "required by law" and "appropriate." Meinken v. Burgess, 262 Ga. 863, 426 S.E.2d 876, 1993 Ga. LEXIS 314 (1993) (decided under former O.C.G.A. § 35-3-37).

Expungement remedy exceptional. — Expungement should be reserved for exceptional cases based upon competing state and citizen interests, and the fact that the defendant's arrest record did not reflect that the defendant was acquitted by operation of law did not constitute an exceptional circumstance warranting the remedy of expungement instead of modification or supplement. Meinken v. Burgess, 262 Ga. 863, 426 S.E.2d 876, 1993 Ga. LEXIS 314 (1993) (decided under former O.C.G.A. § 35-3-37).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1973, p. 1301, § 6 and former Code Section 35-3-37, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Confidentiality of information obtained from Georgia Crime Information Center. — Since information supplied by the Georgia Crime Information Center to local law enforcement agencies may often contain nonconviction data, such as arrests resulting in acquittals, dismissals, or arrests resulting in no prosecutions, such material is of a sensitive nature and disclosure would be an unwarranted invasion of privacy of a citizen. 1981 Op. Att'y Gen. No. U81-47 (decided under former Ga. L. 1973, p. 1301, § 6).

Information obtained pursuant to criminal history background check, required by O.C.G.A. § 16-11-129, from taking of fingerprints and checking of these fingerprints with those presently on file with the Georgia Crime Information Center is of a confidential nature and prohibited from public disclosure. 1981 Op. Att'y Gen. Op. No. U81-47 (decided under former Ga. L. 1973, p. 1301, § 6).

Center may allow private researchers access to information under imposed conditions. — Georgia Crime Information Center is permitted to allow private researchers access to criminal history record information and to impose such conditions on that access as the center deems appropriate. 1975 Op. Att'y Gen. No. U75-78 (decided under former Ga. L. 1973, p. 1301, § 6).

Only superior court judges may order records expunged or modified. — Only superior court judges may order criminal history records to be expunged or

otherwise modified, and then only after strict compliance with the procedure set forth in former O.C.G.A. § 35-3-37(c). 1989 Op. Att'y Gen. No. 89-60 (decided under former O.C.G.A. § 35-3-37).

Expungement by city solicitor's office. — City of Atlanta Solicitor's office does not have the authority to approve the expungement by an original agency of a criminal arrest record involving a felony or misdemeanor state offense which is dismissed in municipal court and for which no indictment or accusation has been drawn. 1998 Op. Att'y Gen. No. U98-11 (decided under former O.C.G.A. § 35-3-37).

Only basis upon which Georgia Crime Information Center shall expunge a record is upon clear finding by court that said record is inaccurate, incomplete, or misleading, and setting forth the factual basis for such finding. 1982 Op. Att'y Gen. No. 82-8 (decided under former O.C.G.A. § 35-3-37).

Purging of records. — Center should purge the center's records only when the records are inaccurate. 1975 Op. Att'y Gen. No. 75-110 (decided under former Ga. L. 1973, p. 1301, § 6).

RESEARCH REFERENCES

Am. Jur. 2d.

66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq.

C.J.S.

76 C.J.S., Records, §§ 76, 82 et seq., 116, 126, 130, 131, 152.

ALR.

Judicial expunction of criminal record of convicted adult, 11 A.L.R.4th 956.

Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses, 69 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 A.L.R.6th 1.

Expunction of federal arrest records in absence of conviction, 97 A.L.R. Fed. 652.

Effect of expungement of conviction on § 241(a)(4), (11) of Immigration and Nationality Act of 1952 (8 USC § 1251(a)(4), (11)), making aliens deportable for crimes involving moral turpitude or drugs, 98 A.L.R. Fed. 750.

35-3-38. Unauthorized requests or disclosures of criminal history record information; disclosure of techniques used to ensure security or privacy of criminal history records.

(a) Any person who knowingly requests, obtains, or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the center, the council, or any participating agency who knowingly falsifies crimi-

nal history record information or any records relating thereto shall for each such offense, upon conviction thereof, be fined not more than $5,000.00, or imprisoned for not more than two years, or both.

(b) Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than $100.00, or imprisoned not more than ten days, or both.

(c) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems except in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than $5,000.00, or imprisoned not more than two years, or both.

(d) Any person who discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems in a manner not permitted by this article shall for each such offense, upon conviction thereof, be fined not more than $100.00, or imprisoned not more than ten days, or both.

History.
Ga. L. 1973, p. 1301, § 7; Ga. L. 1976, p. 617, § 8; Ga. L. 1982, p. 3, § 35.

JUDICIAL DECISIONS

No private cause of action. — Individual's violation of O.C.G.A. § 35-3-38 did not, in and of itself, give rise to a private cause of action against the individual for damages. Sparks v. Thurmond, 171 Ga. App. 138, 319 S.E.2d 46, 1984 Ga. App. LEXIS 2952 (1984).

RESEARCH REFERENCES

Am. Jur. 2d.
32 Am. Jur. 2d, False Pretenses, §§ 1,54. 37 Am. Jur. 2d, Fraud and Deceit, §§ 59, 62.

C.J.S.
35 C.J.S., False Pretenses, §§ 7, 8, 19. 37 C.J.S., Fraud, § 1 et seq.

35-3-39. Effect of neglect or refusal of official to act as required by article.

Any officer or official mentioned in this article who shall neglect or refuse to make any report or to do any act required by any provision of this article shall be deemed guilty of nonfeasance in office and subject to removal therefrom.

History.
Ga. L. 1973, p. 1301, § 8.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 170, 192. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 24 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, § 651 et seq. 67 C.J.S., Officers and Public Employees, §§ 235 et seq., 333 et seq.

35-3-39.1. National Crime Prevention and Privacy Compact; ratification; criminal history records repository.

(a) As used in this Code section, the term:

(1) "Compact" means the National Crime Prevention and Privacy Compact established by Section 217 of the federal law.

(2) "Compact council" means the compact council established by Article VI of the compact.

(3) "Director" means the director of the Georgia Crime Information Center.

(4) "Federal law" means the National Crime Prevention and Privacy Compact Act of 1998 contained in Public Law 92-544, 42 U.S.C. Section 14616.

(5) "Interstate Identification Index System" or "III System" means the cooperative federal-state system for the exchange of criminal history records as provided for in the compact.

(b) The National Crime Prevention and Privacy Compact established by federal law is ratified, enacted, and entered into by the State of Georgia. The compact shall become operative immediately upon approval of this state's participation by the United States Attorney General.

(c) The director shall be the compact officer and shall be responsible for:

(1) Administering the compact within this state;

(2) Ensuring that compact provisions and rules, procedures, and standards established by the compact council are complied with in this state; and

(3) Regulating the in-state use of records received from the Federal Bureau of Investigation or other states party to the compact.

(d) The center shall establish and maintain a criminal history record repository to provide:

(1) Information and records for the National Identification Index and the National Fingerprint File; and

(2) This state's III System-indexed criminal history records for noncriminal justice purposes described in Article IV of the compact.

(e) This state shall comply with III System rules, procedures, and standards established pursuant to the compact concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of the III System operation.

(f) Use of the III System by the center for noncriminal justice purposes authorized in the compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(g) Administration of the compact provisions shall not reduce the level of services available to noncriminal justice users on the effective date of the compact with this state.

(h) The center shall provide criminal history records, excluding sealed records, to criminal justice agencies and other governmental and nongovernmental agencies for noncriminal justice purposes as required by the compact.

(i) Records obtained under the compact may be used only for the official purposes for which the records were requested and under such procedures established by the director in conformity with rules, procedures, and standards established pursuant to Article IV of the compact.

(j) Notwithstanding any other law to the contrary, fingerprints or other forms of positive identification, as provided for in the compact, shall be submitted with all requests for criminal history record checks for noncriminal justice purposes authorized under the compact. Such records checks made pursuant to any other law of this state shall comply with this Code section, the compact, and federal law.

History.

Code 1981, § 35-3-39.1, enacted by Ga. L. 1999, p. 574, § 1; Ga. L. 2000, p. 136, § 35; Ga. L. 2000, p. 1549, § 2.

Cross references.

National Crime Prevention and Privacy Compact; ratification; criminal history records repository, § 35-3-39.1.

Use of confidential, classified, or restricted records for research, § 50-18-101.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1999, "of 1998" was substituted for "of of 1998" in paragraph (a)(4).

Law reviews.

For note on 1999 enactment of this Code section, see 16 Ga. St. U. L. Rev. 227 (1999).

For note, "Just You and Me and Netflix Makes Three: Implications for Allowing 'Frictionless Sharing' of Personally Identifiable Information under the Video Privacy Protection Act," see 20 J. Intell. Prop. L. 413 (2013).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.
Governmental Entity's Liability for Failure to Prevent Crime, 30 POF2d 429.

35-3-40. Construction of article.

(a) In the event of conflict, this article shall to the extent of the conflict supersede all existing statutes which regulate, control, or otherwise relate, directly or by implication, to the collection, storage, and dissemination or usage of fingerprint identification, offender criminal history, uniform crime reporting, and criminal justice activity data records or any existing statutes which relate directly or by implication to any other provisions of this article.

(b) Notwithstanding subsection (a) of this Code section, this article shall not be understood to alter, amend, or supersede the statutes and rules of law governing the collection, storage, dissemination, or usage of records concerning individual juvenile offenders in which they are individually identified by name or by other means.

History.
Ga. L. 1973, p. 1301, § 9.

ARTICLE 3

ANTITERRORISM TASK FORCE

35-3-60. Short title.

This article shall be known and may be cited as the "Antiterrorism Act."

History.
Code 1981, § 35-3-60, enacted by Ga. L. 1984, p. 22, § 35.
Editor's notes.
Former Code Section 35-3-60, relating to legislative findings was based on Ga. L. 1983, p. 393, § 1, and was repealed by Ga. L. 1984, p. 22, § 35, effective February 3, 1984. For present comparable provisions, see O.C.G.A. § 35-3-61(a).

35-3-61. Legislative findings; purpose; liberal construction.

(a) This article is enacted as a direct response to the high level of reactivation of violent and terroristic acts against persons residing within the State of Georgia and in response to the outcry of the communities for assistance from the State of Georgia in combating these violent and terroristic acts.

(b) The purpose of this article shall be to assist law enforcement personnel in the State of Georgia to identify, investigate, arrest, and prosecute individuals or groups of individuals who illegally threaten, harass, terrorize, or otherwise injure or damage the person or property

of persons on the basis of their race, national origin, or religious persuasion.

(c) It is the intent of the General Assembly that this article be interpreted and construed liberally to accomplish its purposes.

History.
Code 1981, § 35-3-61, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 1984, p. 22, § 35.
Editor's notes.
The language formerly contained in subsection (a) of this Code section prior to the 1984 amendment is now contained in Code Section 35-3-60. See Code Section 35-3-60 and notes thereto.

35-3-62. "Terroristic act" defined.

As used in this article, the term "terroristic act" means an act which constitutes a crime against the person or against the residence of an individual which is committed with the specific intent of and may reasonably be expected to instill fear into such person or persons or which is committed for the purpose of restraining that person or those persons from exercising their rights under the Constitution and laws of this state and the United States and any illegal act directed at other persons or their property because of those persons' political beliefs or political affiliations.

History.
Code 1981, § 35-3-62, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 1984, p. 22, § 35; Ga. L. 1987, p. 3, § 35.

35-3-63. Creation; purposes.

There is established a special Antiterrorism Task Force within the bureau. The task force shall operate independently of any other investigative operations within the bureau and shall devote itself to the tasks of identifying, investigating, arresting, and prosecuting individuals or groups of individuals who perform terroristic acts against a person or his residence on the basis of such person's race, national origin, or religious persuasion.

History.
Code 1981, § 35-3-63, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 1984, p. 22, § 35; Ga. L. 2025, p. 1029, § 35(14)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" twice and substituted "The task force" for "This Antiterrorism Task Force" at the beginning of the second sentence.

35-3-64. Confidentiality of investigative reports and identity of agents.

All efforts shall be made to maintain the confidentiality of the investigative efforts of the Antiterrorism Task Force and the identity of agents

who operate in undercover assignments. Information may, however, be shared with other law enforcement agencies when, in the sole discretion of the director, the sharing of such information would not compromise the successful completion of the investigation or cases being made.

History.
Code 1981, § 35-3-64, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 2005, p. 599, § 5/SB 146.

35-3-65. Authority to work with other law enforcement agencies.

The Antiterrorism Task Force shall be authorized to work with and seek the assistance of other law enforcement agencies when, in the sole discretion of the director, such assistance would not compromise the successful completion of the investigations or cases being made.

History.
Code 1981, § 35-3-65, enacted by Ga. L. 1983, p. 393, § 1; Ga. L. 2005, p. 599, § 6/SB 146.

ARTICLE 4

MISSING CHILDREN INFORMATION CENTER

35-3-80. Definitions.

As used in this article, the term:

(1) "Missing child" or "missing children" means a person or persons under the age of 18 years whose temporary or permanent residences are in, or are believed to be in, this state and who have been reported as missing to a law enforcement agency and whose location cannot be determined by that law enforcement agency.

(2) "Missing child report" means a report prepared on a form designed by the bureau for the use by law enforcement agencies and private citizens to report information about missing children to the Missing Children Information Center.

History.
Code 1981, § 35-3-80, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 1988, p. 667, § 1; Ga. L. 2025, p. 1029, § 35(43)(D)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" in paragraph (2).

35-3-81. Establishment, development, maintenance, and operation of center; staff.

(a) There is authorized within the bureau the Missing Children

Information Center. The center shall serve as a central repository of information regarding missing children and shall collect and disseminate such information as is necessary to assist in the location of missing children.

(b) Central responsibility for the development, maintenance, and operation of the center shall be vested in the supervisor of the center who shall be appointed by the director of the bureau.

(c) The supervisor of the center shall maintain the necessary staff along with support services to be procured within the Georgia state government to enable the effective and efficient performance of the duties and responsibilities assigned to the center in this article.

(d) All personnel of the center shall be administered according to appropriate special and standard schedules issued pursuant to the rules of the State Personnel Board.

History.

Code 1981, § 35-3-81, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-54/HB 642; Ga. L. 2025, p. 1029, § 35(43)(E)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" in subsections (a) and (b).

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

35-3-82. Powers and duties.

(a) The center may:

(1) Establish a system of intrastate communication of information relating to missing children;

(2) Provide a centralized file for the exchange of information on missing children within the state;

(3) Interface and connect with the National Crime Information Center for the exchange of information on missing children and children suspected of interstate travel;

(4) Collect, process, maintain, and disseminate information on missing children and unidentified bodies and strive to maintain or disseminate only accurate and complete information;

(5) Cooperate with the State Board of Education in compiling lists

of missing children in this state for distribution to local school districts;

(6) Compile annual statistics on the number of missing children;

(7) Develop recommendations for better reporting and use of computer systems;

(8) Provide assistance to local law enforcement agencies providing fingerprint programs for children;

(9) Circulate a monthly bulletin of missing children to all law enforcement agencies in the state;

(10) Assist local law enforcement agencies in establishing direct computer access to the Missing Children Information Center;

(11) Act as a liaison between private citizens and law enforcement agencies regarding appropriate procedures for handling and responding to missing children reports; and

(12) Establish a toll-free telephone number to assist individuals and agencies in the reporting of missing children and information relative to missing children.

(b) The center is authorized to join and participate in any network of state missing children centers or clearing-houses, specifically including but not limited to the National Center for Missing and Exploited Children.

History.
Code 1981, § 35-3-82, enacted by Ga. L. 1986, p. 659, § 1.

35-3-83. Missing child reports.

Upon the filing of a police report by the parent, guardian, caretaker, governmental unit responsible for the child, or other person with legal custody of the child that a child is missing, the local law enforcement agency receiving such report shall notify all of its on-duty law enforcement officers of the existence of the missing child report, communicate the report to all other law enforcement agencies having jurisdiction in the county and all law enforcement agencies of jurisdictions geographically adjoining that of the local law enforcement agency, and transmit the report to the Missing Children Information Center.

History.
Code 1981, § 35-3-83, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 2014, p. 481, § 1/SB 358.

35-3-84. Sending information to center.

Every law enforcement agency and the bureau shall transmit to the

Missing Children Information Center any information which is acquired or collected pursuant to Code Section 35-1-8 or Code Section 35-3-4, which information would assist in the location of any missing child.

History.
Code 1981, § 35-3-84, enacted by Ga. L. 1986, p. 659, § 1; Ga. L. 2025, p. 1029, § 35(43)(F)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" near the beginning of this Code section.

35-3-85. Registration of related organizations.

Any public or private organization which makes lists of or maintains records on missing children as a primary activity of that organization and which seeks to operate in the State of Georgia shall register with the Missing Children Information Center.

History.
Code 1981, § 35-3-85, enacted by Ga. L. 1986, p. 659, § 1.

ARTICLE 5

GEORGIA BUREAU OF INVESTIGATION NOMENCLATURE

Editor's notes.
Ga. L. 1995, p. 925, § 1, not codified by the General Assembly, provides a statement of public policy relating to the prohibition of unauthorized use of Department of Public Safety and Georgia Bureau of Investigation Nomenclature or symbols.

35-3-100. Short title.

This article shall be known and may be cited as the "Georgia Bureau of Investigation Nomenclature Act of 1995."

History.
Code 1981, § 35-3-100, enacted by Ga. L. 1995, p. 925, § 3.

35-3-101. Definitions.

As used in this article, the term:

(1) "Badge" means any official badge used by employees of the Georgia Bureau of Investigation, either in the past or currently.

(2) "Bureau" means the Georgia Bureau of Investigation, its divisions, or operations under its command.

(3) "Director" means the director of the Georgia Bureau of Investigation.

(4) "Emblem" means any official patch or other emblem worn currently or formerly or used by the Investigative Division, the Division of Forensic Sciences, the Georgia Crime Information Center, or any other division or operation under the command of the bureau to identify the bureau or its employees.

(5) "Person" means any person, corporation, organization, or political subdivision of the State of Georgia.

(6) "Seal" means any official symbol, mark, or abbreviation which represents and is used by the Investigative Division, the Division of Forensic Sciences, the Georgia Crime Information Center, or any other division or operation under the command of the bureau to identify the bureau or its employees.

(7) "Willful violator" means any person who knowingly violates the provisions of this article. Any person who violates this article after being advised in writing by the director that such person's activity is in violation of this article shall be considered a willful violator and shall be considered in willful violation of this article. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this article unless, upon learning of the violation, he or she immediately terminates the agency or other relationship with such violator.

History. Code 1981, § 35-3-101, enacted by Ga. L. 1995, p. 925, § 3; Ga. L. 2004, p. 626, § 1.

35-3-102. Permission required for use of bureau nomenclature.

Whoever, except with the written permission of the director, knowingly uses the words "Georgia Bureau of Investigation," "GBI," "agent of the Georgia Bureau of Investigation," "Division of Forensic Sciences," "DOFS," "Georgia Crime Information Center," "GCIC," or "State Crime Lab" in referring to Georgia's state crime lab in connection with any advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by or associated with the bureau shall be in violation of this article.

History. Code 1981, § 35-3-102, enacted by Ga. L. 1995, p. 925, § 3; Ga. L. 2004, p. 626, § 2.

35-3-103. Permission required for use of bureau symbols.

Any person who uses or displays any symbol, including any emblem,

seal, or badge, current or historical, used by the bureau without written permission from the director shall be in violation of this article.

History.
Code 1981, § 35-3-103, enacted by Ga. L. 1995, p. 925, § 3.

35-3-104. Procedures for seeking permission to use bureau nomenclature or symbols.

Any person wishing permission to use either bureau nomenclature or symbols may request such permission in writing to the director. The director shall serve notice on the requesting party within 15 calendar days after receipt of the request of his or her decision on whether the person may use the nomenclature or the symbol. If the director does not respond within the 15 day time period, then the request is presumed to have been denied. The grant of permission under Code Section 35-3-102 or 35-3-103 shall be in the discretion of the director under such conditions as the director may impose. If the director denies such request and the person making such request reasonably believes that the director has acted in bad faith or based on an illegal motive, then the person may, within 15 days after the person's request was denied or granted on limited terms, file an appeal with the board. The matter will then be considered before the board, but the burden will be with the person making the request to show that the request was improperly denied or limited.

History.
Code 1981, § 35-3-104, enacted by Ga. L. 1995, p. 925, § 3; Ga. L. 2025, p. 1029, § 35(15)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "board" for "Board of Public Safety" at the end of the fifth sentence.

35-3-105. Injunction against violations.

Whenever there shall be an actual or threatened violation of Code Section 35-3-102 or 35-3-103, the director shall have the right to apply to the Superior Court of Fulton County or to the superior court of the county of residence of the violator for an injunction to restrain the violation.

History.
Code 1981, § 35-3-105, enacted by Ga. L. 1995, p. 925, § 3.

35-3-106. Civil penalties.

In addition to any other relief or sanction for a violation of Code Section

35-3-102 or 35-3-103, where the violation is willful, the director shall be entitled to collect a civil penalty in the amount of $500.00 for each violation. Further, when there is a finding of willful violation, the director shall be entitled to recover reasonable attorney's fees for bringing any action against the violator. The director shall be entitled to seek civil sanctions in the Superior Court of Fulton County or in the county of residence of the violator.

History.
Code 1981, § 35-3-106, enacted by Ga. L. 1995, p. 925, § 3.

35-3-107. Damage suits against violators.

Any person who has given money or any other item of value to another person due in part to such person's use of bureau nomenclature or symbols in violation of this article may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees.

History.
Code 1981, § 35-3-107, enacted by Ga. L. 1995, p. 925, § 3.

35-3-108. Criminal penalties.

Any person who violates the provisions of this article shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than $1,000.00 nor more than $5,000.00 or to imprisonment for not less than one and not more than five years, or both. Each violation shall constitute a separate offense.

History.
Code 1981, § 35-3-108, enacted by Ga. L. 1995, p. 925, § 3.

ARTICLE 6

DIVISION OF FORENSIC SCIENCES

Editor's notes.
Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Forensic Sciences Act of 1997'."

Ga. L. 1997, p. 1421, § 11 was codified by the General Assembly in 1998. For the codification of subsection (a) of Ga. L. 1997, p. 1421, § 11, see subsection (h) of Code Section 45-16-22. For the codification of subsection (b) of Ga. L. 1997, p. 1421, § 11, see Code Section 45-16-49.

35-3-150. Definitions.

As used in this article, the term:

(1) "Crime lab" or "state crime lab" means the Division of Forensic Sciences of the bureau.

(2) "Division" means the Division of Forensic Sciences of the bureau.

(3) "Division director" means the director of the Division of Forensic Sciences of the bureau.

(4) "Independent test" means a forensic analysis of evidence in the custody and possession of the state or any political subdivision or authority thereof conducted at the request of or on behalf of any person other than a prosecuting attorney, law enforcement officer, or other authorized agent of the state or which are ordered conducted by a court at the request of an accused.

(5) "Regional medical examiner" shall have the same meaning as set forth in Code Section 45-16-21.

(6) "Rule" or "rules" means a rule or regulation adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 35-3-150, enacted by Ga. L. 1997, p. 1421, § 3; Ga. L. 2025, p. 1029, § 35(16)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted former paragraphs (1) and (3), which read: "(1) 'Board' means the Board of Public Safety." and "(3) 'Director' means the director of the Georgia Bureau of Investigation."; redesignated former paragraphs (2) and (4) through (8) as present paragraphs (1) and (2) through (6), respectively; substituted "bureau" for "Georgia Bureau of Investigation" at the end of paragraphs (1), (2), and (3); and substituted "as set forth in" for "as defined in paragraph (13) of" in paragraph (5).

35-3-151. Responsibilities.

The Division of Forensic Sciences of the bureau:

(1) Shall provide a state-wide system of laboratories dedicated to conducting forensic analysis of evidence submitted to the laboratory by law enforcement agencies, prosecuting attorneys, coroners, and medical examiners;

(2) Shall provide forensic services to the criminal justice system for the examination and analysis of evidence in the areas of medical examiner inquiries, latent fingerprints, photography, questioned documents, firearms and weapons, trace evidence, implied consent, blood alcohol, toxicology, chemistry, drugs, serology, DNA, and such other areas as the director may authorize or the board shall direct;

(3) Shall establish standards for the identification, collection, transportation, and analysis of forensic evidence;

(4) Shall facilitate independent testing or analysis of evidence within the possession, custody, or control of the division as provided in paragraph (3) of subsection (a) of Code Section 17-16-4, relating to discovery in criminal cases;

(5) Shall provide for and establish uniform fees as approved by the board to be paid to medical examiners, dentists, and other professionals for participating in medical examiners' inquiries or coroners' inquests pursuant to Article 2 of Chapter 16 of Title 45, known as the "Georgia Death Investigation Act";

(6) May assist in the training of law enforcement officers, prosecuting attorneys, coroners, and medical examiners as it relates to forensic sciences in cooperation with the Georgia Peace Officer Standards and Training Council, the Prosecuting Attorneys' Council of the State of Georgia, and the Georgia Coroner's Training Council, as appropriate; and

(7) May assist in the training of judges and attorneys as it relates to forensic sciences in cooperation with the Institute of Continuing Judicial Education of Georgia and the Institute of Continuing Legal Education, as appropriate.

History.
Code 1981, § 35-3-151, enacted by Ga. L. 1997, p. 1421, § 3; Ga. L. 2025, p. 1029, § 35(43)(G)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" at the end of the introductory paragraph.

35-3-152. Appointment, powers, and responsibilities of division director.

(a) Responsibility for the development, maintenance, and operations of the division shall be vested in the division director.

(b) The division director shall be appointed by the director of the bureau.

(c) The division director may, with the approval of the board, establish such advisory panels as may be necessary to assist the director to maintain and improve quality control and customer satisfaction.

(d) The division director shall appoint and maintain the necessary professional and support staff to enable the division to carry out its duties and responsibilities effectively and efficiently.

(e) The division director may designate one or more members of the division staff as the official custodians of the records of the division.

History.
Code 1981, § 35-3-152, enacted by Ga. L. 1997, p. 1421, § 3; Ga. L. 2025, p. 1029, § 35(43)(H)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" in subsection (b).

35-3-153. Chief medical examiner office created; appointment; responsibilities.

(a) Within the division there shall be an office of chief medical examiner.

(b) The chief medical examiner shall be appointed by the director. No person may be the chief medical examiner unless that person at the time of appointment is a pathologist certified in forensic pathology by the American Board of Pathology.

(c) It shall be the duty of the chief medical examiner to:

(1) Establish death investigation regions throughout the state and establish policies concerning the requirements for appointment of regional medical examiners to oversee death investigation activities in each established region;

(2) Appoint regional medical examiners;

(3) Employ forensic consultants and other independent contractors with the approval of the division director;

(4) Organize and conduct regular educational sessions as may be needed for medical examiners and coroners in the state in cooperation with the Georgia Coroner's Training Council and the Georgia Police Academy;

(5) Maintain permanent death investigation records for all jurisdictions in the state;

(6) Establish death investigation guidelines for coroners and medical examiners; and

(7) Cooperate with other state agencies, as appropriate, to ensure public health and safety.

(d) If there is a vacancy in the office of chief medical examiner or the chief medical examiner is disqualified or otherwise unable to perform the duties of said office, the division director shall be authorized to perform the duties of chief medical examiner.

History.
Code 1981, § 35-3-153, enacted by Ga. L. 1997, p. 1421, § 3.

35-3-154. Division requirements.

The division shall:

(1) Establish written standards and procedures for the administration of forensic testing. The division shall retain a copy of any procedure adopted pursuant to this paragraph which is modified for a period of five years from the date of its being superseded by the modification;

(2) Adopt rules and regulations as required by law; and

(3) In cooperation with the Georgia Peace Officer Standards and Training Council, provide for the training and certification of operators of such breath test equipment. A copy of such operator's certificate shall be prima-facie evidence in any civil, criminal, or administrative proceeding that such operator was qualified to operate such equipment.

History.
Code 1981, § 35-3-154, enacted by Ga. L. 1997, p. 1421, § 3.

Administrative rules and regulations.
Implied consent, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Bureau of Investigation, Rule 92-3-.01 et seq.

JUDICIAL DECISIONS

Application to blood alcohol tests. — Under O.C.G.A. § 35-3-154, department of forensic sciences need not administratively approve the use of the gas chromatograph or standards for the gas chromatograph's operation and maintenance in order for results of the tests to be admissible. Price v. State, 269 Ga. 222, 498 S.E.2d 262, 1998 Ga. LEXIS 383 (1998), overruled in part, State v. Turnquest, 305 Ga. 758, 827 S.E.2d 865, 2019 Ga. LEXIS 320 (2019), overruled in part as stated in State v. Blazek, 353 Ga. App. 127, 836 S.E.2d 213, 2019 Ga. App. LEXIS 670 (2019), overruled in part as stated in Ellison v. State, 309 Ga. 810, 848 S.E.2d 113, 2020 Ga. LEXIS 601 (2020).

35-3-154.1. Admission of reports from state crime laboratory.

(a) A copy of a report of the methods and findings of any examination or analysis conducted by an employee of the state crime laboratory or an employee of a laboratory with which the state crime laboratory has a contract for the provision of laboratory or scientific examination or analysis, authenticated under oath, is prima-facie evidence in court proceedings in this state of the facts contained therein.

(b) The report shall have the effect as if the person who performed

the analysis or examination had personally testified and shall have an affidavit of the employee stating:

(1) That he or she is certified to perform the requisite analysis or examination;

(2) His or her experience as a chemist or analyst and as an expert witness testifying in court; and

(3) That he or she conducted the tests shown on the report using procedures approved by the bureau and the report accurately reflects his or her opinion regarding the results.

(c) The prosecuting attorney shall serve a copy on the defendant's attorney of record, or on the defendant if pro se, prior to the first proceeding in which the report is to be used against the defendant.

(d) Any report under this Code section shall contain notice of the right to demand the testimony of the person signing the report.

(e) The defendant may object in writing any time after service of the report, but at least ten days prior to trial, to the introduction of the report. If objection is made, the judge shall require the employee to be present to testify. The state shall diligently investigate the witness's availability and report to the court. If the witness is not available on a timely basis, the court shall grant a continuance.

History.
Code 1981, § 35-3-154.1, enacted by Ga. L. 2004, p. 626, § 2.A; Ga. L. 2005, p. 60, § 35/HB 95; Ga. L. 2005, p. 503, § 1/HB 347.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, "state" was substituted for "State" in subsection (a); "stating:" was substituted for "stating that" at the end of the introductory paragraph in subsection (b); "That he" was substituted for "He" at the beginning of paragraphs (b)(1) and (b)(3); and "in which" was inserted in subsection (c).

35-3-155. Application of "Administrative Procedure Act."

Unless otherwise specifically provided by law, technical, scientific, and similar processes, procedures, guidelines, standards, and methods for the collection, preservation, or testing of evidence adopted by the division shall not be subject to the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 35-3-155, enacted by Ga. L. 1997, p. 1421, § 3.

JUDICIAL DECISIONS

Applicability to case arising before effective date of section. — O.C.G.A. § 35-3-155, which became effective May 1, 1997, was applicable to a case in which

the traffic accident occurred in 1995, but the challenge to the section came before the court after May 1, 1997. Helmeci v. State, 230 Ga. App. 866, 498 S.E.2d 326; Love v. State, 271 Ga. 398, 517 S.E.2d 53, 1999 Ga. LEXIS 514 (1999).

Scope of section. — Exclusion from the Administrative Procedure Act requirements for technical standards and procedures for the collection and testing of evidence by O.C.G.A. § 35-3-155 includes the procedure by which an officer obtains a Division of Forensic Sciences certificate to operate an Intoximeter 5000. State v. Corriher, 243 Ga. App. 648, 533 S.E.2d 800, 2000 Ga. App. LEXIS 515, overruled, State v. Bowen, 245 Ga. App. 159, 537 S.E.2d 417, 2000 Ga. App. LEXIS 914 (2000).

ARTICLE 6A

DNA SAMPLING, COLLECTION, AND ANALYSIS

Code Commission notes.

Pursuant to Code Section 28-9-3, in 2011, the amendment of this article by Ga. L. 2011, p. 99, § 50/HB 24, was treated as repealed and superseded by Ga. L. 2011, p. 264, § 3-1/SB 80, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes.

Ga. L. 2011, p. 264, § 1-1/SB 80, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Johnia Berry Act.'"

The former article, relating to DNA analysis upon conviction of certain sex offenses consisted of Code Sections 35-3-160 through 35-3-165. The former article was based on Code 1981, §§ 24-4-60 — 24-4-65, enacted by Ga. L. 1992, p. 2034, § 1; Ga. L. 2000, p. 1075, §§ 1-5; Ga. L. 2004, p. 485, § 1; Ga. L. 2005, p. 60, § 24/HB 95; Ga. L. 2007, p. 408, § 1/HB 314; Ga. L. 2008, p. 252, § 1/SB 430; Ga. L. 2011, p. 99, § 50/HB 24; Code 1981, §§ 35-3-160 — 35-3-165, as redesignated by Ga. L. 2011, p. 264, § 2-1/SB 80, and was repealed by Ga. L. 2011, p. 264, § 3-1/SB 80, effective January 1, 2013.

Law reviews.

For comment, "DNA Collection Acts and the Fourth Amendment: A Call for Legislative Reform in Georgia to Implement Collection of Arrestees' DNA," see 32 Ga. St. U. L. Rev. 513 (2016).

For article, "From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: The First Amendment Case for Public Access to Secret Algorithms Used in Criminal Trials," see 34 Ga. St. U.L. Rev. 915 (2018).

For article, "From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: Three Transformative Ideals to Build a Better Crime Lab," see 34 Ga. St. U.L. Rev. 1007 (2018).

For article, "From the Crime Scene to the Courtroom: The Future of Forensic Science Reform: Symposium Keynote Address: Uncovering Forensic Laws: An Outside Perspective," see 34 Ga. St. U.L. Rev. 1221 (2018).

For note, "It's All In The DNA—How *United States v. Hano* Extends the Statute Of Limitations for the Eleventh Circuit," see 71 Mercer L. Rev. 1191 (2020).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Qualifying Child Witness to Testify, 35 POF2d 665.

Hair Analysis, 38 POF2d 377.

Foundation for DNA Fingerprint Evidence, 8 POF3d 749.

35-3-160. DNA analysis in felony convictions and certain felony charges; performance of tests.

(a) As used in this article, the term:

(1) "Department" means the Department of Corrections.

(2) "Detention facility" means a penal institution under the jurisdiction of the department, including penal institutions operated by a private company on behalf of the department, inmate work camps, inmate boot camps, probation detention centers, parole revocation centers, and county correctional facilities.

(3) "Division" means the Division of Forensic Sciences of the bureau.

(b)(1) A sample of deoxyribonucleic acid (DNA) shall be collected by oral swab or other noninvasive procedure from any individual:

(A) Who has been convicted of a felony and is currently incarcerated in a detention facility, serving a probation sentence, or serving under the jurisdiction of the State Board of Pardons and Paroles for such felony;

(B) Who has been charged with a felony, and sentence for such offense has been imposed pursuant to Article 3 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code Section 16-13-2; or

(C) Who has been convicted of a felony and is subject to an immigration detainer notice as such term is defined in Code Section 42-1-11.5.

(2) Unless a DNA sample has already been collected by the department or another agency or entity, each DNA sample required by paragraph (1) of this subsection shall be collected by the detention facility which is detaining or the entity which is supervising such individual, and the sample shall be forwarded to the division.

(3) Paragraph (1) of this subsection shall not apply to any individual for a conviction for a misdemeanor, to any individual who is charged with a misdemeanor and the sentence for such misdemeanor is imposed pursuant to Article 3 of Chapter 8 of Title 42 regarding first offenders, or because he or she has been charged with a misdemeanor.

(c) DNA analysis shall be performed by the division. The division shall be authorized to contract with individuals or organizations for services to perform such analysis. The identifying characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the bureau in a DNA data bank in accordance with Code Sections 35-3-162 and 35-3-163 and shall be made available only as provided in Code Section 35-3-163.

History.

Code 1981, § 35-3-160, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80; Ga. L. 2019, p. 299, § 1/HB 470; Ga. L. 2024, p. 491, § 13/HB 1105, effective May 1, 2024; Ga. L. 2025, p. 1029, § 35(43)(I)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective May 1, 2024, deleted "or" from the end of subparagraph (b)(1)(A); substituted "; or" for a period at the end of subparagraph (b)(1)(B); and added subparagraph (b)(1)(C).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" in paragraph (a)(3).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2024, "42-1-11.5" was substituted for "42-4-16" at the end of subparagraph (b)(1)(C).

Editor's notes.

Ga. L. 2024, p. 206, § 1/HB 1105, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Criminal Alien Track and Report Act of 2024.'"

Law reviews.

For note, "Padgett v. Donald: Why Not So Special," see 57 Mercer L. Rev. 673 (2006).

For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011).

For note, "A Square Double Helix in a Round Hole: Forensic Genetic Genealogy Searches and the Fourth Amendment," see 39 Ga. St. U.L. Rev. 605 (2023).

For article on the 2024 amendment of this Code section, see 41 Ga. St. U.L. Rev. 71 (2024).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 20-2-2080 et seq., which was based on Ga. L. 2000, p. 1071, § 1, Ga. L. 2000, p. 1075, § 1, Ga. L. 2005, p. 60, § 24/HB 95, and Ga. L. 2007, p. 408, § 1/HB 314, and which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this Code section.

Constitutionality. — Former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) did not authorize unreasonable searches in violation of the Fourth Amendment because the bodily intrusion of taking a blood or saliva sample was minimal, the state had a compelling interest in obtaining reliable and accurate identifying characteristics of individuals convicted of felonies, and those valid law enforcement interests outweighed a convicted felon's privacy interests; to the extent that probable cause or individualized suspicion was required to justify a search, the prisoners' felony convictions provided that justification. Padgett v. Ferrero, 294 F. Supp. 2d 1338, 2003 U.S. Dist. LEXIS 22491 (N.D. Ga. 2003), aff'd, 401 F.3d 1273, 2005 U.S. App. LEXIS 3647 (11th Cir. 2005) (decided under Ga. L. 2000, p. 1071, § 1).

When prisoners were challenging the constitutionality of former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160), the defendants were entitled to summary judgment on the prisoners' privacy claims because the prisoners' right to privacy in the prisoners' identification, assuming one existed, was substantially outweighed by the interests of the state in having available a DNA database that could be used in solving crimes and exonerating the innocent. Padgett v. Ferrero, 294 F. Supp. 2d 1338, 2003 U.S. Dist. LEXIS 22491 (N.D. Ga. 2003), aff'd, 401 F.3d 1273, 2005 U.S. App. LEXIS 3647 (11th Cir. 2005) (decided under Ga. L. 2000, p. 1071, § 1).

Former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) did not violate the Fourth Amendment or Ga. Const. 1983, Art. I, Sec. I, Para. XIII as Georgia's legitimate interest in creating a permanent identification record of convicted felons for law enforcement purposes outweighed the minor intrusion involved in taking prisoners' saliva samples and storing DNA profiles, given prisoners' a reduced expectation of privacy

in the prisoners' identities. Padgett v. Donald, 401 F.3d 1273, 2005 U.S. App. LEXIS 3647 (11th Cir.), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61, 2005 U.S. LEXIS 6028 (2005) (decided under Ga. L. 2005, p. 60, § 24/HB 95).

Prisoners' challenge to the requirement in former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) that incarcerated felons submit saliva samples for DNA profiling was without merit; the bodily intrusion required by the statute to obtain saliva samples for DNA profiling did not impinge their Fourteenth Amendment right to privacy. Padgett v. Donald, 401 F.3d 1273, 2005 U.S. App. LEXIS 3647 (11th Cir.), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61, 2005 U.S. LEXIS 6028 (2005) (decided under Ga. L. 2005, p. 60, § 24/HB 95).

Although prisoners retain a right to bodily privacy under Ga. Const. 1983, Art. I, Sec. I, Para. I, the extraction of saliva required by former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) did not violate that right because the statute promoted law enforcement, and was narrowly tailored to promote that purpose by requiring DNA profiling on a limited population of incarcerated felons and forbidding release of the DNA profiles except for law enforcement purposes. Padgett v. Donald, 401 F.3d 1273, 2005 U.S. App. LEXIS 3647 (11th Cir.), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61, 2005 U.S. LEXIS 6028 (2005) (decided under Ga. L. 2005, p. 60, § 24/HB 95).

Classification of subjecting convicted felons but not convicted misdemeanants to the DNA identification process was rationally related to the Georgia legislature's legitimate law enforcement purpose of creating a permanent identification record of convicted felons because the statute encompassed all convicted felons whose crimes and/or past histories were serious enough to warrant a sentence to confinement, as opposed to lesser punishment, and the legislature acted reasonably and not arbitrarily when the legislature focused on those convicted felons who were housed in a correctional facility where DNA samples can be efficiently and economically obtained. As a result, former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) rationally related to the legitimate state interest the statute was intended to promote and did not violate equal protection. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32, 2007 Ga. LEXIS 580 (2007) (decided under Ga. L. 2007, p. 408, § 1/HB 314).

Former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) did not violate the fourth amendment, the search and seizure provisions of the Georgia Constitution, or a convicted felons' rights to privacy under the United States or Georgia Constitutions. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32, 2007 Ga. LEXIS 580 (2007) (decided under Ga. L. 2007, p. 408, § 1/HB 314).

Former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) did not violate a defendant's right under the Georgia Constitution to not incriminate oneself as the privilege against self-incrimination in the United States Constitution did not protect an individual from government compulsion to provide blood or other biological samples and, although the right against self-incrimination in the Georgia Constitution had been construed liberally to limit the state from forcing an individual to affirmatively produce any evidence, oral or real, regardless of whether or not the evidence was testimonial, former § 24-4-60 (now O.C.G.A. § 35-3-160) did not force a convicted felon to remove incriminating evidence but only to submit an incarcerated person's body for the purpose of having the evidence removed. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32, 2007 Ga. LEXIS 580 (2007) (decided under Ga. L. 2007, p. 408, § 1/HB 314).

Former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) did not violate the eighth amendment because the statute, requiring all convicted felons incarcerated in a state correctional facility to provide a sample for DNA analysis to determine the identification characteristics specific to the person, did not impose any form of punishment. Further, the purpose of establishing a DNA databank has been identified, and the methods for obtaining data provided by the statute were not

excessive measures in response to the purpose, therefore, without any showing of the use of excessive force that might arguably state a claim of cruel and unusual punishment in obtaining DNA samples through involuntary means, the statute was deemed not penal and the means used to enforce the statute had not been shown to be malicious or grossly disproportionate to the refusal to comply with the statutory mandate. Quarterman v. State, 282 Ga. 383, 651 S.E.2d 32, 2007 Ga. LEXIS 580 (2007) (decided under Ga. L. 2007, p. 408, § 1/HB 314).

Collection while incarcerated. — Under the plain language of the First Offender Act, O.C.G.A. § 42-8-60 et seq., the defendant was deemed to have been convicted while incarcerated and, therefore, the defendant's DNA had to be collected and analyzed under the DNA statute, O.C.G.A. § 35-3-160. Bennett v. State, 346 Ga. App. 189, 816 S.E.2d 323, 2018 Ga. App. LEXIS 349 (2018).

Application. — As a person who was convicted of a felony prior to July 1, 2000, and who on that date was incarcerated on such offense, the defendant was properly subject to compulsory blood sampling to establish a DNA profile for storage in the state's DNA data bank. Dingler v. State, 281 Ga. App. 721, 637 S.E.2d 120, 2006 Ga. App. LEXIS 1231 (2006) (decided under Ga. L. 2005, p. 60, § 24/HB 95).

In convictions of aggravated sodomy, kidnapping, burglary, and aggravated assault, use of evidence comparing DNA on lip balm found at the crime scene with defendant's blood sample and with evidence retained from a prior rape prosecution that resulted in the defendant's acquittal did not violate former O.C.G.A. § 24-4-60 et seq (see now O.C.G.A. § 35-3-160). Fortune v. State, 300 Ga. App. 550, 685 S.E.2d 466, 2009 Ga. App. LEXIS 1222 (2009) (decided under Ga. L. 2007, p. 408, § 1/HB 314).

Collection of DNA not unconstitutional on day of release from prison. — Trial court properly denied the defendant's motion to suppress the match of the defendant's DNA collected pursuant to former O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) on the day the defendant was released from prison for separate crimes because the DNA extraction was not a result of an illegal detention and the DNA seizure would have occurred regardless of the any illegal search or seizure; the correct calculation of the defendant's remaining sentence after the entry of an order vacating some of those convictions was a matter for the Department of Corrections, not the trial court, and the order directing the defendant's release was not necessarily evidence that the defendant's detention after a certain date was illegal. The defendant's argument that the defendant was a probationer at the time of the search was meritless. Leftwich v. State, 299 Ga. App. 392, 682 S.E.2d 614, 2009 Ga. App. LEXIS 781 (2009), cert. denied, No. S09C2013, 2009 Ga. LEXIS 710 (Ga. Nov. 2, 2009), cert. denied, 559 U.S. 1019, 130 S. Ct. 1913, 176 L. Ed. 2d 386, 2010 U.S. LEXIS 2515 (2010), overruled in part, Martin v. McLaughlin, 298 Ga. 44, 779 S.E.2d 294, 2015 Ga. LEXIS 793 (2015) (decided under Ga. L. 2007, p. 408, § 1/HB 314).

Evidence found based on a DNA match not excluded under federal law. — *Unpublished decision:* Evidence produced after a comparison of DNA from a robbery scene to a Georgia Bureau of Investigation database did not violate the defendant's fourth amendment rights because the sample was taken pursuant to O.C.G.A. §§ 35-3-160(b) and 35-3-165(b), while the defendant was serving a sentence under Georgia's First Offender Act, O.C.G.A. § 42-8-60, and the match was made when the defendant was on probation with a reduced expectation of privacy. United States v. Hinton, 676 Fed. Appx. 842, 2017 U.S. App. LEXIS 828 (11th Cir. 2017).

Purpose of Georgia's DNA collection statute was not to punish, but to obtain a reliable, immutable form of identification for placement in a DNA database, and all the relevant evidence in the case indicated that the statute would not increase the punishment of anyone to whom the statute was applied. Padgett v. Ferrero, 294 F. Supp. 2d 1338, 2003 U.S. Dist. LEXIS 22491 (N.D. Ga. 2003), aff'd,

401 F.3d 1273, 2005 U.S. App. LEXIS 3647 (11th Cir. 2005) (decided under Ga. L. 2000, p. 1075, § 1).

DNA samples from probationers. — Petitioner was not entitled to habeas relief because it was clear from the record that the petitioner was afforded an opportunity to develop the petitioner's fourth amendment claim in the trial court as well as on appeal; the fact that the petitioner disagreed with the state court's conclusions of state law with respect to the defendant's status at the time of the DNA extraction did not demonstrate that the defendant did not receive a full and fair opportunity to litigate the defendant's fourth amendment claim, and there was nothing clearly erroneous about the state court's factual findings that the petitioner was not a probationer at the time of the DNA extraction and that the saliva sample was taken upon petitioner being physically discharged from lawful custody. Leftwich v. Barrow, No. 1:11-CV-1015-WSD, 2011 U.S. Dist. LEXIS 109674 (N.D. Ga. Sept. 26, 2011) (decided under Ga. L. 2007, p. 408, § 1/HB 314).

RESEARCH REFERENCES

ALR.

Validity, construction, and operation of state DNA database statutes, 76 A.L.R.5th 239.

Validity, construction, and application of state statutes and rules governing requests for postconviction DNA testing, 72 A.L.R.6th 227.

35-3-161. Collection of DNA samples; time and procedure for withdrawal of blood samples.

(a) Each sample required pursuant to Code Section 35-3-160 from persons who are to be incarcerated shall be withdrawn within the first 30 days of incarceration at the receiving unit of the detention facility or at such other place as is designated by the department. Each sample required pursuant to Code Section 35-3-160 from persons who are to be released from a detention facility shall be withdrawn within the 12 months preceding such person's release at a place designated by the department. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn as a condition of probation. The division shall publish in its quality manuals the procedures for the collection and transfer of samples to such division pursuant to Code Section 35-3-154. Personnel at a detention facility shall implement the provisions of this Code section as part of the regular processing of offenders.

(b) Samples collected by oral swab or by a noninvasive procedure may be collected by any individual who has been trained in the procedure. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any sample of blood to be submitted for analysis. No civil liability shall attach to any person authorized to take a sample as provided in this article as a result of the act of taking a sample from any person submitting thereto, provided the sample was taken according to recognized medically accepted procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

(c) Chemically clean sterile disposable needles shall be used for the withdrawal of all samples of blood. The containers for blood samples, oral swabs, and the samples obtained by noninvasive procedures shall be sealed and labeled with the subject's name, social security number, date of birth, race, and gender plus the name of the person collecting the sample and the date and place of collection. The containers shall be secured to prevent tampering with the contents. The steps set forth in this subsection relating to the taking, handling, identification, and disposition of samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the division not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with Code Sections 35-3-162 and 35-3-163.

History.
Code 1981, § 35-3-161, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.

35-3-162. Procedure for analysis and storage of DNA sample; use of remainder of sample not subjected to analysis; confidentiality of results.

Whether or not the results of an analysis are to be included in the data bank, the bureau shall conduct the DNA analysis in accordance with procedures adopted by the bureau to determine identification characteristics specific to the individual whose sample is being analyzed. The director or his or her designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the sample was received and examined, and a statement that the seal on the container containing the sample had not been broken or otherwise tampered with. The remainder of a sample submitted for analysis and inclusion in the data bank pursuant to Code Section 35-3-160 may be divided, if possible, labeled as provided for the original sample, and securely stored by the bureau in accordance with specific procedures of the bureau to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or for retesting by the bureau to validate or update the original analysis. A report of the results of a DNA analysis conducted by the bureau as authorized, including the identifying information, shall be made and maintained at the bureau. Except as specifically provided in this Code section and Code Section 35-3-163, the results of the analysis shall be securely stored and shall remain confidential.

History.
Code 1981, § 35-3-162, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.

35-3-163. Availability of DNA profiles collected; request for DNA profile comparisons; authority to establish unknown identity data base.

(a) It shall be the duty of the bureau to receive samples and to analyze, classify, and file the results of DNA identification characteristics of samples submitted pursuant to Code Section 35-3-160 and to make such information available as provided in this Code section. The results of an analysis and comparison of the identification of the characteristics from two or more biological samples shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the bureau.

(b) Upon request from a prosecuting attorney or law enforcement agency, the bureau may compare a DNA profile from an analysis of a sample from a suspect in a criminal investigation when the sample was obtained through a search warrant, consent of the suspect, court order, or other lawful means to DNA profiles lawfully collected and maintained by the bureau. The bureau shall not add a DNA profile of any such suspect to any DNA data bank except as provided in this article.

(c)(1) Upon his or her request, a copy of the request for search shall be furnished to any individual identified and charged with an offense as the result of a search of information in the data bank. Only when a sample or DNA profile supplied by the requestor satisfactorily matches the requestor's profile in the data bank shall the existence of data in the data bank be confirmed or identifying information from the data bank be disseminated.

(2) The name of the individual whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes.

(3) Upon a showing by the accused in a criminal proceeding that access to the DNA data bank is material to the investigation, preparation, or presentation of a defense at trial or in a posttrial proceeding, a superior court having proper jurisdiction over such criminal proceeding shall direct the bureau to compare the DNA profile which has been generated by the accused through an indepen-

dent test against the data bank, provided that such DNA profile has been generated in accordance with standards for forensic DNA analysis adopted pursuant to 42 U.S.C. Section 14131.

(d) The bureau shall develop procedures governing the methods of obtaining information from the data bank in accordance with this Code section and procedures for verification of the identity and authority of the requestor. The bureau shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

(e) The bureau may create a separate statistical data base composed of DNA profiles of samples of persons whose identity is unknown. Nothing in this Code section or Code Section 35-3-164 shall prohibit the bureau from sharing or otherwise disseminating the information in the statistical data base with law enforcement or criminal justice agencies within or outside the state.

(f) The bureau may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law enforcement agency outside of this state.

History.

Code 1981, § 35-3-163, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80; Ga. L. 2013, p. 141, § 35/HB 79; Ga. L. 2019, p. 299, § 2/HB 470.

U.S. Code.

The reference to 42 U.S.C. Section 14131, in this Code section, refers to provisions on quality assurance and proficiency testing standards for forensic DNA.

Law reviews.

For note, "A Modern Day Arthur Dimmesdale: Public Notification When Sex Offenders Are Released into the Community," see 12 Ga. St. U. L. Rev. 1187 (1995).

For note, "Padgett v. Donald: Why Not So Special," see 57 Mercer L. Rev. 673 (2006).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 35-3-160 et seq., which was based on Ga. L. 2000, p. 1075, § 4, and which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this Code section.

Prisoners' right to privacy not violated. — Although prisoners retain a right to bodily privacy under Ga. Const. 1983, Art. I, Sec. I, Para. I, the extraction of saliva required by O.C.G.A. § 24-4-60 (see now O.C.G.A. § 35-3-160) did not violate that right because the former statute promoted law enforcement, and was narrowly tailored to promote that purpose by requiring DNA profiling on a limited population of incarcerated felons and forbidding release of DNA profiles except for law enforcement purposes. Padgett v. Donald, 401 F.3d 1273, 2005 U.S. App. LEXIS 3647 (11th Cir.), cert. denied, 546 U.S. 820, 126 S. Ct. 352, 163 L. Ed. 2d 61, 2005 U.S. LEXIS 6028 (2005) (decided under Ga. L. 2000, p. 1075, § 4).

Match of DNA established probable cause for search warrant. — Match of defendant's DNA profile to DNA of semen collected at the scene of a crime established probable cause for a search warrant; defendant's argument that the state needed to further prove that the requirements and procedures set forth in

former O.C.G.A. §§ 24-4-60 through 24-4-65 (see now O.C.G.A. § 35-3-160 et seq.) were followed was without merit, and the trial court's order denying defendant's motion to suppress evidence was affirmed. Brown v. State, 270 Ga. App. 176, 605 S.E.2d 885, 2004 Ga. App. LEXIS 1381 (2004), cert. dismissed, No. S05C0517, 2005 Ga. LEXIS 70 (Ga. Jan. 10, 2005) (decided under Ga. L. 2000, p. 1075, § 4).

RESEARCH REFERENCES

ALR.

Authentication of blood sample taken from human body for purposes other than determining blood alcohol content, 77 A.L.R.5th 201.

35-3-164. Unlawful dissemination or use of information; obtaining sample without authority.

(a) Any person who, without authority, disseminates information contained in the data bank shall be guilty of a misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor of a high and aggravated nature.

(b) Except for purposes of law enforcement or as authorized by this article, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the division for analysis shall be guilty of a felony.

History.

Code 1981, § 35-3-164, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80.

RESEARCH REFERENCES

ALR.

Authentication of blood sample taken from human body for purposes other than determining blood alcohol content, 77 A.L.R.5th 201.

35-3-165. Expungement of DNA profile in data bank; requirements.

(a) The bureau shall purge all records and identifiable information in the data bank pertaining to the DNA profile of the individual and shall destroy all such DNA samples collected from such individual within 30 days of the receipt of a certified copy of the applicable:

(1) Court order reversing the conviction together with a court order or documentation from the prosecuting attorney stating that the charges were dismissed;

(2) Judgment of acquittal;

(3) Sentencing order showing that all of the felony charges were reduced to misdemeanors; or

(4) Court order showing the successful completion of the sentence that was imposed pursuant to Article 3 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code Section 16-13-2.

(b) A DNA sample obtained in good faith shall be deemed to have been obtained in accordance with the requirements of this article and its use in accordance with this article shall be authorized until it is expunged as set forth in subsection (a) of this Code section.

History.
Code 1981, § 35-3-165, enacted by Ga. L. 2011, p. 264, § 3-1/SB 80; Ga. L. 2019, p. 299, § 3/HB 470.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 35-3-165, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this Code section.

Expungement right not violated. — In convictions of aggravated sodomy, kidnapping, burglary, and aggravated assault, in which the state used evidence comparing DNA on lip balm found at the crime scene with defendant's blood sample and with evidence retained from a prior rape prosecution, retention and use of the rape trial evidence did not violate the defendant's right to seek expungement of such evidence under former O.C.G.A. § 24-4-65 (see now O.C.G.A. § 35-3-165). Fortune v. State, 300 Ga. App. 550, 685 S.E.2d 466, 2009 Ga. App. LEXIS 1222 (2009).

Evidence found based on a DNA match not excluded under federal law. — *Unpublished decision:* Evidence produced after a comparison of DNA from a robbery scene to a Georgia Bureau of Investigation database did not violate the defendant's fourth amendment rights because the sample was taken pursuant to O.C.G.A. §§ 35-3-160(b) and 35-3-165(b), while the defendant was serving a sentence under Georgia's First Offender Act, O.C.G.A. § 42-8-60, and the match was made when the defendant was on probation with a reduced expectation of privacy. United States v. Hinton, 676 Fed. Appx. 842, 2017 U.S. App. LEXIS 828 (11th Cir. 2017).

RESEARCH REFERENCES

ALR.

Judicial expunction of criminal record of convicted adult in absence of authorizing statute, 68 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — General principles, and expunction of criminal records under statutes providing for such relief where criminal proceeding is terminated in favor of defendant, upon completion of probation, upon suspended sentence, and where expungement relief predicated upon type, and number, of offenses, 69 A.L.R.6th 1.

Judicial expunction of criminal record of convicted adult under statute — Expunction under statutes addressing "first offenders" and "innocent persons," where conviction was for minor drug or other offense, where indictment has not been presented against accused or accused has been released from custody, and where

court considered impact of *nolle prosequi,* partial dismissal, pardon, rehabilitation, and lesser-included offenses, 70 A.L.R.6th 1.

ARTICLE 7

ALERT SYSTEM FOR MISSING DISABLED ADULTS AND THE MEDICALLY ENDANGERED

Editor's notes.
Ga. L. 2008, p. 233, § 1/SB 202, effective July 1, 2008, redesignated former Article 7 of Chapter 3 of Title 38 as Article 7 of Chapter 3 of Title 35.

35-3-170. Short title.

This article shall be known and may be cited as the "Mattie's Call Act."

History.
Code 1981, § 38-3-110, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-170, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-171. Definitions.

As used in this article, the term:

(1) "Alert system" means the state-wide "Mattie's Call" alert system for missing disabled adults and medically endangered persons.

(2) "Disabled adult" means an adult who is developmentally impaired or who suffers from dementia or some other cognitive impairment.

(3) "Local law enforcement agency" means a law enforcement agency with jurisdiction over the investigation of a missing disabled adult or other medically endangered person.

(4) "Medically endangered person" means a person with a known medical condition that might reasonably cause such person to become incapacitated or that may result in life-threatening physiological conditions likely to lead to serious bodily injury or death if not immediately treated.

History.
Code 1981, § 38-3-111, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-171, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-172. Development and implementation.

(a) With the cooperation of the office of the Governor, the Georgia Lottery Corporation, and other appropriate law enforcement agencies in this state, the bureau shall develop and implement a state-wide alert system to be activated on behalf of missing disabled adults and medically endangered persons.

(b) Activation of a state-wide missing person alert system shall not prevent or prohibit any other state or local law enforcement agency from taking additional measures in response to the receipt of a missing person report.

History.
Code 1981, § 38-3-112, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-172, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-173. Director to be state-wide coordinator for alert system.

(a) The director is the state-wide coordinator of the alert system.

(b) The director shall adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The rules and directives shall include instructions on the procedures for activating and deactivating the alert system.

(c) The director shall prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

(d) No rule or directive adopted by the director shall mandate a minimum waiting period before the alert system may be activated or a request by local law enforcement agencies may be submitted to the bureau; provided, however, that it shall remain within the discretion of the director, as provided in this article, whether the alert system shall be activated at the request of a local law enforcement agency.

(e) When making a determination whether to activate or whether to request the activation of a state-wide missing person alert system, both the director and the requesting local law enforcement agency shall take into consideration the known medical condition of the missing person if the medical condition may reasonably be considered a cause for the inability to locate such missing person. In so considering the medical condition of a missing person, particularly if such condition may be immediately life-threatening or incapacitating, the director or other authorized person and the requesting law enforcement official shall be authorized, within his or her discretion, to initiate and request, respectively, a state-wide endangered person advisory.

History.
Code 1981, § 38-3-113, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-173, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-174. Time for reporting elopement of disabled person from personal care home and assisted living community.

The staff of personal care homes and assisted living communities shall call the local police department to report the elopement of any disabled person from the home within 30 minutes of the staff's receiving actual knowledge that such person is missing from the home.

History.
Code 1981, § 38-3-113.1, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-174, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2011, p. 227, § 24/SB 178; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-175. Recruitment of media, private and governmental entities, and others for assistance in developing and implementing alert system; contractual agreements for system support.

(a) The bureau shall recruit public and commercial television, radio, cable, print, and other media, private commercial entities, state or local governmental entities, the public, and other appropriate persons to assist in developing and implementing the alert system.

(b) The bureau may enter into agreements with participants in the alert system to provide necessary support for the alert system.

History.
Code 1981, § 38-3-114, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-175, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-176. Criteria for activating alert system.

(a) On notification by a local law enforcement agency that a disabled adult or medically endangered person is missing, the director shall activate the alert system and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a disabled adult or medically endangered person is missing;

(2) A local law enforcement agency believes that the disabled adult or medically endangered person is in immediate danger of serious bodily injury or death;

(3) A local law enforcement agency confirms that an investigation has taken place that verifies the disappearance and eliminates alternative explanations for the disabled adult's or medically endangered person's disappearance; and

(4) Sufficient information is available to disseminate to the public that could assist in locating the disabled adult or medically endangered person.

(b) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the disabled adult or medically endangered person did not leave a certain geographic location.

(c) The bureau may modify the criteria described by subsection (a) of this Code section as necessary for the proper implementation of the alert system.

History.
Code 1981, § 38-3-115, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-176, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-177. Verification that criteria for activation have been met.

Before requesting activation of the alert system, a law enforcement agency shall verify that the criteria described by subsection (a) of Code Section 35-3-176 have been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert, based on the nature of the disabled adult or medically endangered person and the circumstances surrounding the disappearance. On verification of the criteria, the law enforcement agency shall immediately contact the bureau to request activation and shall supply the necessary information on the forms prescribed by the director.

History.
Code 1981, § 38-3-116, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-177, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-178. Obligations of agencies participating in alert system; participation of Georgia Lottery Corporation in disseminating alert information through retail establishments.

(a) A state agency participating in the alert system shall:

(1) Cooperate with the bureau and assist in developing and implementing the alert system;

(2) Establish a plan for providing relevant information to its officers, investigators, or employees, as appropriate, once the alert system has been activated; and

(3) Utilize a rapid response telephone system that alerts residents in a targeted area.

(b) The Georgia Lottery Corporation is directed to develop a method of notifying its vendors within an alert area of an alert in a manner designed to disseminate alert information to customers at its retail locations.

History.
Code 1981, § 38-3-117, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-178, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-179. Termination of an alert.

The director shall terminate any activation of the alert system with respect to a particular disabled adult or medically endangered person if:

(1) The person is located or the disappearance is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating and recovering the disabled adult or medically endangered person.

History.
Code 1981, § 38-3-118, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-179, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

35-3-180. Immunity.

(a) Any entity or individual participating in the "Mattie's call" alert system pursuant to this article shall not be liable for any civil damages arising from the dissemination of any alert generated pursuant to the "Mattie's call" alert system.

(b) Nothing in this article shall be construed to limit or restrict in any way any legal protection an individual or entity may have under any other law for disseminating any information.

History.
Code 1981, § 38-3-119, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 35-3-180, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 704, § 3/SB 23.

Editor's notes.
Ga. L. 2014, p. 704, § 1/SB 23, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Stacey Nicole English Act.'"

ARTICLE 8

ALERT SYSTEM FOR UNAPPREHENDED SUSPECTS

Editor's notes.
Ga. L. 2008, p. 233, § 1/SB 202, effective July 1, 2008, redesignated former Article 8 of Chapter 3 of Title 38 as Article 8 of Chapter 3 of Title 35.

35-3-190. Alert system for dangerous murder or rape suspects; development and implementation; termination of an alert; immunity.

(a) There is established a state-wide alert system known as "Kimberly's Call."

(b) As used in this article, the term "local law enforcement agency" means a local law enforcement agency with jurisdiction over the search for a suspect in a case of murder or rape.

(c) The director shall develop and implement a state-wide alert system to be activated when a suspect for the crime of murder, felony murder, or murder in the second degree as defined in Code Section 16-5-1 or rape as defined in Code Section 16-6-1 has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public.

(d) The provisions of Code Sections 35-3-173, 35-3-175, and 35-3-178 shall also apply to "Kimberly's Call" as set forth in this Code section.

(e) On notification by a local law enforcement agency that a suspect in a case of murder or rape has not been apprehended and may be a serious threat to the public, the director shall activate the alert system

and notify appropriate participants in the alert system, as established by rule, if:

(1) A local law enforcement agency believes that a suspect has not been apprehended;

(2) A local law enforcement agency believes that the suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

(f) The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(g) Before requesting activation of the alert system, a local law enforcement agency must verify that the criteria described by subsection (e) of this Code section have been satisfied. The local law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime.

(h) The director shall terminate any activation of the alert system with respect to a particular suspect if:

(1) The suspect is located or the incident is otherwise resolved; or

(2) The director determines that the alert system is no longer an effective tool for locating the suspect.

(i) Any entity or individual participating in the "Kimberly's Call" alert system pursuant to this Code section shall not be liable for any civil damages arising from the dissemination of any alert generated pursuant to the "Kimberly's Call" alert system.

History.

Code 1981, § 38-3-120, enacted by Ga. L. 2006, p. 539, § 1/HB 728; Code 1981, § 38-3-130, as redesignated by Ga. L. 2007, p. 47, § 38/SB 103; Code 1981, § 35-3-190, as redesignated by Ga. L. 2008, p. 233, § 1/SB 202; Ga. L. 2014, p. 444, § 2-10/HB 271.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, "of this Code section" was inserted in the first sentence of subsection (f) (now subsection (g)).

Editor's notes.

Ga. L. 2007, p. 47, § 38(7)/SB 103, effective May 11, 2007, redesignated former Code Section 38-3-120 as present Code Section 38-3-130.

Ga. L. 2008, p. 233, § 1/SB 202, purported to amend and redesignate Code Section 38-3-120 as this Code section but actually amended and redesignated Code Section 38-3-130 as this Code section.

35-3-191. Alert system for dangerous suspects of crimes involving death or serious injury to peace officer; alert system for missing peace officer; termination of an alert; immunity.

(a) There is established a state-wide alert system known as "Blue Alert" which shall be developed and implemented by the director.

(b) As used in this Code section, the term:

(1) "Law enforcement agency" means a law enforcement agency with jurisdiction over the search for a suspect in a case involving the death or serious injury of a peace officer or an agency employing a peace officer who is missing in the line of duty.

(2) "Peace officer" means a person who is certified to exercise the powers of arrest.

(c) The "Blue Alert" system may be activated when a suspect for a crime involving the death or serious injury of a peace officer has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public and also when a peace officer becomes missing while in the line of duty under circumstances warranting concern for such peace officer's safety.

(d) The provisions of Code Sections 35-3-173, 35-3-175, and 35-3-178 shall also apply to "Blue Alert" as set forth in this Code section.

(e) Upon notification by a law enforcement agency that a suspect in a case involving the death or serious injury of a peace officer has not been apprehended and may be a serious threat to the public, the director shall activate the "Blue Alert" system and notify appropriate participants in the "Blue Alert" system, as established by rule, if:

(1) A law enforcement agency believes that a suspect has not been apprehended;

(2) A law enforcement agency believes that the suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating the suspect.

The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the suspect did not leave a certain geographic location.

(f) Upon notification by a law enforcement agency that a peace officer is missing while in the line of duty under circumstances warranting concern for such peace officer's safety, the director shall activate the "Blue Alert" system and notify appropriate participants in the "Blue

Alert" system if sufficient information is available to disseminate to the public that could assist in locating the missing peace officer. The area of the alert may be less than state wide if the director determines that the nature of the event makes it probable that the officer is within a certain geographic location.

(g) Before requesting activation of the "Blue Alert" system, a law enforcement agency shall verify that the criteria described by subsection (e) or (f) of this Code section have been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime or the last known location of the missing peace officer.

(h) The director shall terminate any activation of the "Blue Alert" system with respect to a particular incident if:

(1) The suspect or peace officer is located or the incident is otherwise resolved; or

(2) The director determines that the "Blue Alert" system is no longer an effective tool for locating the suspect or peace officer.

Law enforcement agencies shall notify the director immediately when the suspect is located and in custody or the peace officer is found.

(i) Any entity or individual involved in the dissemination of a "Blue Alert" generated pursuant to this Code section shall not be liable for any civil damages arising from such dissemination.

History.
Code 1981, § 35-3-191, enacted by Ga. L. 2010, p. 521, § 1/SB 397.

Cross references.
Obstructing or hindering law enforcement officers, § 16-10-24.

ARTICLE 9

GEORGIA INFORMATION SHARING AND ANALYSIS CENTER

35-3-200. Definitions.

As used in this article, the term:

(1) "Center" means the Georgia Information Sharing and Analysis Center.

(2) "Fusion center" means collaborative effort which combines resources, expertise, intelligence, and other information from various agencies of state and local governments with the goal of maximizing the ability of this state to detect, prevent, and respond to criminal activities or to otherwise engage in homeland security activities.

(3) "Homeland security activity" means any activity related to the prevention or discovery of, response to, or recovery from:

(A) A terrorist attack;

(B) A hostile military or paramilitary action; or

(C) An extraordinary law enforcement emergency, as designated by the Governor.

History.
Code 1981, § 35-3-200, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779.

35-3-201. Creation; purpose.

There is established the Georgia Information Sharing and Analysis Center as a distinct division within the bureau. The center shall be a fusion center maintaining criminal intelligence and terrorism analytical components. The officer or agent charged with operating the center shall report directly to the director.

History.
Code 1981, § 35-3-201, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779; Ga. L. 2025, p. 1029, § 35(43)(J)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "bureau" for "Georgia Bureau of Investigation" in the first sentence.

35-3-202. [Reserved] Responsibilities of director for center operations.

History.
Ga. L. 2016, p. 91, § 5/SB 416; repealed by Ga. L. 2018, p. 681, § 2-1/HB 779, effective July 1, 2018.
Editor's notes.
Ga. L. 2018, p. 681, § 2-1/HB 779 repealed and reserved this Code section, effective July 1, 2018.

35-3-203. Cooperative activities of center.

(a) The center shall share and provide homeland security activity information to the director of emergency management and homeland security, including, but not limited to, threats, warnings, and developing situations, when an investigation reveals conduct of a terroristic nature or in material support of terroristic activities, recruitment of terrorists, or information on the activities of known terrorist organizations.

(b) The center shall liaise with the Federal Bureau of Investigation, Joint Terrorism Task Force, United States Department of Homeland Security, and other local, state, and federal intelligence and law enforcement officials for purposes of carrying out its duties and responsibilities under this article.

History.
Code 1981, § 35-3-203, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779.

35-3-204. Membership; availability of analysts.

(a) Membership in the center shall consist of the director, the director of emergency management and homeland security, the commissioner, the commissioner of natural resources, the commissioner of corrections, the state fire marshal, the Attorney General, the adjutant general, and state and local fire service, law enforcement, homeland security, emergency management, corrections, and other appropriate agencies and disciplines as determined by the director. Such members may assign or make available their analysts or other personnel to the center as such need is determined by the director.

(b) The director of emergency management and homeland security may maintain Georgia Emergency Management and Homeland Security Agency analysts in the center as determined by the director of emergency management and homeland security. Such analysts assigned to the center who are funded by or employees of the Georgia Emergency Management and Homeland Security Agency shall focus on homeland security activity.

History.
Code 1981, § 35-3-204, enacted by Ga. L. 2016, p. 91, § 5/SB 416; Ga. L. 2018, p. 681, § 2-1/HB 779; Ga. L. 2025, p. 1029, § 35(17)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted "of public safety" following "commissioner" in the first sentence in subsection (a).

CHAPTER 4

GEORGIA POLICE ACADEMY

Sec.		Sec.	
35-4-1.	Short title.	35-4-6.	Selection, powers, and duties of superintendent of academy.
35-4-2.	Definitions.		
35-4-3.	Academy assigned to department for administrative purposes.	35-4-7.	Availability of training programs; fees; enrollment.
35-4-4.	Powers and duties of board as to establishment, operation, and maintenance of academy generally.	35-4-8.	Training program for coroners and deputy coroners.
35-4-5.	Acceptance of gifts, grants, donations, property, and services by board.	35-4-9.	Attendance not required; academy training programs not to supersede other programs.

35-4-1. Short title.

This chapter shall be known as and may be cited as the "Georgia Police Academy Act."

History.
Ga. L. 1962, p. 535, § 1.

35-4-2. Definitions.

As used in this chapter, the term:

(1) "Academy" means the Georgia Police Academy.

(2) "Police officer" means any law enforcement officer charged with the duty of enforcing the criminal laws and ordinances of the state or of the counties or municipalities of the state who is employed by and compensated by the state or any county or municipality of the state or who is elected and compensated on a fee basis. The term shall include, but not be limited to, members of the department, municipal police, county police, sheriffs, deputy sheriffs, wardens, guards, agents and investigators of the State Forestry Commission, game wardens of the Department of Natural Resources, and agents of the Department of Revenue.

(3) "State" means the State of Georgia and any department, board, bureau, commission, or other agency thereof.

History.
Ga. L. 1962, p. 535, § 2; Ga. L. 1975, p. 1175, § 1; Ga. L. 2019, p. 808, § 7/SB 72.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 1, 7. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 1 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 1 et seq.

C.J.S.
62 C.J.S., Municipal Corporations, § 560 et seq. 67 C.J.S., Officers and Public Employees, §§ 2 et seq., 13 et seq. 81A C.J.S., States, § 1 et seq.

35-4-3. Academy assigned to department for administrative purposes.

The academy is assigned to the department for administrative purposes only as prescribed in Code Section 50-4-3.

History.
Ga. L. 1962, p. 535, § 5; Ga. L. 1975, p. 1175, § 5; Ga. L. 2025, p. 1029, § 35(42)(R)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in this Code section.

35-4-4. Powers and duties of board as to establishment, operation, and maintenance of academy generally.

(a) The board is authorized to establish, operate, and maintain the Georgia Police Academy for the purpose of training police officers and others as provided in this chapter and to do all things and take whatever action is necessary to accomplish the purposes of this chapter, including, but not limited to, the establishment of training standards and programs and the promulgation of rules and regulations relative thereto.

(b) The board is authorized and directed to select a site for the academy.

History.
Ga. L. 1962, p. 535, § 4; Ga. L. 1975, p. 1175, §§ 3, 6.

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 108 et seq. 81A C.J.S., States, § 235 et seq.

35-4-5. Acceptance of gifts, grants, donations, property, and services by board.

The board is authorized to accept gifts, grants, donations, property, both real and personal, and services for the purposes of carrying out this chapter.

History.
Ga. L. 1962, p. 535, § 5; Ga. L. 1975, p. 1175, § 5.

35-4-6. Selection, powers, and duties of superintendent of academy.

(a) The board shall hire a superintendent of the academy whose duties shall be to administer the policies and programs of the board regarding the academy.

(b) The superintendent shall be responsible to the board for the management and control of the academy and shall report directly to the board.

(c) In administering the policies and programs of the board, the superintendent shall seek the assistance of the State Board of Education, which is authorized and directed to cooperate and work with the superintendent.

History.
Ga. L. 1962, p. 535, § 5; Ga. L. 1975, p. 1175, §§ 4, 5; Ga. L. 2001, p. 311, § 1.

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 108 et seq. 81A C.J.S., States, §§ 235 et seq., 267, 274 et seq.

35-4-7. Availability of training programs; fees; enrollment.

(a) Subject to rules and regulations prescribed by the board, the training programs at the academy shall be made available to all police officers and may also be made available to other persons who evidence interest in entering the law enforcement profession.

(b) The board is authorized to prescribe by rules and regulations fees to cover all or a part of the cost of furnishing such training.

(c) The state and municipalities and counties of the state are authorized to expend funds for the purpose of paying the fees provided for in subsection (b) of this Code section.

(d) The board is given full authority to decide who shall be allowed to enroll in the training programs at the academy.

History.
Ga. L. 1962, p. 535, § 6; Ga. L. 1982, p. 3, § 35.

OPINIONS OF THE ATTORNEY GENERAL

Employers authorized to pay fees charged. — Intent of this section is that each of the employers (state, county, or municipality) is authorized to pay the fees which the employers are charged by the police academy; funds obtained from the Governor's emergency fund cannot be used for the purpose of paying the fees of county and municipal police officers for attending the academy. 1965-66 Op. Att'y Gen. No. 66-18.

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 108 et seq. 81A C.J.S., States, §§ 235, 236.

35-4-8. Training program for coroners and deputy coroners.

Subject to rules and regulations prescribed by the board, the academy shall make available to all coroners and deputy coroners in the state at least once annually a training program of at least 16 hours of instruction including, but not limited to, the following: Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act"; all laws pertaining to the duties of coroners; and investigating technique. The board is authorized to charge such tuition as may be necessary to defray the expense of such training and is also authorized to accept appropriations from any governmental unit or gifts or grants for such purpose.

History.
Ga. L. 1980, p. 543, § 4; Ga. L. 1992, p. 6, § 35.

Cross references.
The Georgia Coroner's Training Council Act, § 45-16-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 34.

C.J.S.
18 C.J.S., Coroners and Medical Examiners, § 5.

35-4-9. Attendance not required; academy training programs not to supersede other programs.

It is not the intention of this chapter that it be mandatory that any police officer be required to attend the academy. The training program established at the academy shall not supersede any other training program for police officers but shall be separate and apart from any other training program for police officers.

History.
Ga. L. 1962, p. 535, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, § 50 et seq. 73 Am. Jur. 2d, Statutes, § 54.

C.J.S.

67 C.J.S., Officers and Public Employees, § 21. 82 C.J.S., Statutes, §§ 356 et seq., 425.

CHAPTER 5

GEORGIA PUBLIC SAFETY TRAINING CENTER

Sec.		Sec.	
35-5-1.	Short title.		certain personnel; fees; enrollment; authorization for expenditure of funds; powers and duties.
35-5-2.	Board authorized to establish, operate, and maintain center; administrator.	35-5-6.	Effect of chapter on powers of Board of Corrections, State Board of Pardons and Paroles, and Technical College System of Georgia.
35-5-3.	Assignment to department for administrative purposes; authorization to solicit and accept gifts, grants, donations, property, and services.	35-5-7.	Law enforcement unit.
35-5-4.	Powers and duties of administrator.	35-5-8.	Responding to at-risk individuals facing emergencies; training.
35-5-5.	Center available for use by		

Cross references.
Procedure for passing certain stationary vehicles, § 40-6-16.

Law reviews.
For article, "HB 479: Repeal of Georgia's Citizen's Arrest Law," see 38 Ga. St. U.L. Rev. 25 (2021).

35-5-1. Short title.

This chapter shall be known and may be cited as the "Georgia Public Safety Training Center Act."

History.
Ga. L. 1980, p. 429, § 1; Ga. L. 1993, p. 91, § 35.

Cross references.
Use of retired unmarked pursuit cars for training, § 35-2-57.

35-5-2. Board authorized to establish, operate, and maintain center; administrator.

(a) The board is authorized:

(1) To establish, operate, and maintain the Georgia Public Safety Training Center for the purpose of providing facilities and programs for the training of state and local law enforcement officers, firefighters, correctional personnel, emergency medical personnel, behavioral health co-responders, and others; and

(2) To do all things and take any action necessary to accomplish such purpose, including, but not limited to, the promulgation of rules and regulations relative thereto.

(b) The board is authorized and directed to select a site for the Georgia Public Safety Training Center.

(c) The board shall select the administrator of the Georgia Public Safety Training Center and establish the compensation for the administrator.

(d) As used in this chapter, the term "emergency medical personnel" includes emergency medical technicians or emergency rescue specialists who are certified or seeking certification as emergency medical technicians, paramedics, tactical emergency medical officers, cardiac technicians, or other medical first responders under Chapter 11 of Title 31 and who are employed in the capacity for which they are certified or seeking certification.

History.
Ga. L. 1980, p. 429, § 2; Ga. L. 2006, p. 1057, § 1/SB 581; Ga. L. 2022, p. 26, § 4-4/HB 1013; Ga. L. 2025, p. 1029, § 35(18)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "board" for "Board of Public Safety" in subsection (a) and substituted "Georgia Public Safety Training Center" for "center" in subsections (b) and (c).
Law reviews.
For article, "HB 1013: Georgia Mental Health Parity Act," see 39 Ga. St. U.L. Rev. 145 (2022).

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 108 et seq.

35-5-3. Assignment to department for administrative purposes; authorization to solicit and accept gifts, grants, donations, property, and services.

(a) The Georgia Public Safety Training Center is assigned to the department for administrative purposes only as prescribed in Code Section 50-4-3.

(b) The board is authorized to solicit and accept gifts, grants, donations, property, both real and personal, and services for the purpose of carrying out this chapter.

History.
Ga. L. 1980, p. 429, § 4; Ga. L. 1982, p. 3, § 35; Ga. L. 2025, p. 1029, § 35(19)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Georgia Public Safety Training Center" for "center" and "department" for "Department of Public Safety" in subsection (a).
Cross references.
Use of retired unmarked pursuit cars for training, § 35-2-57.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, States, Territories, and Dependencies, § 70.

35-5-4. Powers and duties of administrator.

The administrator of the Georgia Public Safety Training Center shall select the necessary staff and shall administer the policies and programs of the board regarding the Georgia Public Safety Training Center. The administrator shall be responsible to the board for the management and operation of the Georgia Public Safety Training Center and shall report directly to the board.

History.
Ga. L. 1980, p. 429, § 3; Ga. L. 2025, p. 1029, § 35(20)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Georgia Public Safety Training Center" for "center" in three places in this Code section.
Cross references.
Use of retired unmarked pursuit cars for training, § 35-2-57.

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 108 et seq.

35-5-5. Center available for use by certain personnel; fees; enrollment; authorization for expenditure of funds; powers and duties.

(a) Subject to such rules and regulations as shall be prescribed by the board, the facilities of the Georgia Public Safety Training Center may be made available to all state and local law enforcement officers, firefighters, emergency medical personnel, and correctional personnel and may also be made available to other persons who evidence interest in entering the fields of law enforcement, fire fighting, emergency medical services, or corrections.

(b) The board is authorized to prescribe and collect such fees as are necessary to defray all or a portion of the cost of furnishing such training and the use of the facilities of the Georgia Public Safety Training Center.

(c) The state and counties and municipalities of this state are authorized to expend funds for the purpose of paying the fees assessed for use of the Georgia Public Safety Training Center. The board shall have the authority to determine who shall be allowed to enroll and participate in the training programs of the Georgia Public Safety

Training Center and who shall be allowed to utilize the facilities of the Georgia Public Safety Training Center.

(d) Subject to such rules and regulations as shall be prescribed by the board, the Georgia Public Safety Training Center shall have the following powers and duties in connection with the training of peace officers, emergency medical personnel, behavioral health co-responders, and law enforcement support personnel:

(1) To train instructors authorized to conduct training of peace officers, emergency medical personnel, behavioral health co-responders, and law enforcement support personnel;

(2) To reimburse or provide for certain costs incurred in training peace officers, emergency medical personnel, behavioral health co-responders, and law enforcement support personnel employed or appointed by each agency, organ, or department of this state, counties, and municipalities to the extent that funds are appropriated for such purpose by the General Assembly. In the event sufficient funds are not appropriated for a fiscal year to fund the full cost provided for in this paragraph, then the amount which would otherwise be payable shall be reduced pro rata on the basis of the funds actually appropriated. As used in this paragraph, the terms "cost" and "costs" shall not include travel or salaries of personnel undergoing training and shall be limited exclusively to the cost of tuition which is incurred in connection with such training;

(3) To reimburse or provide for certain costs incurred in training active duty, retired, or honorably discharged members of the United States armed forces who are attending basic law enforcement training, as outlined in subsection (a) of Code Section 35-8-9, to the extent that funds are appropriated for such purpose by the General Assembly. In the event sufficient funds are not appropriated for a fiscal year to fund the full cost provided for in this paragraph, then the amount which would otherwise be payable shall be reduced pro rata on the basis of the funds actually appropriated. As used in this paragraph, the terms "cost" and "costs" shall not include travel or salaries of service members undergoing training and shall be limited exclusively to the cost of tuition which is incurred in connection with such training if such cost or costs are not covered by any other resource available to such service member. Each active duty, retired, or honorably discharged service member undergoing this training shall have complied with the requirements set forth in Code Section 35-8-8;

(4) To expend funds appropriated or otherwise available to the center for paying the costs of training provided under subsection (a) of Code Section 35-8-20, other than travel expenses and salaries of

police chiefs or department heads of law enforcement units and wardens of state institutions undergoing training, and shall expend such funds for purposes of compensating a training officer to administer the course of training and conduct any business associated with the training provisions of said Code Section 35-8-20;

(5) To expend funds appropriated or otherwise available to the center for paying the costs of training provided for under subsection (a) of Code Section 35-8-20.1, other than travel expenses and salaries of police chiefs or department heads of law enforcement units undergoing training, and shall expend such funds for purposes of compensating a training officer to administer the course of training and conduct any business associated with the training provisions of said Code Section 35-8-20.1;

(6) To expend funds appropriated or otherwise available to the center for paying the costs of training provided for under Chapter 11 of Title 31 for the initial certification training and continued training as needed by emergency medical personnel and shall expend such funds for purposes of compensating a training officer to administer the course of training and conduct any business associated with the training provisions of said chapter; and

(7) To administer and coordinate the training for communications officers with respect to the requirements of Code Section 35-8-23. The board shall be authorized to promulgate rules and regulations to facilitate the administration and coordination of training consistent with the provisions of said Code Section 35-8-23. The tuition costs of the training of communications officers shall be paid from funds appropriated to the center.

History.

Ga. L. 1980, p. 429, § 5; Ga. L. 1997, p. 1488, § 2; Ga. L. 2006, p. 1057, § 2/SB 581; Ga. L. 2022, p. 26, § 4-5/HB 1013; Ga. L. 2022, p. 107, § 1/SB 358; Ga. L. 2025, p. 1029, § 35(21)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Georgia Public Safety Training Center" for "center" once in subsections (a) and (b) and three times in subsection (c).

Cross references.

Use of retired unmarked pursuit cars for training, § 35-2-57.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2022, a semicolon was substituted for a comma at the end of paragraph (d)(3).

Law reviews.

For article, "HB 1013: Georgia Mental Health Parity Act," see 39 Ga. St. U.L. Rev. 145 (2022).

35-5-6. Effect of chapter on powers of Board of Corrections, State Board of Pardons and Paroles, and Technical College System of Georgia.

Nothing in this chapter shall be considered as altering current state

laws establishing the powers and authority of the Board of Corrections or the State Board of Pardons and Paroles. Furthermore, nothing in this chapter shall prevent the Technical College System of Georgia from providing any course of instruction including, but not limited to, instructional courses, certified training, advanced instruction, or classes for or pertaining to public safety first responders and emergency medical personnel.

History. Ga. L. 1980, p. 429, § 6; Ga. L. 1985, p. 283, § 1; Ga. L. 2006, p. 1057, § 3/SB 581; Ga. L. 2008, p. 335, § 5/SB 435.

35-5-7. Law enforcement unit.

(a) The administrator of the Georgia Public Safety Training Center, with the approval of the board, is authorized to establish a law enforcement unit within the Georgia Public Safety Training Center and appoint employees to serve as peace officers who shall be responsible for preserving public order, protecting life and property, and preventing crime. Such employees shall have been certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the course of training required by Chapter 8 of this title, the "Georgia Peace Officer Standards and Training Act."

(b) While in the performance of their duties, such peace officers shall have the same law enforcement powers, including the power of arrest, as any other law enforcement officer certified pursuant to Chapter 8 of this title, the "Georgia Peace Officer Standards and Training Act." The Georgia Public Safety Training Center law enforcement unit shall enforce laws on all properties controlled by the Georgia Public Safety Training Center and enforce state laws and protect life and property when ordered by the Governor or requested by a sheriff of a county or police chief of a county or municipality in this state. Such officers shall be authorized to possess and carry such firearms and other weapons while on duty as may be prescribed by the administrator of the center.

(c) From funds appropriated or available to the Georgia Public Safety Training Center, the administrator of the center shall be authorized to provide motor vehicles, uniforms, firearms, and any other equipment and supplies to employees of the Georgia Public Safety Training Center law enforcement unit necessary to carry out the provisions of this Code section.

(d) This Code section shall not repeal, supersede, alter, or affect the power of any other law enforcement officer of this state or of any county, municipality, or other political subdivision of this state.

History. Code 1981, § 35-5-7, enacted by Ga. L. 1987, p. 317, § 2; Ga. L. 2024, p. 502, § 2/SB 37, effective July 1, 2024; Ga. L.

2025, p. 1029, § 35(22)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted the current provisions of this Code section for the former provisions, which read: "(a) The administrator of the center, with the approval of the board, is authorized to establish a security police force within the Georgia Public Safety Training Center.

"(b) While in the performance of their duties on property of the Georgia Public Safety Training Center, such security police shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such Georgia Public Safety Training Center."

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Georgia Public Safety Training Center" for "center" in the first sentence of subsection (a).

35-5-8. Responding to at-risk individuals facing emergencies; training.

(a) The Georgia Public Safety Training Center shall create and maintain an at-risk adult training course available to all peace officers, emergency medical personnel, and behavioral health co-responders relating to responding to at-risk adults, including those individuals living with Alzheimer's disease or other forms of dementia.

(b) Such training course shall, at a minimum, provide training in:

(1) Investigating criminal violations involving benefits trafficking and related offenses;

(2) Investigating criminal violations involving the abuse, neglect, or exploitation of a disabled adult or elder person;

(3) Responding to reports of missing persons;

(4) Interacting with victims of abuse, neglect, and exploitation in a victim centered and trauma informed way; and

(5) Certain aspects of Alzheimer's disease and other forms of dementia and cognitive impairment, including;

(A) Instruction in interacting with persons with Alzheimer's disease and other forms of dementia;

(B) Techniques for recognizing the behavioral symptoms and characteristics of Alzheimer's disease and other forms of dementia;

(C) Techniques for effective communication with persons with Alzheimer's disease and other forms of dementia;

(D) Techniques for employing alternatives to physical restraints; and

(E) Protocols for contacting caregivers when an individual with Alzheimer's disease or other form of dementia is found wandering or during an emergency situation.

(c) The training course provided for in this Code section shall be developed by the Georgia Public Safety Training Center in collaboration with the Forensic Special Initiatives Unit of the Division of Aging Services of the Department of Human Services.

(d) The number of hours and specific curriculum required for the training course provided for in this Code section shall be approved by the Georgia Peace Officer Standards and Training Council.

History.
Code 1981, § 35-5-8, enacted by Ga. L. 2025, p. 805, § 1/HB 238, effective July 1, 2025.

Effective date.
This Code section became effective July 1, 2025.

CHAPTER 6

STATE VICTIM SERVICES COMMISSION

Sec.		Sec.	
35-6-1.	Creation and responsibility.	35-6-4.	Responsibility of state auditor; inspection of documentation.
35-6-2.	Membership; terms; procedure.		
35-6-3.	Powers and duties; ombudsman program.		

Cross references.

Victim assistance coordinator, § 15-18-14.2.

Payment and disposition of fines and forfeitures, § 15-21-1 et seq.

Victim compensation, § 15-21-1 et seq.

Law reviews.

For article, "Disrupting Victim Exploitation," see 69 Mercer L. Rev. 805 (2018).

35-6-1. Creation and responsibility.

There is created the State Victim Services Commission. Such commission shall be responsible for developing a comprehensive state plan for assisting men, women, and children who are victims of crime through the distribution of the fine surcharges imposed for local victim assistance programs.

History.

Code 1981, § 35-6-1, enacted by Ga. L. 2004, Ex. Sess., p. ES3, § 25.

Cross references.

Referral to victim assistance organizations of child suspected of being a victim of sexual exploitation or trafficking, § 15-11-130.1.

35-6-2. Membership; terms; procedure.

(a) The State Victim Services Commission shall consist of 14 members as follows:

(1) The executive director of the Prosecuting Attorneys' Council of Georgia or his or her designee;

(2) The president of the Georgia Sheriffs' Association or his or her designee;

(3) The executive director of the Criminal Justice Coordinating Council or his or her designee;

(4) The chairperson of the Georgia Commission on Family Violence or his or her designee;

(5) The executive director of the Georgia Coalition Against Domestic Violence or his or her designee;

(6) The executive director of the Association County Commissioners of Georgia or his or her designee;

(7) The executive director of the Children's Advocacy Centers of Georgia or his or her designee;

(8) The executive director of the Georgia Superior Court Clerks' Cooperative Authority or his or her designee;

(9) The executive director of the Georgia Municipal Association or his or her designee;

(10) The executive director of the Georgia Network to End Sexual Assault or his or her designee;

(11) A district attorney appointed by the Prosecuting Attorneys' Council of Georgia;

(12) One member appointed by the Governor;

(13) One member appointed by the Lieutenant Governor; and

(14) One member appointed by the Speaker of the House of Representatives.

(b) The letter of appointment shall set out the term for which each member is appointed. Thereafter, each member shall be appointed for a term of two years, and no member may serve more than two consecutive terms. All vacancies shall be filled for the unexpired term by an appointee of the original appointing official.

(c) The commission shall elect a chairperson, vice chairperson, and a secretary from among its members for terms of two years, and any member shall be eligible for successive election to such office by the commission.

(d) The commission shall hold regular meetings at such times and such places as it may deem necessary or convenient to enable the commission to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this chapter. Special meetings may be called by the chairperson or a majority of the members of the commission.

(e) A quorum for transacting business shall be determined by the members of the commission.

(f) The members of the commission shall serve without compensation or expense reimbursement.

History. Code 1981, § 35-6-2, enacted by Ga. L. 2004, Ex. Sess., p. ES3, § 25; Ga. L. 2019, p. 919, § 18-2/HB 553.

35-6-3. Powers and duties; ombudsman program.

(a) The State Victim Services Commission shall have the following powers and duties:

(1) To review the financial reports submitted pursuant to Code Section 15-21-132 concerning local victim assistance programs;

(2) To assess the degree of compliance of the courts in collecting and forwarding funds authorized to be collected pursuant to Article 8 of Chapter 21 of Title 15;

(3) To review and determine the extent to which county governing authorities collect funds from the courts and distribute such funds to victim services programs;

(4) To assess the extent to which such funds are utilized by such victim services programs to provide direct services to victims of crimes;

(5) To recommend changes in legislation that will ensure compliance in the collection, distribution, and use of victim assistance funds as needed; and

(6) To recommend as necessary and advisable rules and regulations for the collection and distribution of funds by court officers pursuant to Article 8 of Chapter 21 of Title 15.

(b) The commission may establish a victim services ombudsman program, provided that funds are appropriated by the General Assembly for such purpose or the commission receives sufficient funds from private grants or donations to fund such program.

History.
Code 1981, § 35-6-3, enacted by Ga. L. 2004, Ex. Sess., p. ES3, § 25.

35-6-4. Responsibility of state auditor; inspection of documentation.

(a) The state auditor is authorized and directed to assist the State Victim Services Commission in the discharge of its duties set forth in this chapter.

(b) Any victim assistance program, including programs operated by public officers, that receives funds pursuant to Article 8 of Chapter 21 of Title 15 shall make available to the State Victim Services Commission, the state auditor, or such other persons as the State Victim Services Commission may designate all books and records of all receipts, income, and expenditures of such funds. The commission and its designees shall be authorized to inspect and make abstracts of

records of services provided to victims of crimes by any victim assistance program, including programs operated by public officers, that receives funds pursuant to Article 8 of Chapter 21 of Title 15, provided that the commission and its designees shall not disclose the content of individually identifiable records that contain information that is privileged or confidential under the laws of this state or federal law.

History.
Code 1981, § 35-6-4, enacted by Ga. L. 2004, Ex. Sess., p. ES3, § 25.

CHAPTER 6A

CRIMINAL JUSTICE COORDINATING COUNCIL

Sec.		Sec.	
35-6A-1.	Legislative findings.		gration; obligations of council.
35-6A-2.	Creation; assignment to Georgia Bureau of Investigation; definitions.	35-6A-11.	Juvenile justice advisory board; membership.
35-6A-3.	Membership; vacancies; membership not bar to holding public office.	35-6A-12.	Role of juvenile justice advisory board.
35-6A-4.	Election of chairperson and vice chairperson; meetings; minutes and records; rules.	35-6A-13.	[Reserved] Criminal Case Data Exchange Board; membership; operation.
35-6A-5.	Compensation and expense allowance for members.	35-6A-14.	[Reserved] Role of board; public access.
35-6A-6.	Appointment of director; power and duties.	35-6A-15.	Grant program for transportation costs to emergency treatment facilities.
35-6A-7.	Functions and authority of council.	35-6A-16.	(Repealed effective December 31, 2030.) Grant program for enforcement of motor vehicle related statutes; termination.
35-6A-8.	Limitations on authority of council.	35-6A-17.	(Repealed effective December 31, 2030.) Georgia Motor Vehicle Crime Prevention Advisory Board; membership; termination.
35-6A-9.	Preparation of budget requests; appropriations; gifts, grants, and donations of property and services.		
35-6A-10.	Grant program for local cooperation relative to immi-		

Editor's notes.

By resolution (Ga. L. 1986, p. 188), the General Assembly created the Governor's Commission on Black on Black Crime and directed the Criminal Justice Coordinating Council to gather information regarding black on black crime and to report its findings to the commission.

Administrative rules and regulations.

Criminal Justice Coordinating Council, Official Compilation of the Rules and Regulations of the State of Georgia, Rule 144-1-.01 et seq.

35-6A-1. Legislative findings.

The General Assembly finds that the high incidence of crime in Georgia is detrimental to the general welfare of the state and its citizens and that criminal justice efforts must be better coordinated, intensified, and made more effective in all components of the system and at all levels of government. The General Assembly, therefore, declares it to be the public policy of this state to provide the necessary leadership to coordinate the major components of the criminal justice system by establishing a state-wide coordinating body which represents all components and all levels of the criminal justice system.

History.
Ga. L. 1981, p. 1306, § 1.

35-6A-2. Creation; assignment to Georgia Bureau of Investigation; definitions.

(a) There is established the Criminal Justice Coordinating Council of the State of Georgia which is assigned to the Georgia Bureau of Investigation for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) As used in this chapter, the term "council" means the Criminal Justice Coordinating Council.

History.
Ga. L. 1981, p. 1306, § 2; Ga. L. 2001, p. 311, § 2; Ga. L. 2018, p. 550, § 1-5/SB 407; Ga. L. 2022, p. 121, § 15/SB 441.

Editor's notes.
Ga. L. 2022, p. 121, § 1/SB 441, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) The state's current system for sharing criminal case data is not adequate to provide to all appropriately interested parties, including, but not limited to, law enforcement agencies and officers, courts, crime victims and other impacted individuals, housing providers, and employers, complete criminal case data;

"(2) One recent report indicates there may be as many as 7 million criminal charges without a final disposition indicated, and, of those, as many as 5.4 million criminal charges have languished for years;

"(3) Georgia's citizens and businesses are harmed by incomplete criminal case data. For example, in thousands of cases, as a result of incomplete criminal case data, citizens' employability and housing opportunities have been negatively impacted; and

"(4) A more uniform, modern system and framework for handling criminal case data will support the state in meeting its obligations to victims to keep them informed as their perpetrators make their way through the criminal justice system.

"(b) It is the intent of the General Assembly that criminal case data be complete and accurately reported to the appropriate state data base and be accessible to state and local criminal justice agencies, employers, housing providers, victims, and all citizens."

Ga. L. 2022, p. 121, § 2/SB 441, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Criminal Records Responsibility Act.'"

Law reviews.
For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

For article, "SB 441: Criminal Records Responsibility Act," see 39 Ga. St. U.L. Rev. 105 (2022).

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 20.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, §§ 2, 3 et seq., 18 et seq.

35-6A-3. Membership; vacancies; membership not bar to holding public office.

(a) The Criminal Justice Coordinating Council shall consist of 27 members and shall be composed as follows:

(1) The chairperson of the Georgia Peace Officer Standards and Training Council, the director of homeland security, the chairperson of the Judicial Council of Georgia, the chairperson of the Council of Accountability Court Judges of Georgia, the chairperson of the Prosecuting Attorneys' Council of the State of Georgia, the commissioner of corrections, the chairperson of the Board of Corrections, the commissioner of community supervision, the chairperson of the Board of Community Supervision, the vice chairperson of the board, the chairperson of the State Board of Pardons and Paroles, the State School Superintendent, the commissioner of community affairs, the president of the Council of Juvenile Court Judges, the chairperson of the Georgia Public Defender Council, the commissioner of behavioral health and developmental disabilities, and the commissioner of juvenile justice or their designees shall be ex officio members of the council, as full voting members of the council by reason of their office; and

(2) Ten members shall be appointed by the Governor for terms of four years, their initial appointments, however, being four for four-year terms, two for three-year terms, and four for two-year terms. Appointments shall be made so that there are always on the council the following persons: one county sheriff, one chief of police, one mayor, one county commissioner, one superior court judge, four individuals who shall be, by virtue of their training or experience, knowledgeable in the operations of the criminal justice system of this state, and one individual who shall be, by virtue of his or her training and experience, knowledgeable in the operations of the entire spectrum of crime victim assistance programs delivering services to victims of crime. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the council, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) The initial terms for all 19 original members shall begin July 1, 1981. The initial term for the member added in 1985 shall begin July 1, 1985. The initial term for the member added in 1988 shall begin July 1, 1988. The initial term for the member added in 1989 shall begin July 1, 1989. The State School Superintendent shall be a member effective on

July 1, 1989. The chairperson of the Georgia Public Defender Council shall become a member on December 31, 2003. The chairperson of the Council of Accountability Court Judges of Georgia shall become a member on July 1, 2015.

(d) Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

History.

Ga. L. 1981, p. 1306, § 3; Ga. L. 1983, p. 518, § 1; Ga. L. 1984, p. 22, § 35; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 544, § 5; Ga. L. 1988, p. 242, § 1; Ga. L. 1989, p. 288, § 1; Ga. L. 1989, p. 1245, § 1; Ga. L. 1990, p. 8, § 35; Ga. L. 1991, p. 435, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 417, § 1; Ga. L. 1997, p. 1453, § 1; Ga. L. 1998, p. 128, § 35; Ga. L. 2003, p. 191, § 8; Ga. L. 2004, p. 988, § 1; Ga. L. 2008, p. 568, § 11/HB 1054; Ga. L. 2015, p. 422, § 5-55/HB 310; Ga. L. 2015, p. 519, § 8-8/HB 328; Ga. L. 2018, p. 1112, § 35/SB 365; Ga. L. 2024, p. 159, § 1/HB 1165, effective April 22, 2024; Ga. L. 2025, p. 1029, § 35(23)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective April 22, 2024, substituted "the commissioner of the Department of Behavioral Health and Developmental Disabilities," for "the chairperson of the Governor's Office for Children and Families" near the end of paragraph (a)(1).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, in paragraph (a)(1), substituted "board" for "Board of Public Safety" and "behavioral health and developmental disabilities" for "the Department of Behavioral Health and Developmental Disabilities".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, in paragraph (a)(1), "juvenile justice" was substituted for "the Department of Juvenile Justice " and "and" was added at the end.

Pursuant to Code Section 28-9-3, in 2015, the amendment of the introductory language of subsection (a) of this Code section by Ga. L. 2015, p. 422, § 5-55/HB 310, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 519, § 8-8/HB 328, due to irreconcilable conflict.

Editor's notes.

Ga. L. 2008, p. 568, § 1/HB 1054, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2/HB 1054, not codified by the General Assembly, provides: "The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state's child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children's Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state's families in need."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews.

For note on 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 21 (1992).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 105 (2003).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, §§ 31, 32.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 70.

35-6A-4. Election of chairperson and vice chairperson; meetings; minutes and records; rules.

The business of the council shall be conducted in the following manner:

(1) The council shall annually elect a chairperson and a vice chairperson from among its membership. The offices of chairperson and vice chairperson shall be filled in such a manner that they are not held in succeeding years by representatives of the same component (law enforcement, courts, corrections) of the criminal justice system;

(2) The council shall meet at such times and places as it shall determine necessary or convenient to perform its duties. The council shall also meet on the call of the chairperson or at the written request of three of its members;

(3) The council shall maintain minutes of its meetings and such other records as it deems necessary; and

(4) The council shall adopt such rules for the transaction of its business as it shall desire and may appoint such committees as it considers necessary to carry out its business and duties, specifically including the power to transact and carry out through appointed committees the business of the council when serving pursuant to Chapter 15 of Title 17 as the Georgia Crime Victims Compensation Board.

History.
Ga. L. 1981, p. 1306, § 4; Ga. L. 1999, p. 846, § 1; Ga. L. 2006, p. 72, § 35/SB 465; Ga. L. 2025, p. 1029, § 35(24)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "chairperson" for "chairman" in paragraph (2) and added "and" at the end of paragraph (3).

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, §§ 81 et seq., 98 et seq.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, §§ 47, 48, 49, 50.

35-6A-5. Compensation and expense allowance for members.

Members of the council shall serve without compensation but shall receive for each day of actual attendance of council meetings a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for use of a personal car in connection with such attendance.

History.
Ga. L. 1981, p. 1306, § 5; Ga. L. 1987, p. 3, § 35; Ga. L. 2010, p. 875, § 1/SB 173.
Cross references.
Expense allowance for members of General Assembly, § 45-7-4(a)(22).
Mileage and actual travel expenses for state officials and employees, § 50-19-7.

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

35-6A-6. Appointment of director; power and duties.

(a) The Governor shall appoint a director of the council who shall serve at the pleasure of the Governor.

(b) The director may contract with other agencies, public and private, or persons as the director deems necessary for the rendering and affording of such services, facilities, studies, research, and reports to the council as will best assist it to carry out its duties and responsibilities.

(c) The director may employ such other professional, technical, and clerical personnel as deemed necessary to carry out the purposes of this chapter.

History.
Ga. L. 1981, p. 1306, § 6.

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, §§ 70, 147 et seq.

35-6A-7. Functions and authority of council.

The council is vested with the following functions and authority:

(1) To cooperate with and secure cooperation of every department,

agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(2) To prepare, publish in print or electronically, and disseminate fundamental criminal justice information of a descriptive and analytical nature to all components of the criminal justice system of this state, including law enforcement agencies, the courts, juvenile justice agencies, and correctional agencies;

(3) To serve as the state-wide clearing-house for criminal justice information and research;

(4) To maintain a research program in order to identify and define significant criminal justice problems and issues and effective solutions and to publish in print or electronically special reports as needed;

(5) In coordination and cooperation with all components of the criminal justice system of this state, to develop criminal justice legislative proposals and executive policy proposals reflective of the priorities of the entire criminal justice system of this state;

(6) To serve in an advisory capacity to the Governor on issues impacting the criminal justice system of this state;

(7) To coordinate high visibility criminal justice research projects and studies which cross traditional system component lines with a state-wide impact;

(8) To convene periodically state-wide criminal justice conferences involving key executives in the criminal justice system of this state and elected officials for the purpose of developing, prioritizing, and publicizing a policy agenda for the criminal justice system of this state;

(9) To provide for the interaction, communication, and coordination of all components of the criminal justice system of this state for the purpose of improving this state's response to crime and its effects;

(10) To administer gifts, grants, and donations for the purpose of carrying out this chapter;

(11) To promulgate rules governing the approval of victim assistance programs as provided for in Article 8 of Chapter 21 of Title 15;

(12) To supervise the preparation, administration, and implementation of the three-year juvenile justice plan as provided by this chapter; and

(13) To do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it.

History.
Ga. L. 1981, p. 1306, § 7; Ga. L. 1995, p. 260, § 4; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 875, § 2/SB 173; Ga. L. 2015, p. 890, § 1/HB 263; Ga. L. 2016, p. 864, § 35/HB 737.

Law reviews.
For note on the 1995 amendment of this Code section, see 12 Ga. St. U. L. Rev. 89 (1995).

For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 45 et seq.

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 147 et seq.

35-6A-8. Limitations on authority of council.

Notwithstanding any provision in this chapter to the contrary, the council shall not exercise any power, undertake any duty, or perform any function assigned by law to the Governor, the Attorney General, or any of the prosecuting or investigatory agencies at the state or local level.

History.
Ga. L. 1981, p. 1306, § 8.

35-6A-9. Preparation of budget requests; appropriations; gifts, grants, and donations of property and services.

(a) The council shall prepare a budget request in the same manner as any such request would be prepared by a budget unit under Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," and a separate appropriation shall be provided for the council in the general appropriations Act.

(b) The council shall be authorized to accept and use gifts, grants, and donations for the purpose of carrying out this chapter. The council shall also be authorized to accept and use property, both real and personal, and services, for the purpose of carrying out this chapter. Any funds, property, or services received as gifts, grants, or donations shall be kept separate and apart from any funds received by the Georgia Bureau of Investigation; and such funds, property, or services so received as gifts, grants, or donations shall be the property and funds of the council and, as such, shall not lapse at the end of each fiscal year but shall remain under the control and subject to the direction of the council to carry out this chapter.

History.
Ga. L. 1981, p. 1306, § 9; Ga. L. 2010, p. 875, § 3/SB 173.

35-6A-10. Grant program for local cooperation relative to immigration; obligations of council.

(a) Subject to available funding, the council shall establish a grant or incentive program for the provision of funds to local law enforcement agencies as incentive to such agencies to use the federal Department of Homeland Security's Secure Communities initiative or any successor or similar program and shall establish an incentive program and a grant program to offset the costs for local law enforcement agencies to enter into and implement memorandums of agreement with federal agencies under Section 287(g) of the federal Immigration and Nationality Act. In awarding such grants or incentives, the council shall be authorized to consider and give priority to local areas with the highest crime rates for crimes committed by illegal aliens.

(b) The council shall:

(1) Subject to available funding, provide incentive programs and grants to local law enforcement agencies for utilizing federal resources and for entering into agreements with federal agencies for the enforcement of immigration law;

(2) Provide technical assistance to local governments and agencies for obtaining and qualifying for incentive programs and grant funds to utilize available federal resources and to enter into and implement such agreements provided for in subsection (a) of this Code section;

(3) Communicate information regarding the availability of federal resources and agreements provided for in subsection (a) of this Code section and the availability of related incentive programs and grant funds and post such information on the agency's official internet website;

(4) Provide technical assistance and information regarding the process for contacting federal agencies, utilizing federal resources, and entering into agreements provided for in subsection (a) of this Code section and post such information on the agency's official internet website; and

(5) Support state-wide campaigns and information programs in an effort to encourage every local law enforcement agency in this state to utilize federal resources and enter into agreements for the enforcement of state and federal immigration law.

History.
Code 1981, § 35-6A-10, enacted by Ga. L. 2011, p. 794, § 11/HB 87; Ga. L. 2025, p. 1029, § 35(25)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "internet website;" for "Internet website;" in paragraphs (b)(3) and (b)(4).

Editor's notes.

Former Code Section 35-6A-10, relating to the repeal of this chapter, was based on Ga. L. 1981, p. 1306, § 11; and Ga. L. 1981 Ex. Sess., p. 8 and was repealed by Ga. L. 1983, p. 518, § 2, effective March 15, 1983.

Ga. L. 2011, p. 794, § 1/HB 87, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Illegal Immigration Reform and Enforcement Act of 2011.'"

Ga. L. 2011, p. 794, § 21/HB 87, not codified by the General Assembly, provides for severability, and provides, in part, that: "(b) The terms of this Act regarding immigration shall be construed to have the meanings consistent with such terms under federal immigration law.

"(c) The provisions of this Act shall be implemented in a manner consistent with federal laws governing immigration and civil rights."

Ga. L. 2011, p. 794, § 22/HB 87, not codified by the General Assembly, provides, in part, that the enactment of this Code section shall apply to offenses and violations occurring on or after July 1, 2011.

Law reviews.

For article on the 2011 enactment of this Code section, see 28 Ga. St. U.L. Rev. 35 (2011).

35-6A-11. Juvenile justice advisory board; membership.

(a) There is established a juvenile justice advisory board to the council which shall consist of at least 15 and not more than 33 members appointed by the Governor who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency, the administration of juvenile justice, or the reduction of juvenile delinquency and shall be composed of:

(1) At least three members of the council, two of whom are not full-time government employees or elected officials;

(2) At least one locally elected official representing general purpose local government;

(3) Representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecuting attorneys, attorneys for children and youth, and probation workers;

(4) Representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

(5) Representatives of private nonprofit organizations, including individuals with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

(6) Volunteers who work with delinquent children or potential delinquent children;

(7) Representatives of programs that are alternatives to incarceration, including programs providing organized recreation activities;

(8) Individuals with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion;

(9) Persons, licensed or certified by the applicable state, with expertise and competence in preventing and addressing mental health and substance abuse issues in delinquent youth and youth at risk of delinquency; and

(10) Representatives of victim or witness advocacy groups, including at least one individual with expertise in addressing the challenges of sexual abuse and exploitation and trauma, particularly the needs of youth who experience disproportionate levels of sexual abuse, exploitation, and trauma before entering the juvenile justice system.

(b)(1) A majority of the members of the advisory board, including the chairperson, shall not be full-time employees of the federal, state, or local government.

(2) At least one-fifth of the members of the advisory board shall be under 28 years of age at the time of their appointment.

(3) At least three members shall have been or shall currently be under the jurisdiction of the juvenile justice system of this state or, if not feasible and in appropriate circumstances, shall be a parent or guardian of a person who has been or is currently under the jurisdiction of the juvenile justice system.

(c) Membership on the advisory board shall not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The advisory board shall elect a chairperson from among its membership who shall also be a member of the council. The advisory board may elect such other officers and committees as it considers appropriate.

(e) Members of the advisory board shall serve without compensation, although each member of the advisory board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the office. Such reimbursement shall be limited to all travel and other expenses necessarily incurred through service on the advisory board, in compliance with this state's travel rules and regulations. However, in no case shall a member of the advisory board be reimbursed for expenses incurred in the member's capacity as the representative of another state agency.

History.
Code 1981, § 35-6A-11, enacted by Ga. L. 2015, p. 890, § 2/HB 263; Ga. L. 2022, p. 365, § 1/HB 1433; Ga. L. 2023, p. 83, § 2/HB 268, effective July 1, 2023; Ga. L. 2025, p. 1029, § 35(26)/SB 153, effective July 1, 2025.
Amendments.
The 2023 amendment, effective July 1, 2023, substituted "a juvenile justice advisory board" for "an advisory board" in subsection (a).
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted "and" at the end of paragraph (a)(8) and substituted "shall" for "must" in the first sentence in subsection (d).

35-6A-12. Role of juvenile justice advisory board.

The juvenile justice advisory board shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. The advisory board shall also meet on the call of the chairperson, the director of the council, the chairperson of the council, or the Governor;

(2) Maintain minutes of its meetings;

(3) Participate in the development and review of this state's juvenile justice plan prior to submission to the council for final action;

(4) Be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory board, on all juvenile justice and delinquency prevention grant applications submitted to the council;

(5) Using the combined expertise and experience of its members, provide regular advice and counsel to the director of the council to enable the council to carry out its statutory duties under this article; and

(6) Carry out such duties that may be required by federal law or regulation so as to enable this state to receive and disburse federal funds for juvenile delinquency prevention and treatment.

History.
Code 1981, § 35-6A-12, enacted by Ga. L. 2015, p. 890, § 2/HB 263; Ga. L. 2023, p. 83, § 3/HB 268, effective July 1, 2023.
Amendments.
The 2023 amendment, effective July 1, 2023, inserted "juvenile justice" in the undesignated introductory language in this Code section.

35-6A-13. [Reserved] Criminal Case Data Exchange Board; membership; operation.

History.
Code 1981, § 35-6A-13, enacted by Ga. L. 2018, p. 550, § 1-6/SB 407; repealed by Ga. L. 2022, p. 121, § 16/SB 441, effective July 1, 2022.

Editor's notes.
Ga. L. 2025, p. 1029, § 35(27)/SB 153, part of an Act to revise, modernize, and correct the Code, designated this Code section as reserved.

35-6A-14. [Reserved] Role of board; public access.

History.
Code 1981, § 35-6A-14, enacted by Ga. L. 2018, p. 550, § 1-6/SB 407; repealed by Ga. L. 2022, p. 121, § 16/SB 441, effective July 1, 2022.

Editor's notes.
Ga. L. 2025, p. 1029, § 35(28)/SB 153, part of an Act to revise, modernize, and correct the Code, designated this Code section as reserved.

35-6A-15. Grant program for transportation costs to emergency treatment facilities.

Subject to appropriations, the council shall establish a grant program for the provision of funds to units of local government to be used for costs associated with transporting individuals to and from emergency receiving, evaluating, and treatment facilities as such terms are defined in Chapters 3 and 7 of Title 37.

History.
Code 1981, § 35-6A-15, enacted by Ga. L. 2022, p. 26, § 4-6/HB 1013; Ga. L. 2025, p. 1029, § 35(29)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "the council" for "the Criminal Justice Coordinating Council" near the beginning of this Code section.

Law reviews.
For article, "HB 1013: Georgia Mental Health Parity Act," see 39 Ga. St. U.L. Rev. 145 (2022).

35-6A-16. (Repealed effective December 31, 2030.) Grant program for enforcement of motor vehicle related statutes; termination.

(a) The council shall, subject to available funding:

(1) Establish a grant program for the provision of funds to local law enforcement agencies and multi-jurisdiction task forces for the:

(A) Prevention, reduction, and investigation of motor vehicle and motor vehicle parts theft;

(B) Prevention, reduction, and investigation of motor vehicle related crime;

(C) Establishment of multi-jurisdiction task forces upon request of local law enforcement agencies;

(D) Investigation of fraud related to motor vehicle insurance, motor vehicle dealer purchases, and motor vehicle rental transactions and other forms of financial fraud relating to motor vehicles;

(E) Hiring of personnel by local law enforcement agencies for the purpose of preventing, reducing, and investigating motor vehicle related crime;

(F) Purchase of equipment and technology for support in motor vehicle related crime prevention, reduction, and investigation;

(G) Provision of training to local law enforcement agencies and multi-jurisdiction task forces relative to motor vehicle related crime prevention, reduction, and investigation; and

(H) Production of public awareness materials and programs relating to motor vehicle related crime prevention;

(2) Promote state-wide planning and coordination of the investigation and prosecution of crimes relating to motor vehicle and motor vehicle parts theft;

(3) Provide support to local prosecutors handling motor vehicle and motor vehicle parts theft related prosecutions; and

(4) Provide support to multi-jurisdiction task forces established by local law enforcement agencies for the purpose of preventing, reducing, and investigating motor vehicle related crime.

(b)(1) Any grant awarded pursuant to this Code section shall be upon recommendation from and after consideration by the Georgia Motor Vehicle Crime Prevention Advisory Board. Each grant application shall describe the type of motor vehicle related crime prevention, reduction, investigation, enforcement, prosecution, or offender rehabilitation program to be implemented. Such programs may include, but shall not be limited to:

(A) Multi-jurisdiction task forces and programs utilizing the National Insurance Crime Bureau task force which reduce motor vehicle related crime and increase the apprehension of motor vehicle and motor vehicle parts thieves and persons who attempt to defraud insurance companies;

(B) Motor vehicle related crime prevention efforts, activities, and public awareness campaigns intended to reduce victimization by motor vehicle related crime and fraud;

(C) The provision of specialized training for motor vehicle related crime investigation personnel, including, but not limited to, law enforcement personnel, local motor vehicle registration agents and title clerks, and port facility employees, in order to enhance

knowledge, skills, procedures, and systems to detect, prevent, and combat motor vehicle related crime and fraud;

(D) The provision of support and maintenance by one or more dedicated prosecutors who have the specific mission and expertise to provide legal guidance and prosecutorial continuity to complex criminal cases arising from the activities of a multi-jurisdiction task force; and

(E) The prevention of future criminal behavior by first-time offenders who have been charged, convicted, or adjudicated for a motor vehicle related crime.

(2) To the extent possible, grants awarded pursuant to this Code section shall be awarded to local law enforcement agencies, multi-jurisdiction task forces, or other qualified applicants in a variety of geographic areas of the state. The ability to contribute additional moneys or match funding for a program shall not be required as a condition of receipt of a grant pursuant to this Code section.

(c) For the purposes of this Code section, the council may accept and use federal funds granted by Congress or executive order, as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds shall not commit state funds and shall not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available.

(d) The council shall prepare an annual report relative to activities and programs of the council and any funds received and grants awarded pursuant to this Code section. Such report may include recommendations for changes in state programs, statutes, policies, budgets, and standards relating to improving and supporting the motor vehicle related crime prevention initiatives of local law enforcement agencies and multi-jurisdiction task forces. Such report shall be submitted annually to the General Assembly and the Governor by December 1.

(e) This Code section shall stand repealed on December 31, 2030.

History.

Code 1981, § 35-6A-16, enacted by Ga. L. 2023, p. 83, § 1/HB 268, effective July 1, 2023.

Effective date.

This Code section became effective July 1, 2023.

Cross references.

Motor Vehicle Chop Shop and Stolen and Altered Property Act, § 16-8-80 et seq.

Crimes of staging a collision or filing a fraudulent claim; penalty, § 33-1-9.1.

35-6A-17. (Repealed effective December 31, 2030.) Georgia Motor Vehicle Crime Prevention Advisory Board; membership; termination.

(a) There is established the Georgia Motor Vehicle Crime Prevention Advisory Board which shall be composed of:

(1) The director of the Georgia Bureau of Investigation or his or her designee from within the Georgia Bureau of Investigation;

(2) The state revenue commissioner or his or her designee from within the Department of Revenue;

(3) The Commissioner of Insurance or his or her designee from within the Department of Insurance;

(4) The Attorney General of Georgia or his or her designee from within the office of the Attorney General;

(5) A member of the Georgia State Patrol;

(6) A representative from an insurance company authorized to issue motor vehicle coverage in this state;

(7) A licensed new or used motor vehicle dealer;

(8) A licensed used motor vehicle parts dealer;

(9) A registered secondary metals recycler; and

(10) One representative from each of the following:

(A) A judge of a superior court in Georgia;

(B) The Georgia Association of Chiefs of Police;

(C) The Georgia Sheriffs' Association;

(D) The District Attorneys Association of Georgia;

(E) The National Insurance Crime Bureau;

(F) The Georgia Association of Criminal Defense Lawyers;

(G) The motor vehicle rental industry; and

(H) A consumer protection group.

(b) The Governor shall appoint those members listed in paragraphs (5) through (10) of subsection (a) of this Code section.

(c) Members of the Georgia Motor Vehicle Crime Prevention Advisory Board shall serve for terms of four years. The advisory board shall elect a chairperson from among its membership and may elect such other officers and committees as it considers appropriate. In the event of death, resignation, disqualification, or removal for any reason of any

member of the advisory board, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term. Membership on the advisory board shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership on the advisory board.

(d) Citizen members of the Georgia Motor Vehicle Crime Prevention Advisory Board shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21, as well as the mileage or transportation allowance authorized for state employees. Members of the advisory board who are state officials or state employees shall receive no compensation for their services on the advisory board but shall be reimbursed for expenses incurred in the performance of their duties as members of the advisory board in the same manner as they are reimbursed for expenses in their capacities as state officials or state employees. The funds necessary for the reimbursement of the expenses of state officials and state employees shall come from funds appropriated or otherwise available to their respective departments.

(e) The Georgia Motor Vehicle Crime Prevention Advisory Board shall solicit and review applications for grants authorized pursuant to Code Section 35-6A-15 and make recommendations to the council for the award thereof.

(f) This Code section shall stand repealed on December 31, 2030.

History.

Code 1981, § 35-6A-17, enacted by Ga. L. 2023, p. 83, § 1/HB 268, effective July 1, 2023; Ga. L. 2025, p. 1029, § 35(30)/SB 153, effective July 1, 2025.

Effective date.

This Code section became effective July 1, 2023.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "office of the Attorney General;" for "Office of the Attorney General;" in paragraph (a)(4).

CHAPTER 7

ORGANIZED CRIME PREVENTION COUNCIL

Sec.
35-7-1 through 35-7-5. [Reserved].

35-7-1 through 35-7-5. [Reserved].

History.
Ga. L. 1980, p. 396, §§ 1 — 5; Ga. L. 1993, p. 91, § 35 repealed by Ga. L. 2004, p. 988, § 2, effective May 17, 2004.

Editor's notes.
Ga. L. 2004, p. 988, § 2 repealed and reserved this chapter, effective May 17, 2004.

The former Code sections, relating to the Organized Crime Prevention Council, consisted of Code Sections 35-7-1 through 35-7-5.

CHAPTER 8

EMPLOYMENT AND TRAINING OF PEACE OFFICERS

Sec.	
35-8-1.	Short title.
35-8-2.	Definitions.
35-8-3.	Georgia Peace Officer Standards and Training Council; membership; organization; administrative assignment to department.
35-8-4.	Officers of council; quorum; minutes of meetings and records; reports to Governor and General Assembly.
35-8-5.	Compensation of members of council.
35-8-6.	Appointment of executive director of council; contracts for services; personnel; investigators; subpoenas; funding; gifts, grants, or donations.
35-8-7.	Powers and duties of council generally.
35-8-7.1.	Refusal to grant certificate; discipline of officer; grounds; restoration of certificate; emergency suspension of certification; inclusion on a Giglio list; notice of investigation; retention of records.
35-8-7.2.	Administrative procedure; hearings; review.
35-8-7.3.	Civil suits by peace officers.
35-8-7.4.	Bias motivated intimidation of first responders; prosecution and penalty.
35-8-8.	(For effective date, see note.) Requirements for appointment or certification of persons as peace officers and preemployment attendance at basic training course; form for candidates for sheriff.
35-8-8.1.	Employment related information; provision of notice.
35-8-9.	Completion of basic training course required; acceptance of other instruction; effect of failure to complete basic training requirements; limitation.
35-8-10.	Applicability and effect of certification requirements generally; requirements as to exempt persons.
35-8-11.	Basic course to be completed at schools certified by council.
35-8-12.	Certification to use speed detection devices; withdrawal or suspension of certificate.
35-8-13.	[Reserved] Training and certification of police chaplains.
35-8-13.1.	Training and certification of municipal probation officers.
35-8-14.	Notice to law enforcement officer of placement on Giglo list; investigation; impact.
35-8-15.	Preparation and maintenance of employment records by law enforcement units and council; release of records.
35-8-16.	Effect of standards and training requirements provided in chapter; adoption of additional requirements by law enforcement units.
35-8-17.	Effect of peace officer's failure to comply with chapter generally; civil actions against noncomplying peace officers and law enforcement units.
35-8-18.	Applicability of chapter to emergency peace officers.
35-8-19.	Appointment of citizen of adjoining state as peace officer.
35-8-20.	Training requirements for police chiefs, department heads, and wardens; effect of failure to fulfill training requirement; waivers.
35-8-20.1.	Training requirements for newly appointed police

Sec.	
	chiefs and department heads; effect of failure to fulfill training requirement; waiver.
35-8-21.	Training requirements for peace officers; effect of failure to fulfill training requirement; waiver; exemption for retired peace officers; confirmation of training.
35-8-21.1.	Use of retired peace and correctional officers in emergency or disaster; training; immunities; compensation; power of arrest.
35-8-22.	Reimbursement of training expenses by subsequent employer of peace officer; collection procedure; required documentation.
35-8-23.	Basic training course for communications officers; certification requirements; duties of council; rules and regulations.
35-8-24.	Training requirements for jail officers and juvenile correctional officers; exemptions.
35-8-25.	Training and certification of bomb technicians, explosive ordnance disposal technicians, and animal handlers; intergovernmental assistance agreements.
35-8-26.	(For effective date, see note.) TASER and electronic control weapons; requirements for use; establishment of policies; training.
35-8-27.	Training requirements for school resource officers.

Cross references.

Basic training courses for sheriffs, § 15-16-3.

Campus policemen generally, § 20-3-72 and § 20-8-1 et seq.

Conservation rangers and deputy conservation rangers, § 27-1-16 et seq.

Furnishing a copy of psychological or psychiatric evaluation to law enforcement officer upon request, § 31-33-7.

Hospital Peace Officers, § 31-54-1 et seq.

Appointment and powers of county police, § 36-8-1 et seq.

Powers and duties of investigators for state examining boards and office of joint-secretary, § 43-1-5.

Employment of peace officers by Governor's Inspector General, § 45-12-216.

Editor's notes.

By resolution (Ga. L. 1986, p. 1204), the General Assembly urged certain public organizations and state agencies to develop programs for the education and training of social services and criminal justice professionals in the areas of child abuse, sexual abuse, and sexual exploitation.

Administrative rules and regulations.

Administration of Council, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Peace Officer Standards and Training Council, Rule 464-1-.01 et seq.

Law reviews.

For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: State Labor Law and Federal Police Reform," see 51 Ga. L. Rev. 1209 (2017).

For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities," see 51 Ga. L. Rev. 1079 (2017).

For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: Commodifying Policing: A Recipe for Community-Police Tensions," see 51 Ga. L. Rev. 1047 (2017).

For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: The Problematic Prosecution of an Asian American Police Officer: Notes: From a Participant in People v. Peter Liang," see 51 Ga. L. Rev. 1023 (2017).

For article, "Symposium Protect and Serve: Perspectives on 21st Century Polic-

ing January 20, 2017: Keynote Address," see 51 Ga. L. Rev. 981 (2017).

For article, "Missing Police Body Camera Videos: Remedies, Evidentiary Fairness, and Automatic Activation," see 52 Ga. L. Rev. 57 (2017).

For article, "Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases," see 54 Ga. L. Rev. 1 (2019).

For article, "Violent Videos: Criminal Defense in a Digital Age," see 37 Ga. St. U.L. Rev. 305 (2021).

JUDICIAL DECISIONS

Noncompliance with conditions of Ga. L. 1970, p. 208, § 1 et seq. (see now O.C.G.A. Ch. 8, T. 35), by express terms of Ga. L. 1970, p. 208, § 15 (see now O.C.G.A. § 35-8-17), renders arrest unauthorized. The noncomplying peace officer, however, may be authorized to effect an arrest, under certain circumstances, as a private citizen. Mason v. State, 147 Ga. App. 179, 248 S.E.2d 302, 1978 Ga. App. LEXIS 2840 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Construction with indemnification law. — General Assembly did not intend for the requirements of the Peace Officer Standards and Training Act to be grafted onto the indemnification law, O.C.G.A. § 45-9-80 et seq. 1983 Op. Att'y Gen. No. 83-12.

Deputy sheriff subject to chapter. — Deputy sheriff having responsibility for county jail and arrest power is subject to Ga. L. 1970, p. 208, § 1 et seq. (see now O.C.G.A. Ch. 8, T. 35); further, a person cannot be so employed without the certificate required by Ga. L. 1970, p. 208, § 13 (see now O.C.G.A. § 35-8-10). 1971 Op. Att'y Gen. No. U71-128.

Person who ostensibly appears to be a law enforcement officer and who is killed while on duty, but who has not complied with the Peace Officer Standards and Training Act, is nonetheless a law enforcement officer for the purposes of state indemnification. 1983 Op. Att'y Gen. No. 83-12.

Candidate for sheriff is not affected by this chapter. 1971 Op. Att'y Gen. No. U71-110.

Park security officers not authorized or required to be peace officers. — Security officers of the North Georgia Mountains Authority are neither required nor authorized to become certified peace officers under this chapter. 1972 Op. Att'y Gen. No. 72-27 (see O.C.G.A. Ch. 8, T. 35; see also 1990 Op. Att'y Gen. 90-11).

State education board's security guards not "peace officers". — Since the State Board of Education cannot cloak the security guards it employs with a peace officer's power to make arrests, its security guards are not "peace officers" within the meaning of this chapter. 1978 Op. Att'y Gen. No. 78-3.

Campus policemen and other security personnel of University System institutions vested with the power to make arrests under O.C.G.A. § 20-3-72 are subject to the mandatory training requirements of O.C.G.A. Ch. 8, T. 35 and are consequently covered by the random drug testing provisions of O.C.G.A. § 45-20-90 et seq. 1990 Op. Att'y Gen. No. 90-11.

Use of same guards in both county correctional camps and county jails. — It is permissible under state law and the rules and regulations of the Department of Offender Rehabilitation (now Corrections) for same guards to be used to supervise inmates in both county correctional camps and county jails; however, certain practical considerations must be made concerning oaths, bonds, and this chapter. 1981 Op. Att'y Gen. No. U81-21.

Felony conviction disqualifying applicant not eliminated by pardon. — Pardon by the Board of Pardons and Paroles that relieves an individual convicted of a felony from civil and political disabilities does not eliminate

such a conviction as one which would disqualify an applicant under this chapter. 1976 Op. Att'y Gen. No. 76-9.

Investigators employed by solicitor's office of juvenile court. — Investigators employed by the solicitor's office of the juvenile court may not be authorized by the solicitor to carry weapons and may not exercise the powers of a peace officer unless the individuals are certified as peace officers pursuant to O.C.G.A. Ch. 8, T. 35. 1990 Op. Att'y Gen. No. U90-22.

35-8-1. Short title.

This chapter shall be known and may be cited as the "Georgia Peace Officer Standards and Training Act."

History.

Ga. L. 1970, p. 208, § 1.

Cross references.

Student loan repayment for peace officers, § 20-3-465.

Removal of law enforcement officer's personal identifiable information from public records, § 50-18-78.

Law reviews.

For annual survey of labor and employment law, see 57 Mercer L. Rev. 251 (2005).

For annual survey of labor and employment law, see 58 Mercer L. Rev. 211 (2006).

JUDICIAL DECISIONS

Records of private university's police force not subject to Public Records Act. — Records of a campus police force of a private university were not subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the state and the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2. The fact that the campus police performed a public function did not make their records public records. The fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make them officers or employees of a public office or agency for purposes of the Open Records Act. The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P., 271 Ga. App. 501, 610 S.E.2d 138, 2005 Ga. App. LEXIS 87 (2005), cert. denied, No. S05C0939, 2005 Ga. LEXIS 392 (Ga. May 23, 2005), superseded by statute as stated in Agnes Scott College v. Hartley, 321 Ga. App. 74, 741 S.E.2d 199, 2013 Ga. App. LEXIS 319 (2013), superseded by statute as stated in Smith v. Northside Hosp., Inc., 302 Ga. 517, 807 S.E.2d 909, 2017 Ga. LEXIS 954 (2017).

Construction with Whistleblower Act. — When a port authority officer alleged that the officer was discharged after the officer complained that the port authority was violating the authority's own rules and O.C.G.A. § 35-8-1, the officer stated a cognizable claim under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4(a)(2), (d)(2). Pattee v. Ga. Ports Auth., 477 F. Supp. 2d 1253, 2006 U.S. Dist. LEXIS 96164 (S.D. Ga. 2006).

College campus police officers did not qualify for immunity. — Campus police officers employed by a private college did not qualify as a state officer or employee who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. Hartley v. Agnes Scott College, 295 Ga. 458, 759 S.E.2d 857, 2014 Ga. LEXIS 502 (2014).

CPR certification not required. — Sheriff's deputies and police officers were entitled to official immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), as the deputies' and officers' failure to provide cardio-pulmonary resuscitation

(CPR) to the son of the parents was discretionary, and no malice was shown; the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., and the departments for which the officers and deputies worked did not require the officers and deputies to maintain CPR certification or to carry CPR equipment and the officers and deputies were not certified to perform CPR, and, even if the deputies and officers moved people away who were trying to help the son, this did not show malice, as the deputies and officers were concerned the people might harm the son. Daley v. Clark, 282 Ga. App. 235, 638 S.E.2d 376, 2006 Ga. App. LEXIS 1357 (2006), cert. denied, No. S07C0417, 2007 Ga. LEXIS 292 (Ga. Mar. 26, 2007).

Reversing reinstatement of officer on basis not raised before administrative body. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286, 2014 Ga. App. LEXIS 647 (2014).

35-8-2. Definitions.

As used in this chapter, the term:

(.1) "Affected peace officer" means a peace officer whose name is listed on a Giglio list.

(1) "Applicant" means a prospective peace officer who has not commenced employment or service with a law enforcement unit.

(2) "Candidate" means a peace officer who, having satisfied preemployment requirements, has commenced employment with a law enforcement unit but who has not satisfied the training requirement provided for in this chapter.

(3) "Council" means the Georgia Peace Officer Standards and Training Council.

(4) "Department head" means the chief executive or head of a state department or agency, a county, a municipality, or a railroad who is a peace officer and whose responsibilities include the supervision and assignment of one or more employees or the performance of administrative and managerial duties of a police agency or law enforcement unit. Such term does not include the Attorney General, the director of the Georgia Drugs and Narcotics Agency, a district attorney, a solicitor-general, a county or municipal fire chief, or peace officers employed exclusively as investigators of any such offices who do not exercise any law enforcement supervisory or managerial duties. The provisions of this paragraph shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(4.1) "Detention facility" means a municipal or county jail used for the detention of persons charged with or convicted of a felony, a misdemeanor, or a municipal or county ordinance, but shall not include a facility customarily used to hold one or more persons for a

period not to exceed eight hours while any such person awaits processing, booking, court appearance, or release.

(5) "Emergency peace officers" means any peace officers who are employed or appointed to act as peace officers during an emergency or disaster which has been so declared by the chief executive officer of the state and whose status as peace officers is intended to be temporary and for that limited purpose.

(5.01) "Giglio list" means a list of names compiled and maintained by a prosecuting attorney of officers disqualified from trial testimony because of identified or alleged issues of credibility or bias.

(5.1) "Jail officer" means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(5.2) "Juvenile correctional facility" means a facility operated by the Department of Juvenile Justice and used for the detention of youth who are delinquent or who are alleged to be delinquent or a facility operated by the Department of Juvenile Justice used for the care, treatment, and rehabilitation of juvenile offenders.

(5.3) "Juvenile correctional officer" means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(6) "Law enforcement support personnel" means persons, other than peace officers, whose primary employment with a law enforcement unit consists of performing functions directly related to the prevention, detection, or investigation of crime.

(7) "Law enforcement unit" means:

(A) Any agency, organ, or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime;

(B) The Office of Permits and Enforcement of the Department of Transportation, the Department of Juvenile Justice and its institutions and facilities for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department or institutions, and the office or section in the Department of Juvenile Justice in which persons are assigned who have been designated by the commissioner to investigate and apprehend delinquent children and any child with a

pending juvenile court case alleging the child to be a child in need of services; and

(C) The Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, and county correctional institutions for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department, board, or institutions.

(8) "Peace officer" means, for purposes of this chapter only:

(A) An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime;

(B) An enforcement officer who is employed by the Department of Transportation in its Office of Permits and Enforcement and any person employed by the Department of Juvenile Justice who is designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services;

(B.1) Personnel who are authorized to exercise the power of arrest, who are employed or appointed by the Department of Juvenile Justice, and whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, the supervision of delinquent children in the department's institutions, facilities, or programs, or the supervision of delinquent children under intensive supervision in the community;

(C) Personnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, county probation systems, and county correctional institutions; and

(D) An administrative investigator who is an agent, operative, investigator, or officer of this state whose duties include the prevention, detection, and investigation of violations of law and the enforcement of administrative, regulatory, licensing, or certification requirements of his or her respective employing agency.

Law enforcement support personnel are not peace officers within the

meaning of this chapter, but they may be certified upon voluntarily complying with the certification provisions of this chapter.

(8.1) "Requesting entity" means any law enforcement agency or other entity within this state empowered by law to maintain a law enforcement unit.

(8.2) "Retired correctional officer" means any retired correctional officer certified by the council.

(9) "Retired peace officer" means a retired law enforcement officer who, prior to his or her retirement from service with the state or a subdivision or municipality thereof, was a peace officer within the meaning of such term as defined in paragraph (8) of this Code section. A retired peace officer may be certified or registered upon voluntarily complying with the certification or registration provisions of this chapter. Such term shall also mean a retired law enforcement officer who retired from service with the United States who meets all criteria as specified by the council for such classification; provided, however, that such classification shall not exempt such officer from satisfying the minimum employment and training requirements of this chapter if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

(10) "School" means any school, college, university, academy, or training program approved by the council which offers basic law enforcement training and which consists of a combination of a course curriculum, instructors, and facilities.

(10.1) "School resource officer" means a peace officer whose primary employment or assigned duties with a law enforcement unit is assignment or appointment to a public elementary school or secondary school.

(11) "Speed detection device" means that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name "Vascar," any device designed to measure the speed or velocity of motor vehicles using the Doppler principle of radio detection and ranging and commonly marketed under the name "radar," or any similar device, including but not limited to laser, operating under the same or similar principle, which device is approved by the department for the measurement of speed, including any device for the measurement of speed or velocity based upon the Doppler principle of radar or speed timing principle of laser.

History.

Ga. L. 1970, p. 208, §§ 2, 14; Ga. L. 1975, p. 1165, §§ 2, 3, 10; Ga. L. 1976, p. 395, §§ 1-5; Ga. L. 1978, p. 992, §§ 1, 2; Ga. L. 1978, p. 2299, § 1; Ga. L. 1980, p. 979, § 1; Ga. L. 1981, p. 778, § 1; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 1, 2, 5, 6; Ga. L. 1985, p. 283, § 1; Ga. L. 1987, p. 1141, § 1; Ga. L. 1989, p. 568, § 1; Ga. L. 1993, p. 91, § 35; Ga. L. 1993,

p. 966, §§ 1, 2; Ga. L. 1995, p. 880, § 1; Ga. L. 1995, p. 1238, § 1; Ga. L. 1996, p. 1281, § 1; Ga. L. 1997, p. 582, §§ 1, 2; Ga. L. 1997, p. 1453, § 1; Ga. L. 1997, p. 1488, §§ 2A, 2B, 7A, 7B; Ga. L. 1998, p. 128, § 35; Ga. L. 1998, p. 224, § 2; Ga. L. 1999, p. 777, §§ 2, 3; Ga. L. 2012, p. 775, § 35/HB 942; Ga. L. 2013, p. 294, § 4-45/HB 242; Ga. L. 2014, p. 382, § 1/SB 324; Ga. L. 2015, p. 422, § 5-56/HB 310; Ga. L. 2017, p. 673, § 1-1/SB 149; Ga. L. 2020, p. 481, § 1/SB 341; Ga. L. 2025, p. 420, § 3/HB 288, effective May 12, 2025; Ga. L. 2025, p. 1029, § 35(42)(S)/SB 153, effective July 1, 2025.

Amendments.

The first 2025 amendment, effective May 12, 2025, added paragraphs (.1) and (5.01).

The second 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "department" for "Department of Public Safety" in paragraph (11).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, "Department of Juvenile Justice" was substituted for "Department of Children and Youth Services" in subparagraph (8)(B).

Editor's notes.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Administrative rules and regulations.

Definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Peace Officer Standards and Training Council, Rule 464-2-.01 et seq.

Law reviews.

For review of 1996 use of radar speed detection devices legislation, see 13 Ga. St. U.L. Rev. 244 (1996).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Power to direct owner from burning building. — Under the police power, a deputy sheriff is authorized to go upon private property and direct the owner to move back from a burning building, when the deputy has been made aware of the possibility of an explosion, and in the deputy's opinion the safety of a 21/2-year-old child was unnecessarily endangered because of the proximity to the burning structure. Veit v. State, 182 Ga. App. 753, 357 S.E.2d 113, 1987 Ga. App. LEXIS 2656 (1987).

Construction with other law. — Juvenile's interference with a juvenile probation officer's attempt to take the juvenile into custody, after the juvenile tested positive for illegal drug use, was sufficient to support an adjudication under O.C.G.A. § 16-10-24(b); moreover, the appeals court was not persuaded by the juvenile's contention that O.C.G.A. § 42-8-30 specifically limited the role of the "probation supervisor" over juveniles to those counties in which no juvenile probation system existed. In the Interest of M.M., 287 Ga. App. 233, 651 S.E.2d 155, 2007 Ga. App. LEXIS 915 (2007), cert. denied, No. S08C0022, 2008 Ga. LEXIS 95 (Ga. Jan. 28, 2008).

Court lacked subject matter jurisdiction. — Trial court erred by entering a default judgment against a police officer for failing to timely answer because the officer was immune from suit on the claim brought under state law; thus, the default judgment entered on that claim was a nullity and the trial court

lacked subject matter jurisdiction and should have dismissed the state law cause of action for lack of subject matter jurisdiction. Ferrell v. Young, 323 Ga. App. 338, 746 S.E.2d 167, 2013 Ga. App. LEXIS 591 (2013).

Discretionary authority. — With respect to law enforcement officers claiming qualified immunity in a case alleging that certain searches violated Fourth Amendment rights, the officers could show that the officers were acting within the officers' discretionary authority because it is clear that performing searches and assisting in arrests are legitimate job-related functions within the power of law enforcement bodies under O.C.G.A. § 35-8-2(8)(A). Mehta v. Foskey, 877 F. Supp. 2d 1367, 2012 U.S. Dist. LEXIS 91009 (S.D. Ga. 2012).

Immunity when probation officer assisting local law enforcement in pursuit. — In a suit by a passenger against a Department of Corrections (DOC) probation officer whose vehicle collided with the passenger's vehicle during a police chase, because the officer's actions were consistent with DOC's non-defective policy, which allowed the officer to assist law enforcement, DOC had sovereign immunity under O.C.G.A. § 50-21-24(6). Britt v. Jackson, 348 Ga. App. 159, 819 S.E.2d 677, 2018 Ga. App. LEXIS 529 (2018), cert. denied, No. S19C0483, 2019 Ga. LEXIS 539 (Ga. Aug. 5, 2019).

OPINIONS OF THE ATTORNEY GENERAL

Power to arrest is essential to status of peace officer. — Employee of agency who is required by oath of office to preserve public order and protect life and property, but does not have power to make arrests, is not a peace officer under this definition. 1981 Op. Att'y Gen. No. 81-31.

Power to arrest confers duty to preserve public order. — There are two conditions provided for in the definition of a peace officer, but it must be understood that once a person is given the power to arrest it necessarily follows that the person has a duty to preserve the public order. 1981 Op. Att'y Gen. No. 81-31.

District attorney not law enforcement officer or peace officer. — District attorney does not fit under any definition of a law enforcement officer or peace officer in this state. 1980 Op. Att'y Gen. No. U80-33.

Park security officers not "peace officers". — Though the security officers of the North Georgia Mountains Authority do have the power of arrest, the security officers fail to meet the definition of "peace officer" on two other grounds: (1) the security officers are not responsible for the enforcement of the criminal laws of the state or its political subdivisions; and (2) the security guards are not employed by the Department of Public Safety, a municipality, or a county. 1972 Op. Att'y Gen. No. 72-27. (See also 1990 Op. Att'y Gen. 90-11).

Sheriffs and deputy sheriffs of municipal courts are not "peace officers" as defined by this section since they are not employed by a law enforcement unit. 1975 Op. Att'y Gen. No. U75-7.

Independent communications department not "law enforcement unit". — Communications department, independent from the law enforcement agencies the department serves, which is primarily an information transmitting department, is not a "law enforcement unit" as defined in paragraph (7) of O.C.G.A. § 35-8-2. 1983 Op. Att'y Gen. No. 83-67.

Intent of General Assembly regarding certification of persons employed to use speed detection devices was to have people certified no matter which type of device is used as long as the device itself fits within the definition provided for under paragraph (11) of code O.C.G.A. § 35-8-2. 1981 Op. Att'y Gen. No. 81-77.

Paragraph (11) does not include devices not considered under § 40-14-1. — Paragraph (11) of Ga. L. 1970, p. 208, §§ 2 and 14 (see now O.C.G.A. § 35-8-2) specifically defines certain devices and does not bring in any additional types of devices not considered under the definition found in Ga. L. 1970, p. 435, § 3 (see now O.C.G.A. § 40-14-1). 1981 Op. Att'y Gen. No. 81-77.

Definition of "speed detection device" in Ga. L. 1970, p. 208, §§ 2 and 14 (see now O.C.G.A. § 35-8-2) does not conflict with the definition for the same device in Ga. L. 1970, p. 435, § 3 (see now O.C.G.A. § 40-14-1). 1981 Op. Att'y Gen. No. 81-77.

Stopwatch as "speed detection device". — Although not normally thought to be a "speed detection device," a stopwatch meets this definition when the stopwatch is being used in traffic enforcement. 1981 Op. Att'y Gen. No. 81-77.

Stopwatch is a mechanism similar to "Vascar." In actuality "Vascar" is a type of stopwatch combined with a computer which handles the mathematical functions. 1981 Op. Att'y Gen. No. 81-77.

RESEARCH REFERENCES

Am. Jur. 2d.

8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 947, 948.

C.J.S.

23 C.J.S., Criminal Procedure and Rights of the Accused, § 852. 62 C.J.S., Municipal Corporations, § 560 et seq.

35-8-3. Georgia Peace Officer Standards and Training Council; membership; organization; administrative assignment to department.

(a) The Georgia Peace Officer Standards and Training Council is established. The council shall consist of 22 voting members and five advisory members.

(b) The voting members shall consist of:

(1) An appointee of the Governor who is not the Attorney General, the commissioner or his or her designee, the director of investigation of the Georgia Bureau of Investigation or his or her designee, the president of the Georgia Association of Chiefs of Police or his or her designee, the president of the Georgia Sheriffs Association or his or her designee, the president of the Georgia Municipal Association or his or her designee, the president of the Association County Commissioners of Georgia or his or her designee, the president of the Peace Officers' Association of Georgia or his or her designee, the commissioner of corrections or his or her designee, the commissioner of community supervision or his or her designee, the chairperson of the State Board of Pardons and Paroles or his or her designee, the president of the Georgia Prison Wardens Association or his or her designee, the commissioner of juvenile justice or his or her designee, and the commissioner of natural resources or his or her designee, who shall be ex officio members of the council;

(2) Six members who shall be appointed by the Governor for terms of four years, their initial appointments, however, being two for four-year terms, two for three-year terms, and two for two-year terms. Appointments shall be made so that there are always on the

council the following persons who are appointed by the Governor: one chief of police; two municipal police officers other than a chief of police; one county sheriff; one city manager or mayor; and one county commissioner. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment, and successors shall serve for the unexpired term. Any member may be appointed for additional terms; and

(3) Two members who are peace officers and who shall be appointed by the Governor for terms of four years. Neither person shall serve beyond the time he or she is actively employed or serves as a peace officer. Vacancies shall be filled in the same manner as the original appointment, and successors shall serve for the unexpired term.

(c) Five advisory members shall be appointed by the council to serve on the council in an advisory capacity only without voting privileges.

(d) Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(e) The council is assigned to the department for administrative purposes only, as prescribed in Code Section 50-4-3.

History.

Ga. L. 1970, p. 208, § 3; Ga. L. 1972, p. 866, § 1; Ga. L. 1972, p. 1015, § 1606; Ga. L. 1975, p. 1165, § 1; Ga. L. 1976, p. 395, § 6; Ga. L. 1976, p. 1684, §§ 1, 2; Ga. L. 1977, p. 717, §§ 2-4; Ga. L. 1982, p. 3, § 35; Ga. L. 1982, p. 2478, §§ 3, 7, 8; Ga. L. 1983, p. 3, § 26; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1997, p. 1488, § 3; Ga. L. 2015, p. 422, § 5-57/HB 310; Ga. L. 2016, p. 247, § 1/SB 279; Ga. L. 2025, p. 1029, § 35(31)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted "of public safety" following "commissioner" near the beginning of paragraph (b)(1) and substituted "the department" for "the Department of Public Safety" in subsection (e).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, a second "the" preceding "time he" was deleted in the second sentence of paragraph (b)(3).

Editor's notes.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Judicial immunity. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and its investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A.

§ 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's First and Fourteenth Amendment substantive due process rights, was dismissed. Evans v. Ga. Peace Officer Stds. & Training Council, No. 1:05-CV-2579-RLV, 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

RESEARCH REFERENCES

C.J.S.
73 C.J.S., Public Administrative Law and Procedure, § 83.

35-8-4. Officers of council; quorum; minutes of meetings and records; reports to Governor and General Assembly.

The business of the council shall be conducted in the following manner:

(1) The officers of the council, who shall consist of a chairperson, vice chairperson, and secretary-treasurer, shall be elected at the first meeting of each calendar year.

(2) Eleven members of the council shall constitute a quorum for the transaction of business.

(3) The council shall maintain minutes of its meetings and such other records as it deems necessary.

(4) The council shall report at least annually to the Governor and to the General Assembly as to its activities.

History.
Ga. L. 1970, p. 208, § 4; Ga. L. 2018, p. 336, § 1/HB 867.

35-8-5. Compensation of members of council.

The members of the council shall receive no salary but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.

History.
Ga. L. 1970, p. 208, § 5.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 279 et seq.

C.J.S.
67 C.J.S., Officers and Public Employees, § 377 et seq.

35-8-6. Appointment of executive director of council; contracts for services; personnel; investigators; subpoenas; funding; gifts, grants, or donations.

(a) The council may appoint an executive director who shall serve at the pleasure of the council. The council shall establish the compensation for the executive director.

(b) The executive director may contract for such services as may be necessary and authorized in order to carry out the provisions of this chapter and may employ such other professional, technical, and clerical personnel deemed necessary to carry out the purposes of this chapter.

(c) The executive director is authorized to appoint certain investigators for the purpose of carrying out the provisions of this chapter. The executive director and persons so appointed shall meet all employment and training requirements of this chapter as for all other peace officers and shall have all of the powers of other peace officers. Any investigator of the council shall have access to and may examine any writing, document, or other material which is deemed by the chairperson of the council to be related to the fitness of any peace officer or applicant to practice as a peace officer. The chairperson or executive director of the council may issue subpoenas to compel such access. When a subpoena is disobeyed, the council may apply to the superior court of the county where the person to whom the subpoena is issued resides for an order requiring obedience. Failure to comply with such order shall be punishable as for contempt of court.

(d) Investigators provided for under subsection (c) of this Code section may retain their weapon and badge upon retirement pursuant to the requirements and procedures provided for under Code Section 35-1-20.

(e) The funds necessary to carry out this chapter shall come from the funds appropriated to and available to the council and from any other available funds.

(f) The council is authorized to accept and use gifts, grants, donations, property, both real and personal, and services for the purpose of carrying out this chapter.

(g) Any funds, property, or services received as gifts, grants, or donations shall be kept separate and apart from any funds appropriated to the council; and the funds, property, or services so received by gifts, grants, or donations shall be the property and funds of the council and, as such, shall not lapse at the end of each fiscal year but shall remain under the control of and subject to the direction of the council for carrying out this chapter.

History.
Ga. L. 1970, p. 208, § 7; Ga. L. 1975, p. 1165, § 5; Ga. L. 1988, p. 483, § 1; Ga. L. 1989, p. 514, § 1; Ga. L. 2018, p. 336, § 2/HB 867.

OPINIONS OF THE ATTORNEY GENERAL

Council personnel selected and appointed with concurrence of Department of Public Safety. — Staff, clerical, and technical assistants, and other personnel of the council are to be selected and appointed with the concurrence of the Department of Public Safety and the council, and are to serve only so long as their appointment is mutually agreeable. 1975 Op. Att'y Gen. No. 75-89.

Appointment of investigators. — Subsection (c) of O.C.G.A. § 35-8-6, which authorizes the Executive Director of the Georgia Peace Officer Standards and Training Council to appoint investigators with the power of arrest, allows for the appointment of officers exempted from the certification requirements by the grandfathering provisions in O.C.G.A. § 35-8-10(c) whose registrations have remained in effect, and who are in compliance with their training requirements. 1989 Op. Att'y Gen. No. U89-9.

Responsibility for the proper administration of any fund received lies with the council; as an activity of the Department of Public Safety, though, the council is subject to budgetary adjustments just as any other activity within the department. 1975 Op. Att'y Gen. No. 75-89.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, States, Territories, and Dependencies, § 70.

35-8-7. Powers and duties of council generally.

The council is vested with the following powers and duties:

(1) To meet at such times and places as it may deem necessary;

(2) To contract with other agencies, public or private, or persons as it deems necessary for the rendering and affording of such services, facilities, studies, and reports to the council as will best assist it to carry out its duties and responsibilities;

(3) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(4) To establish criteria to be used in certifying schools authorized to conduct training required by this chapter;

(5) To certify schools as authorized to conduct training required by this chapter;

(6) To prescribe minimum qualifications for directors of schools certified to conduct training required by this chapter;

(7) To certify such school directors;

(8) To establish minimum qualifications for instructors at schools certified to conduct training required by this chapter;

(9) To certify instructors authorized to conduct training required by this chapter;

(10) To reevaluate certified schools annually to determine if such schools shall continue to be certified;

(11) To withdraw or suspend certification of schools, school directors, and instructors who fail to continue to meet or maintain, at any given time, the criteria and qualifications required for school, school director, or instructor certification;

(12) To determine whether a candidate has met the requirements of this chapter and is qualified to be employed as a peace officer and to issue a certificate to those so qualified;

(13) To certify to designated law enforcement units a candidate's successful completion of the course;

(14) To refuse to grant a certificate to or to discipline a certified peace officer or an exempt peace officer under this chapter or any antecedent law;

(14.1) Upon notice from a prosecuting attorney, to review the factual basis for the inclusion of any affected peace officer on a Giglio list;

(15) To establish and modify the curriculum, including the methods of instruction, composing the basic training courses and to set the minimum number of hours therefor;

(16) To establish and recommend curricula for such advanced, in-service, and specialized training courses as the council shall deem advisable and to recognize the completion of such courses by the issuance of certificates;

(17) To provide technical assistance as requested by law enforcement units;

(18) To provide for and administer the registration of all exempt peace officers;

(19) To research, plan, and establish policy relative to peace officer training and to develop and coordinate the delivery of peace officer training programs through such agencies and institutions as the council may deem appropriate;

(20) To establish as part of the curriculum for basic and in-service training courses for all peace officers training on organized criminal activity and criminal street gangs;

(21) To develop, adopt, and issue advanced or professional peace officer certificates based upon the attainment of specified education, advanced or specialized training, and experience as the council may determine;

(22) To provide and administer the certification of persons qualified to operate radar speed detection devices and to withdraw or suspend such certificates as provided for in this chapter;

(23) To impose administrative fees, as determined by the council, for services provided pursuant to the provisions of this chapter;

(24) To adopt in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such rules and regulations as are necessary to carry out the purposes of this chapter; and

(25) To do any and all things necessary or convenient to enable it to perform wholly and adequately its duties and to exercise the power granted to it.

History.

Ga. L. 1970, p. 208, § 6; Ga. L. 1975, p. 1165, § 4; Ga. L. 1976, p. 395, § 7; Ga. L. 1977, p. 713, §§ 1, 2; Ga. L. 1977, p. 717, § 1; Ga. L. 1978, p. 1680, § 1; Ga. L. 1980, p. 979, § 2; Ga. L. 1985, p. 539, § 1; Ga. L. 1987, p. 3, § 35; Ga. L. 1997, p. 1488, § 4; Ga. L. 1998, p. 270, § 12; Ga. L. 2010, p. 212, § 1/SB 324; Ga. L. 2025, p. 420, § 4/HB 288, effective May 12, 2025.

Amendments.

The 2025 amendment, effective May 12, 2025, added paragraph (14.1).

Editor's notes.

Ga. L. 2010, p. 212, § 2/SB 324, not codified by the General Assembly, provides: "Nothing contained in this Act shall be construed so as to suggest that any administrative fees that may have been collected by the Georgia Peace Officer Standards and Training Council prior to this Act's enactment were collected without authority. Nor shall this Act be construed so as to create in any person paying administrative fees prior to the effective date of this Act a cause of action for the payment of such fees." This Act became effective May 20, 2010.

Administrative rules and regulations.

Administration of Council, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Peace Officer Standards and Training Council, Rule 464-1-.01 et seq.

Law reviews.

For review of 1998 legislation relating to crimes and offenses, see 15 Ga. St. U.L. Rev. 80 (1998).

JUDICIAL DECISIONS

Certification requirement. — Since the arresting officer met all the requirements of Ga. L. 1982, p. 3, § 35 (see now O.C.G.A. § 35-8-8) and had successfully completed the course required by Ga. L. 1975, p. 1165, § 6 (see now O.C.G.A. § 35-8-9), the officer was not disqualified to make arrests on the ground that the officer had not yet been certified under Ga. L. 1980, p. 979, § 2 (see now O.C.G.A. § 35-8-7). Davis v. State, 164 Ga. App. 312, 295 S.E.2d 131, 1982 Ga. App. LEXIS 3298 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Council authorized to take prior training into account when deciding on individual's certification. — Since the council is authorized to determine who, in the council's judgment and discretion, has fulfilled the training requirements of this chapter and ought to be certified, the council is fully consonant with the council's responsibility and authority to take prior law enforcement training into account when deciding whether or not to certify an individual as a peace officer, regardless of the individual's status at the time the individual received such training. 1975 Op. Att'y Gen. No. 75-118.

Responsibility for the proper administration of any funds received lies with the council; as an activity of the Department of Public Safety, though, the council is subject to budgetary adjustments just as any other activity within the department. 1975 Op. Att'y Gen. No. 75-89.

Reimbursement of school security personnel. — Georgia Peace Officer Standards and Training Council is required to reimburse school security personnel employed by the board of education of a county or an independent board of education of a municipality for the various public schools for certain costs incurred in training. 1989 Op. Att'y Gen. 89-29.

Council exceeds powers if council reimburses private personnel. — While it would be fully consistent with the council's statutorily delegated authority to assume the responsibility for reimbursing state and local government units over whose law enforcement personnel the council has mandatory training and certification authority, the council would be exceeding the council's statutory powers if the council were to administrate reimbursement procedures or authorize reimbursement for civilians or other private personnel whom the council is not mandated to train or certify. 1975 Op. Att'y Gen. No. 75-118.

Federal law on gun ban for individuals convicted of domestic violence. — For discussion of how amendments to the Gun Control Act of 1968, 18 U.S.C. § 921 et seq., banning possession of guns by individuals convicted of a misdemeanor crime of domestic violence, affect the council's responsibilities in certification matters, see 1996 Op. Att'y Gen. No. 96-25.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, § 50 et seq.

C.J.S.

67 C.J.S., Officers and Public Employees, §§ 313 et seq., 323. 73 C.J.S., Public Administrative Law and Procedures, § 108 et seq.

35-8-7.1. Refusal to grant certificate; discipline of officer; grounds; restoration of certificate; emergency suspension of certification; inclusion on a Giglio list; notice of investigation; retention of records.

(a) The council shall have authority to refuse to grant a certificate to an applicant or to discipline a council certified officer or exempt officer under this chapter or any antecedent law upon a determination by the council that the applicant, council certified officer, or exempt officer has:

(1) Failed to demonstrate the qualifications or standards for a certificate provided in this chapter or in the rules and regulations of

the council. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the council that he or she meets all requirements for the issuance of a certificate;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being an officer or in any document connected therewith or practiced fraud or deceit or intentionally made any false statement in obtaining a certificate to practice as an officer;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or a verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon. However, the council may not deny a certificate to an applicant with a conviction if the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction. The conviction of a crime involving moral turpitude shall be conclusive of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection;

(5) Had his or her certificate or license to practice as an officer revoked, suspended, or annulled by any lawful certifying or licensing authority; had other disciplinary action taken against him or her by any lawful certifying or licensing authority; or was denied a certificate or license by any lawful certifying or licensing authority;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public; such conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer;

(7) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the council, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, so long as such law, rule, or regulation relates to or in part regulates the practice of an officer;

(8) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state;

(10) Become unable to perform as an officer with reasonable skill and safety to citizens by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition; or

(11) Been suspended or discharged by the officer's employing law enforcement unit for disciplinary reasons.

(b)(1) When the council finds that any person is unqualified to be granted a certificate or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the council may take any one or more of the following actions:

(A) Refuse to grant a certificate to an applicant;

(B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the officer;

(C) Suspend any certificate for a definite period;

(D) Limit or restrict any certificate;

(E) Revoke any certificate; or

(F) Condition the penalty, or withhold formal disposition, upon the officer's completing such care, counseling, or treatment, as directed by the council.

(2) In addition to and in conjunction with the foregoing actions, the council may make a finding adverse to the applicant or officer but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the officer on probation, which may be vacated upon noncompliance with such reasonable terms as the council may impose.

(c) In its discretion, the council may restore and reissue a certificate issued under this chapter or any antecedent law to an officer and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) Upon arrest or indictment of an officer for any crime which is punishable as a felony, the executive director of the council shall order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its

authority to discipline any officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

(e)(1) Upon initiating an investigation of an officer for possible disciplinary action or upon disciplining an officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such officer of the investigation or disciplinary action. In the case of an investigation, it shall be sufficient to identify the officer and state that a disciplinary investigation has been opened. Notice of the initiation of an investigation shall be sent by priority mail. If the investigation is completed without any further action, notice of the termination of such investigation shall also be provided to the head of the employing agency. In the case of disciplinary action, the notice shall identify the officer and state the nature of the disciplinary action taken. The notice of disposition shall be sent only after the action of the council is deemed final. Such notice shall be sent by priority mail.

(2) In reviewing the inclusion of the name of an affected peace officer on a Giglio list pursuant to this subsection, the council shall consider:

(A) Any bias or injury against a specific defendant alleged by the prosecuting attorney to have occurred when the prosecuting attorney's notice relates to a specific criminal prosecution;

(B) Allegations or instances of previous misleading, deceptive, untrue, or fraudulent statements made by the affected peace officer to the prosecuting attorney or while serving as a witness for the prosecuting attorney;

(C) Whether the affected peace officer has pleaded guilty or been convicted, by final judgment and when all appeals have been exhausted, of an offense punishable as false swearing within the meaning of Code Section 16-10-71 or an offense of perjury pursuant to Code Section 16-10-70; and

(D) Any allegations of acts or omissions which would otherwise subject the affected peace officer to discipline pursuant to subsection (a) of this Code section.

(3) Upon completion of review pursuant to this subsection, the council shall notify the affected peace officer and the employing agency of the affected peace officer of its determination concerning the factual basis asserted by the prosecuting attorney. If the council determines from its review that discipline of the affected peace officer

is warranted, notice sent pursuant to this paragraph shall include such information. If the council determines that discipline of the affected peace officer is not warranted, such matter shall be administratively dismissed, the affected peace officer's public status shall not reflect the occurrence of such investigation, and notice of such action shall be delivered to the head of the employing agency, the affected peace officer, and the prosecuting attorney who placed the affected peace officer on a Giglio list. No peace officer shall be suspended, revoked, or otherwise sanctioned solely based upon the placement of his or her name on a Giglio list.

(f) Upon initiating an investigation of a peace officer for possible disciplinary action or upon disciplining a peace officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such peace officer of the investigation or disciplinary action. It shall be sufficient for such notice to identify the peace officer and state that a disciplinary investigation has been opened. If the investigation is completed without any further action, notice of the termination of such investigation shall also be provided to the head of the employing agency. In the case of disciplinary action, the notice shall identify the officer and state the nature of the disciplinary action taken. The notice of disposition shall be sent only after the action of the council is deemed final.

(g) If the certification of an a peace officer is suspended or revoked by either the executive director or council pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs the peace officer; the district attorney of the judicial circuit in which such law enforcement agency is located; and the solicitor of the state court, if any, of the county in which such law enforcement agency is located. It shall be sufficient for this notice to identify the peace officer and state the length of time, if known, that the peace officer will not have powers of arrest.

(h) Any notice required by this Code section shall be sent by certified mail or certificate of mailing. As used in this subsection, the term "certificate of mailing" means a delivery method utilized by the United States Postal Service which provides evidence that an item has been sent and the date such item was accepted.

(i) Notwithstanding Article 5 of Chapter 18 of Title 50, records of an investigation of a peace officer by the council, including, but not limited to, records used to investigate complaints against a peace officer and polygraph case files containing official polygraph reports, shall be retained for 30 years following the date that such investigation is deemed concluded by the council and then such records may be destroyed; provided, however, that the council shall have the authority to destroy such records prior to such 30 years where such peace officer

is deceased and no action upon the complaint was taken by the council beyond the council's initial intake of such complaint.

History.

Code 1981, § 35-8-7.1, enacted by Ga. L. 1985, p. 539, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 2008, p. 237, § 1/SB 373; Ga. L. 2011, p. 506, § 1/HB 203; Ga. L. 2013, p. 864, § 1/HB 366; Ga. L. 2019, p. 305, § 1/HB 325; Ga. L. 2025, p. 420, § 5/HB 288, effective May 12, 2025.

Amendments.

The 2025 amendment, effective May 12, 2025, added subsections (e) and (h); redesignated former subsections (e), (f), and (g) as present subsections (f), (g) and (i), respectively; deleted the former last sentence in subsections (f) and (g), which read: "Such notice shall be sent by priority mail."; substituted "a peace officer" for "an officer", "the peace officer" for "the officer", and "such peace officer" for "such officer" throughout subsections (f), (g), and (i); in subsection (f), substituted "It shall be sufficient for such notice" for "In the case of an investigation, it shall be sufficient" at the beginning of the second sentence and deleted the former third sentence which read: "Notice of the initiation of an investigation shall be sent by priority mail."; and substituted "or council pursuant to this Code section, the council shall" for "or council, then the council shall" in the first sentence of subsection (g).

Law reviews.

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Agreement in violation of section void. — Purported agreement between a police officer and county human resources director that the officer would withdraw an appeal of the officer's termination if disciplinary materials were removed from the employee file to preserve the officer's Peace Officer Standards and Training Council (P.O.S.T.) certification was void and unenforceable because it would have violated not only the P.O.S.T. Council's regulations but also the record-keeping requirements of O.C.G.A. § 35-8-15 and the prohibition of O.C.G.A. § 35-8-7.1(a)(2). Maner v. Chatham County, 246 Ga. App. 265, 540 S.E.2d 248, 2000 Ga. App. LEXIS 1208 (2000).

Judicial immunity. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and the council's investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's First and Fourteenth Amendment substantive due process rights, was dismissed. Evans v. Ga. Peace Officer Stds. & Training Council, No. 1:05-CV-2579-RLV, 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

Peace officer's right against self-incrimination did not extend to administrative inquiry into job performance. — Because a peace officer's invocation of a right against self-incrimination could not shield that officer from an inquiry into the effect of that assertion on the officer's job performance, and because the record supported an administrative decision that the officer's refusal to cooperate in an investigation provided sufficient grounds for the Georgia Peace Officer Standards and Training Council to enter an order of decertification, the superior court erred in reversing an administrative law judge's decision upholding the decertification and finding that the officer's actions amounted to unprofessional conduct. Ga. Peace Officers Stds. & Training Council v. Anderson, 290 Ga. App. 91, 658 S.E.2d 840, 2008 Ga. App. LEXIS 254 (2008), cert. denied, No. S08C1167, 2008 Ga. LEXIS 576 (Ga. June 16, 2008).

RESEARCH REFERENCES

ALR.

Nonsexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying police officer's demotion or removal or suspension from duty, 19 A.L.R.6th 217.

35-8-7.2. Administrative procedure; hearings; review.

(a) Except as otherwise provided in subsection (b) of this Code section, proceedings of the council in the exercise of its authority to issue any certificate, conduct a review of the inclusion of an affected peace officer on a Giglio list, or discipline any peace officer under the terms of this chapter shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In all such proceedings the council shall have authority to compel the attendance of witnesses and the production of any book, writing, or document upon the issuance of a subpoena therefor. In any hearing in which the fitness of a peace officer or applicant is in question, the council may exclude all persons from its deliberation of the appropriate action and may, when it deems necessary, speak to the peace officer or applicant in private. All final determinations, findings, and conclusions of the council under this chapter are final and conclusive decisions of the matters involved.

(b) Proceedings for review of a final decision of the council shall be instituted by filing a petition within 30 days after the service of the final decision of the council or, if a rehearing is requested, within 30 days after the decision thereon. The petition shall be filed in the superior court of the county of residence of the petitioner.

History.

Code 1981, § 35-8-7.2, enacted by Ga. L. 1985, p. 539, § 2; Ga. L. 2025, p. 420, § 6/HB 288, effective May 12, 2025.

Amendments.

The 2025 amendment, effective May 12, 2025, inserted ", conduct a review of the inclusion of an affected peace officer on a Giglio list," in the first sentence in subsection (a).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, "superior court" was substituted for "Superior Court" in the second sentence of subsection (b).

JUDICIAL DECISIONS

Judicial immunity. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and the council's investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's First and Fourteenth Amendment substantive due process rights, was dismissed. Evans v. Ga. Peace Officer Stds. & Training

Council, No. 1:05-CV-2579-RLV, 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

Reversing agency decision on ground not raised before agency. — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. Ga. Peace Officer Standards and Training Council v. Hodges, 330 Ga. App. 145, 767 S.E.2d 286, 2014 Ga. App. LEXIS 647 (2014).

35-8-7.3. Civil suits by peace officers.

A peace officer shall have the right to bring a civil suit against any person, group of persons, organization, or corporation, or the head of an organization or corporation, for damages, either pecuniary or otherwise, suffered during the officer's performance of official duties, for abridgment of the officer's civil rights arising out of the officer's performance of official duties, or for filing a complaint against the officer which the person knew was false when it was filed.

History.
Code 1981, § 35-8-7.3, enacted by Ga. L. 2020, p. 671, § 5/HB 838.

35-8-7.4. Bias motivated intimidation of first responders; prosecution and penalty.

(a) As used in this Code section, the term "first responder" means any firefighter of a municipal, county, or volunteer fire department; a peace officer as defined in Code Section 35-8-2; and an emergency medical technician as defined in Code Section 16-10-24.2.

(b) A person commits the offense of bias motivated intimidation when such person maliciously and with the specific intent to intimidate, harass, or terrorize another person because of that person's actual or perceived employment as a first responder:

(1) Causes death or serious bodily harm to another person; or

(2) Causes damage to or destroys any real or personal property of a person because of actual or perceived employment as a first responder without permission and the amount of the damage exceeds $500.00 or the value of the property destroyed exceeds $500.00.

(c) Any person that violates subsection (b) of this Code section shall be guilty of the offense of bias motivated intimidation and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than $5,000.00, or both.

(d) Each violation of this Code section shall constitute a separate offense and shall not merge with any other crime.

(e) A sentence imposed under this Code section shall run consecutively to any sentence for any other offense related to the act or acts establishing an offense under this Code section.

(f) Charges of violating subsection (b) of this Code section shall not be prosecuted by way of an accusation but only by indictment or special presentment by a grand jury.

History.

Code 1981, § 35-8-7.4, enacted by Ga. L. 2020, p. 671, § 6/HB 838; Ga. L. 2025, p. 1029, § 35(32)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted a semicolon for a comma following "fire department" and following "Code Section 35-8-2" in subsection (a).

Law reviews.

For article, "32 Shots in the Dark: How Local Governments Can Increase Police Accountability When States Refuse To," see 74 Mercer L. Rev. 1155, 1167 (2023).

35-8-8. (For effective date, see note.) Requirements for appointment or certification of persons as peace officers and preemployment attendance at basic training course; form for candidates for sheriff.

(a) Any person employed or certified as a peace officer shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

(3) Have a high school diploma or its recognized equivalent;

(4) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for the purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council and fully cooperate during the course of such investigation;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which

might adversely affect his or her exercise of the powers or duties of a peace officer; and

(8) Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace officer candidates in this state; each law enforcement agency is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate. Any person with a degree from a postsecondary institution accredited by a regional accrediting agency recognized by the United States Department of Education shall be deemed to have met the requirements of this paragraph.

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of subsection (a) of this Code section.

(c) The executive director of the council, or his or her designee, shall promulgate a form which shall be available to any person seeking election to the office of sheriff. Such form shall provide for the attestation and certification by the executive director that the person seeking such form is a certified peace officer who is not under revocation by the council.

History.

Ga. L. 1970, p. 208, § 8; Ga. L. 1973, p. 539, § 1; Ga. L. 1976, p. 1563, § 1; Ga. L. 1976, p. 1684, §§ 3, 4; Ga. L. 1977, p. 712, § 1; Ga. L. 1977, p. 1180, §§ 1, 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 2004, p. 986, § 2; Ga. L. 2008, p. 237, § 2/SB 373; Ga. L. 2011, p. 545, § 1/SB 95; Ga. L. 2013, p. 864, § 2/HB 366; Ga. L. 2017, p. 774, § 35/HB 323; Ga. L. 2018, p. 336, § 3/HB 867; Ga. L. 2025, p. 420, § 7/HB 288, effective May 12, 2025; Ga. L. 2025, p. 745, § 1(4)/SB 154, see notes for effective date; Ga. L. 2025, p. 1029, § 35(33)/SB 153, effective July 1, 2025.

Delayed effective date.

Ga. L. 2025, p. 745, § 4/SB 154, provides that the 2025 amendment becomes effective upon an act of Congress repealing the establishment of the United States Department of Education or otherwise abolishing the United States Department of Education. The Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. After the contingency is met, paragraph (a)(8) will read as follows: "Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace officer candidates in this state; each law

enforcement agency is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate. Any person with a degree from a postsecondary institution accredited by a regional accrediting agency recognized by the United States Department of Education, or its successor, shall be deemed to have met the requirements of this paragraph."

Amendments.

The first 2025 amendment, effective May 12, 2025, substituted "law enforcement agency" for "law enforcement unit" in the fourth sentence in paragraph (a)(8); added subsection (c); and deleted former subsection (c), which read: "(c)(1) For purposes of this subsection, the term 'employment related information' means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.

"(2) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate, or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.

"(3) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents to a requesting law enforcement agency, including retrieving and redacting costs, provided such amount shall not exceed $25.00 or 25¢ per page, whichever is greater. No employer shall be required to prepare or create any document not already in the employer's possession at the time a request for employment related information is received. Any employment related information provided pursuant to this subsection that is not subject to public disclosure while in the possession of a prior employer shall continue to be privileged and protected from public disclosure as a record of the requesting law enforcement agency.

"(4) No employer or law enforcement agency shall be subject to any civil liability for any cause of action by virtue of disclosing complete and accurate information to a law enforcement agency in good faith and without malice pursuant to this subsection. In any such cause of action, malice or bad faith shall only be demonstrated by clear and convincing evidence. Nothing contained in this subsection shall be construed so as to affect or limit rights or remedies provided by federal law.

"(5) Before taking final action on an application for employment based, in whole or in part, on any unfavorable employment related information received from a previous employer, a law enforcement agency shall inform the applicant, candidate, or peace officer that it has received such employment related information and that the applicant, candidate, or peace officer may inspect and respond in writing to such information. Upon the applicant's, candidate's, or peace officer's request, the law enforcement agency shall allow him or her to inspect the employment related information and to submit a written response to such information. The request for inspection shall be made within five business days from the date that the applicant, candidate, or peace officer is notified of the law enforcement agency's receipt of such employment related information. The inspection shall occur not later than ten business days after said notification. Any response to the employment related information shall be made by the applicant, candidate, or peace officer not later than three business days after his or her inspection.

"(6) Nothing contained in this Code section shall be construed so as to require

any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall not be a violation of this Code section for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. An action against such person to require disclosure on the grounds that the claim of self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located.". See Editor's notes.

The second 2025 amendment inserted ", or its successor," following "United States Department of Education" in paragraph (a)(8). For effective date of this amendment, see the delayed effective date note.

Cross references.

Qualifications of firefighters, § 25-4-8.

Editor's notes.

Ga. L. 2025, p. 420, § 7/HB 288 redesignated former subsection (c) of Code Section 35-8-8 as present Code Section 35-8-8.1, effective May 12, 2025.

JUDICIAL DECISIONS

Prohibition against felons running for office of sheriff. — Georgia Const. 1976, Art. IX, Sec. I, Para. IX (see now Ga. Const. 1983, Art. IX, Sec. I, Para. III) authorizes the General Assembly to prohibit a convicted felon from running for office of sheriff even if the felon obtains full pardon. Georgia Peace Officer Stds. & Training Council v. Mullis, 248 Ga. 67, 281 S.E.2d 569, 1981 Ga. LEXIS 924 (1981).

Constitutional prohibition against convicted felon's holding appointment of honor or trust, such as position of deputy sheriff, unless pardoned, in no way prevents General Assembly from imposing as a qualification for peace officer that the individual not have been convicted of a felony. Georgia Peace Officer Stds. & Training Council v. Mullis, 248 Ga. 67, 281 S.E.2d 569, 1981 Ga. LEXIS 924 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Sheriff as registered peace officer must meet requirements under § 15-16-1. — Sheriff who was a registered peace officer under Ga. L. 1977, p. 1180, §§ 1 and 2 (see now O.C.G.A. § 35-8-8) but did not complete two years of service as sheriff prior to January 1, 1980, must meet the requirements of former Code 1933, § 24-2801 (see now O.C.G.A. § 15-16-1). 1980 Op. Att'y Gen. No. 80-148.

Agencies may hire those 18 years old. — This section allows, but does not necessarily require, law enforcement agencies to hire those as young as 18 years of age. 1973 Op. Att'y Gen. No. 73-130.

Appointment of investigators. — O.C.G.A. § 35-8-6(c), which authorizes the Executive Director of the Georgia Peace Officer Standards and Training Council to appoint investigators with the power of arrest, allows for the appointment of officers exempted from the certification requirements by the grandfathering provisions in O.C.G.A. § 35-8-10(c) whose registrations have remained in effect, and who are in compliance with the officers' training requirements. 1989 Op. Att'y Gen. No. U89-9.

Individual cannot be employed as police officer prior to obtaining high school diploma or equivalent; an individual may not be employed as a peace officer with the understanding that the individual must obtain the high school diploma or the diploma's equivalent prior to being certified. 1970 Op. Att'y Gen. No. 70-152.

Single felony conviction disqualifies individual from employment or certification. — In order for an individual to be disqualified from employment or certification under this chapter, the individual's single

conviction would have to have been for a felony and not a misdemeanor. 1971 Op. Att'y Gen. No. 71-191.

Imprisonment in "prison" or "penitentiary" same. — Since paragraph (a)(4) uses the word "prison" and not the word "penitentiary," it should be noted the two are interchangeable and the variation, therefore, is legally insignificant. 1971 Op. Att'y Gen. No. 71-191.

Possible that convicted individual does not serve time. — Word "could" in paragraph (a)(4) refers to the possibility that an individual convicted of a felony might not, and often does not, serve time on the sentence, i.e., the sentence might be probated or suspended. 1971 Op. Att'y Gen. No. 71-191.

Educational and medical prerequisites apply to all law enforcement officers certified by the council; the council may not certify officers who do not meet the certification requirements specified in this chapter. 1970 Op. Att'y Gen. No. 70-209.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 76. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, § 611 et seq. 67 C.J.S., Officers and Public Employees, §§ 21, 25 et seq.

35-8-8.1. Employment related information; provision of notice.

(a) As used in this Code section, the term "employment related information" means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.

(b)(1) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate, or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.

(2) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents pursuant to this subsection to a requesting law enforcement agency, including retrieving and redacting costs, provided such amount shall not exceed $25.00 or 25¢ per page, whichever is greater. No employer shall be required to prepare or create any document not already in the

employer's possession at the time a request for employment related information is received. Any employment related information provided pursuant to this subsection that is not subject to public disclosure while in the possession of a prior employer shall continue to be privileged and protected from public disclosure as a record of the requesting law enforcement agency.

(3) No employer or law enforcement agency shall be subject to any civil liability for any cause of action by virtue of disclosing complete and accurate information to a law enforcement agency in good faith and without malice pursuant to this subsection. In any such cause of action, malice or bad faith shall only be demonstrated by clear and convincing evidence. Nothing in this subsection shall be construed so as to affect or limit rights or remedies provided by federal law.

(4) Before taking final action on an application for employment based, in whole or in part, on any unfavorable employment related information received from a previous employer, a law enforcement agency shall inform the applicant, candidate, or peace officer that it has received such employment related information and that the applicant, candidate, or peace officer may inspect and respond in writing to such information. Upon the applicant's, candidate's, or peace officer's request, the law enforcement agency shall allow him or her to inspect the employment related information and to submit a written response to such information. The request for inspection shall be made within five business days from the date that the applicant, candidate, or peace officer is notified of the law enforcement agency's receipt of such employment related information. The inspection shall occur not later than ten business days after said notification. Any response to the employment related information shall be made by the applicant, candidate, or peace officer not later than three business days after his or her inspection.

(5) Nothing in this subsection shall be construed so as to require any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall not be a violation of this subsection for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. An action against such person to require disclosure on the grounds that the claim of self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located.

(c) A law enforcement agency that receives notice from a prosecuting attorney that the name of an affected peace officer has been placed on

a Giglio list shall forward a copy of such notice to the council within 30 days of receipt for review pursuant to Code Section 35-8-7.1.

History.
Ga. L. 2011, p. 545, § 1/SB 95; Ga. L. 2017, p. 774, § 35/HB 323; Code 1981, § 35-8-8.1, enacted by Ga. L. 2025, p. 420, § 7/HB 288, effective May 12, 2025; Ga. L. 2025, p. 1029, § 35(33)/SB 153, effective July 1, 2025.
Effective date.
This Code section became effective May 12, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" at the beginning of subsection (a).
Editor's notes.
Ga. L. 2025, p. 420, § 7/HB 288 redesignated former subsection (c) of Code Section 35-8-8 as present Code Section 35-8-8.1, effective May 12, 2025.

35-8-9. Completion of basic training course required; acceptance of other instruction; effect of failure to complete basic training requirements; limitation.

(a) In addition to complying with the preemployment standards as set forth in Code Section 35-8-8, each and every candidate shall satisfactorily complete a basic training course prior to his or her appointment as a peace officer.

(b) The council shall have the authority to recognize instruction received by a candidate if, in the determination of the council, such instruction is at least equivalent to that required by this chapter. If such instruction is recognized, then it shall be in lieu of part or parts of the minimum hours of instruction required for certification by this chapter.

(c) Should any candidate fail to complete successfully the basic training requirements specified in this Code section, he or she shall not perform any of the duties of a peace officer involving the power of arrest until such training shall have been successfully completed.

(d) A municipal correctional institution covered under the provisions of subparagraph (C) of paragraph (7) and subparagraph (C) of paragraph (8) of Code Section 35-8-2 shall not be permitted to have more than ten correctional officers in any 12 month period take the basic training course necessary to become a certified peace officer.

History.
Ga. L. 1970, p. 208, § 9; Ga. L. 1975, p. 1165, § 6; Ga. L. 1992, p. 1004, § 1; Ga. L. 1994, p. 1355, § 1; Ga. L. 1997, p. 1488, § 4A.

JUDICIAL DECISIONS

Reimbursement by police officer for training. — It is not against public policy for a police officer to agree to reimburse an employer, a city, for a

portion of the cost of training the officer if the officer voluntarily terminates employment with the city within 12 months of graduation from the training program. City of Pembroke v. Hagin, 194 Ga. App. 642, 391 S.E.2d 465, 1990 Ga. App. LEXIS 246 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Educational and medical prerequisites apply to all law enforcement officers certified by the council; the council may not certify officers who do not meet the certification requirements specified in this chapter. 1970 Op. Att'y Gen. No. 70-209.

Mandatory licensing requirements of O.C.G.A. §§ 16-11-126 through 16-11-129 apply to peace officer candidates. 1996 Op. Att'y Gen. No. 96-22.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, § 611 et seq. 67 C.J.S., Officers and Public Employees, §§ 21, 25 et seq.

35-8-10. Applicability and effect of certification requirements generally; requirements as to exempt persons.

(a) No person required to comply with the certification provisions of this chapter shall be employed or appointed by any law enforcement unit without certification from the council that the applicant has met the preemployment requirements established in this chapter, and no candidate shall perform any of the duties of a peace officer involving the power of arrest until such training shall have been successfully completed.

(b) Peace officers commencing any employment or service on any terms with the department, counties, municipalities, the Georgia Bureau of Investigation, the Department of Natural Resources, the Department of Revenue, Alcohol and Tobacco Tax Unit, the Secretary of State's investigative section, the Office of the Commissioner of Insurance and Safety Fire Commissioner, or a railroad after July 1, 1975, are required to comply with the certification provisions of this chapter. Peace officers commencing such employment or service prior to July 1, 1975, and whose employment continues on July 1, 1975, are exempt and excused from compliance with the certification provisions of this chapter except as provided in this Code section so long as the registration provided for in subsections (d) and (e) of this Code section remains in effect. Any peace officer otherwise exempt from the certification provisions of this chapter shall meet the qualifications and requirements specified in paragraphs (2), (4), (5), and (8) of subsection (a) of Code Section 35-8-8.

(c) If, after July 1, 1975, any other employment or service is conditioned on compliance with this chapter, persons so employed or serving shall be required to comply with the certification provisions established in this chapter, except that persons so employed or serving whose employment or service commenced prior to and continues upon the effective date of the peace officer's law enforcement unit becoming subject to the provisions of this chapter shall be exempt and excused from compliance so long as registration provided for in subsections (d) and (e) of this Code section remains in effect. Notwithstanding this subsection, the effective date of requirements for certification or registration shall be determined by the council based upon identification of the applicability of this chapter to particular peace officers. Nothing in this subsection shall be deemed to grant an exemption to persons required to be certified by subsections (a) and (b) of this Code section.

(d) Peace officers exempt from the certification provisions of this chapter are required to register with the council. The registration shall remain in effect for the period of time said person is employed as a peace officer.

(e) Any registration granted in this Code section shall not terminate upon a subsequent employment or appointment as a peace officer, provided that subsequent employment or appointment as a peace officer is recognized by the council to be substantially the same or similar to the employment or appointment by virtue of which said peace officer was exempted and registered as such; provided, further, that such subsequent employment or appointment is commenced within 12 months of such prior termination as a peace officer.

(f) Except as otherwise provided by subsection (b) of this Code section, nothing in this subsection or in subsection (d) shall be deemed to require any exempt peace officer to comply with Code Sections 35-8-8 and 35-8-9 for the period of time the registration shall remain in effect.

(g) A peace officer excused from mandatory compliance with this chapter by this Code section may choose to be certified under this chapter. If so, the council shall have the authority to recognize instruction received by such a peace officer as equivalent to all or part of the instruction required for certification under this chapter.

(h) Any person who was serving as a sheriff on July 1, 1970, and who subsequently becomes a peace officer shall not be required to comply with this chapter.

(i) A retired peace officer may be voluntarily registered by the council as an exempt peace officer without meeting the qualifications and requirements specified in paragraphs (2), (4), (5), and (8) of subsection (a) of Code Section 35-8-8. Such registration of a retired peace officer shall not terminate, as provided for in subsection (e) of this Code

section. Nothing in this subsection shall be deemed to grant an exemption to persons required to be certified or registered by this chapter.

History.

Ga. L. 1970, p. 208, § 13; Ga. L. 1975, p. 1165, § 9; Ga. L. 1976, p. 395, § 8; Ga. L. 1977, p. 713, §§ 3-7; Ga. L. 1978, p. 1680, § 2; Ga. L. 1978, p. 2299, §§ 2-6; Ga. L. 1981, p. 778, §§ 2, 3; Ga. L. 1994, p. 1355, § 2; Ga. L. 2003, p. 331, § 2; Ga. L. 2025, p. 1029, § 35(34)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, in subsection (b), substituted "department" for "Department of Public Safety" in the first sentence and substituted "shall" for "must" in the last sentence.

Editor's notes.

Ga. L. 1993, p. 724, § 3, effective April 9, 1993, not codified by the General Assembly, provides: "Any person elected to the office of sheriff at the 1992 general election, which person is a registered peace officer as provided in Code Section 35-8-10, shall be exempt from any qualifications provided for sheriffs in an Act approved April 17, 1992 (Ga. L. 1992, p. 2112), which qualifications are in conflict with the provisions of this Act."

Paragraph (a)(8) of Code Section 35-8-8, referred to in this Code section, was redesignated as paragraph (a)(7) by Ga. L. 2008, p. 237, § 2/SB 373.

JUDICIAL DECISIONS

No twelve month gap in employment of deputy. — *Unpublished decision:* When a deputy arrested a person for being drunk at a high school football game, the deputy was entitled to qualified immunity as to the arrestee's excessive force claim because, inter alia, the deputy was certified under Georgia law and, thus, the requirement that registered peace officers not have more than a 12-month gap between positions in law enforcement was inapplicable to the deputy. Collins v. Ensley, 498 Fed. Appx. 908, 2012 U.S. App. LEXIS 24024 (11th Cir. 2012).

OPINIONS OF THE ATTORNEY GENERAL

Investigators. — O.C.G.A. § 35-8-6(c), which authorizes the Executive Director of the Georgia Peace Officer Standards and Training Council to appoint investigators with the power of arrest, allows for the appointment of officers exempted from the certification requirements by the grandfathering provisions in subsection (c) of O.C.G.A. § 35-8-10 whose registrations have remained in effect, and who are in compliance with the officers' training requirements. 1989 Op. Att'y Gen. No. U89-9.

Deputy sheriff subject to chapter. — Deputy sheriff having responsibility for county jail and arrest power is subject to Ga. L. 1970, p. 208 (see now O.C.G.A. Ch. 8, T. 35); further, a person cannot be so employed without the certificate required by Ga. L. 1970, p. 208, § 13 (see now O.C.G.A. § 35-8-10). 1971 Op. Att'y Gen. No. U71-128.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, §§ 48, 50 et seq., 76. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, § 611 et seq. 67 C.J.S., Officers and Public Employees, §§ 21, 25 et seq.

35-8-11. Basic course to be completed at schools certified by council.

The basic course provided for in Code Section 35-8-9 shall be completed at any school certified by the council which provides the course requirements and methods of instruction established by the council.

History.
Ga. L. 1970, p. 208, § 10; Ga. L. 1975, p. 567, § 5; Ga. L. 1975, p. 1165, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 76. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, § 611 et seq. 67 C.J.S., Officers and Public Employees, §§ 21, 25 et seq.

35-8-12. Certification to use speed detection devices; withdrawal or suspension of certificate.

(a) Persons employed or appointed by any agency, organ, or department of this state or a subdivision or municipality thereof authorized to use speed detection devices shall be required to be certified by the council as qualified speed detection device operators. Each person operating radar speed or laser detection devices shall satisfactorily complete a course of instruction in the theory and application of speed detection device operation as a condition for certification. The council shall establish and modify the curriculum for the course of instruction, including a minimum number of hours. Persons authorized and qualified to conduct the course of instruction required by this Code section shall be certified by the council as speed detection device operator instructors upon complying with requirements prescribed by the council. The council shall have the authority to recognize instruction received by persons subject to the requirements of this Code section if, in the determination of the council, the instruction is at least equivalent to that required by this chapter. If the instruction is recognized, then it shall be accepted in lieu of part or parts of the minimum hours of instruction required for speed detection device certification by this chapter. Should any person fail to complete successfully the training requirements for operation of speed detection devices, he or she shall not perform any functions related to the use of the devices until such training shall have been successfully completed and until such time as the council shall issue appropriate certification. All persons certified to use speed detection devices shall complete an update or refresher training course of such duration and at such time as may be prescribed by the council in order for their speed detection device operators' certifications to remain in force and effect. The council is authorized to

withdraw or suspend the certification of any person for failure to meet the update or refresher requirements specified in this Code section or for violation of any portion of this chapter relating to conditions which may lead to the withdrawal or suspension of peace officer certification to operate radar or laser speed detection devices.

(b) Upon the withdrawal or suspension of any certificate to operate speed detection devices for the reasons set forth in this Code section, the executive director of the council shall notify the commissioner. The notification shall contain the officer's name and employing law enforcement agency.

(c) Upon receipt from the commissioner that a speed detection device permit has been suspended or revoked pursuant to Code Section 40-14-11, the council shall withdraw or suspend the certification to operate speed detection devices for every certified operator employed by the agency whose permit has been suspended or revoked. The period of withdrawal or suspension shall be consistent with the action taken by the department.

History.
Ga. L. 1980, p. 979, § 3; Ga. L. 1996, p. 1281, § 2.

Cross references.
Speed detection device, § 40-14-1.

Law reviews.
For review of 1996 use of radar speed detection devices legislation, see 13 Ga. St. U.L. Rev. 244 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Intent of General Assembly regarding certification of persons employed to use speed detection devices was to have people certified no matter which type of device is used as long as the device itself fits within the definition provided for under Ga. L. 1980, p. 979 (see now O.C.G.A. § 35-8-2(11)). 1981 Op. Att'y Gen. No. 81-77.

RESEARCH REFERENCES

Am. Jur. 2d.
8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 947, 948. 63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.

C.J.S.
23 C.J.S., Criminal Procedure and Rights of the Accused, § 852. 63 C.J.S., Municipal Corporations, § 611 et seq. 67 C.J.S., Officers and Public Employees, §§ 21, 25 et seq.

35-8-13. [Reserved] Training and certification of police chaplains.

History.
Ga. L. 1980, p. 1127, § 1; Ga. L. 1991, p. 94, § 35; repealed by Ga. L. 2018, p. 336, § 4/HB 867, effective July 1, 2018.

Editor's notes.
Ga. L. 2018, p. 336, § 4/HB 867 repealed and reserved this Code section, effective July 1, 2018.

35-8-13.1. Training and certification of municipal probation officers.

(a) Any person employed or appointed as a municipal probation officer on or after July 1, 2017, shall not be authorized to exercise the power of arrest as a municipal probation officer unless such person has successfully completed a training course and received certification for municipal probation officers approved by the Georgia Peace Officer Standards and Training Council; provided, however, that such person shall only exercise the power of arrest upon individuals whom he or she is supervising under Article 6 of Chapter 8 of Title 42, unless such person is certified as a peace officer by the Georgia Peace Officer Standards and Training Council.

(b) Persons applying for certification and persons certified by the council under this Code section shall be subject to the powers and authority of the Georgia Peace Officer Standards and Training Council applicable to peace officers as defined in this chapter and shall be required to fulfill all of the requirements of a peace officer, except peace officer training requirements applicable to peace officers only. Such persons shall be required to register with the council. Such registration shall remain in effect for the period of time such person is employed as a municipal probation officer.

(c) Any person who registers with the council pursuant to this Code section shall not have such registration invalidated upon termination of employment or appointment as a municipal probation officer if subsequent employment or appointment as a municipal probation officer is commenced within 12 months of such prior termination of employment or appointment as a municipal probation officer.

(d) Any municipal probation officer exempted from mandatory compliance with this Code section may choose to be certified under this Code section. If so, the council shall have the authority to recognize instruction received by such municipal probation officer as equivalent to all or part of the instruction required for certification under this Code section.

(e) As used in this Code section, the term "municipal probation officer" means only municipal probation officers employed directly by a municipality or consolidated government and shall not include employees of private probation providers which contract with municipalities or consolidated governments in accordance with the provisions of Article 6 of Chapter 8 of Title 42; provided, however, that such term shall not include probation officers of any municipal corporation which conducts a training course for such officers if such training course is approved by the council.

(f) Any person who has completed the peace officer basic training

course and is certified as a peace officer by the council may serve as a municipal probation officer without obtaining the municipal probation officer training and certification required by this Code section.

History.
Code 1981, § 35-8-13.1, enacted by Ga. L. 1998, p. 192, § 1; Ga. L. 2017, p. 673, § 2-1/SB 149; Ga. L. 2025, p. 1029, § 35(35)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "the council" for "the Georgia Peace Officer Standards and Training Council" in subsections (e) and (f); and, in subsection (e), substituted "As used in this Code section, the term 'municipal probation officer' means" for "The term 'municipal probation officer' as used in this Code section means", and substituted "such term" for "the term 'municipal probation officer'".
Cross references.
Probation, § 42-8-1 et seq.
Law reviews.
For annual survey on criminal law, see 74 Mercer L. Rev. 93 (2022).

35-8-14. Notice to law enforcement officer of placement on Giglo list; investigation; impact.

(a) Upon receipt of notice from a prosecuting attorney that a peace officer employed by the law enforcement agency has been placed on a Giglio list, such agency shall provide a copy of such notice to the affected peace officer in as timely manner as possible, not to exceed three days from the date of receipt. If the affected peace officer is no longer employed by the law enforcement agency that receives such notice, the law enforcement agency shall forward such notice to be served in person or delivered by certified mail or statutory overnight delivery, return receipt requested, to the last known address of the affected peace officer.

(b) A law enforcement agency that employs an affected peace officer shall not demote, suspend, discharge, impose discipline, or take adverse employment action upon an affected peace officer solely based upon the placement of such peace officer's name on a Giglio list.

(c) A law enforcement agency that employs an affected peace officer shall be authorized to demote, suspend, discharge, impose discipline, or take adverse employment action upon an affected peace officer when:

(1) An internal investigation establishes, based upon a preponderance of the evidence, that a factual basis exists for the reason provided by the prosecuting attorney for placement of the affected peace officer on a Giglio list; or

(2) The council has imposed discipline upon the affected peace officer for the conduct identified by the prosecuting attorney which was the basis for placement of such officer on the Giglio list.

History.
Code 1981, § 35-8-14, enacted by Ga. L. 2025, p. 420, § 8/HB 288, effective May 12, 2025.

Effective date.
This Code section became effective May 12, 2025.
Editor's notes.
Former Code Section 35-8-14, relating to the Board of Corrections and State Board of Pardons and Paroles to establish training program for employees authorized to make arrests, was based on Ga. L. 1978, p. 992, § 3; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 3 and by repealed by Ga. L. 1982, p. 2478, § 9, effective November 1, 1982. Additionally, the former designation had been reserved by Ga. L. 2013, p. 141, § 35/HB 79, effective April 24, 2013.

35-8-15. Preparation and maintenance of employment records by law enforcement units and council; release of records.

(a) Each law enforcement unit shall prepare duplicate records on any candidate or peace officer employed under this chapter as may be prescribed by the rules and regulations of the council. One copy of the records shall be maintained in the headquarters of the law enforcement unit; the second copy shall be forwarded to the council and shall be maintained by the council.

(b) The contents of the records provided for in subsection (a) of this Code section, except for court proceedings, shall be considered as confidential and shall be released only to the candidate or peace officer to whom they pertain or to a law enforcement unit considering the candidate or peace officer for employment.

History.
Ga. L. 1970, p. 208, § 12; Ga. L. 1975, p. 1165, § 1.

JUDICIAL DECISIONS

Agreement in violation of section void. — Purported agreement between a police officer and county human resources director that the officer would withdraw an appeal of termination if disciplinary materials were removed from the employee file to preserve the officer's Peace Officer Standards and Training Council (P.O.S.T.) certification was void and unenforceable because it would have violated not only the P.O.S.T. Council's regulations but also the record-keeping requirements of O.C.G.A. § 35-8-15 and the prohibition of O.C.G.A. § 35-8-7.2(a)(2) against knowingly making "misleading, deceptive, untrue, or fraudulent representations in the practice of being a peace officer or in any document connected therewith." Maner v. Chatham County, 246 Ga. App. 265, 540 S.E.2d 248, 2000 Ga. App. LEXIS 1208 (2000).

Unpublished decision: County was statutorily required to maintain duplicate personnel records for a police officer who worked for the county school system and to forward a copy of the records to the Georgia Peace Officer Standards and Training Council, and the county was required by regulation to inform the Council when the officer resigned in lieu of termination; dismissal of the officer's claim for breach of an alleged contract requiring the county to report only that the officer resigned was proper. Flowers v. Fulton Cnty. Sch. Sys., 654 Fed. Appx. 396, 2016 U.S. App. LEXIS 10234 (11th Cir. 2016).

35-8-16. Effect of standards and training requirements provided in chapter; adoption of additional requirements by law enforcement units.

This chapter establishes only the minimum qualification standards and training requirements for peace officers in this state; each law enforcement unit is encouraged to prescribe such additional requirements as it deems necessary and appropriate.

History.
Ga. L. 1970, p. 208, § 11.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70.
C.J.S.
67 C.J.S., Officers and Public Employees, § 21. 73 C.J.S., Public Administrative Law and Procedures, § 108 et seq.

35-8-17. Effect of peace officer's failure to comply with chapter generally; civil actions against noncomplying peace officers and law enforcement units.

(a) Any peace officer so employed who does not comply with this chapter shall not be authorized to exercise the powers of a law enforcement officer generally and particularly shall not be authorized to exercise the power of arrest.

(b) The council is authorized to bring a civil action against any peace officer who does not comply with this chapter to enjoin the peace officer from performing any and all functions of a peace officer, including the power of arrest, until the officer shall meet the certification or registration requirements of this chapter.

(c) The council is authorized to bring a civil action against any law enforcement unit which employs or appoints any peace officer who fails to meet the certification or registration requirements of this chapter to enjoin the law enforcement unit from allowing the peace officer to perform any and all peace officer functions, including exercising the power of arrest, until such time as the peace officer shall comply with the certification or registration requirements of this chapter.

History.
Ga. L. 1970, p. 208, § 15; Ga. L. 1975, p. 1165, § 11; Ga. L. 1977, p. 713, § 8; Ga. L. 1977, p. 1180, § 3.

JUDICIAL DECISIONS

Noncompliance with the conditions of this chapter renders an arrest unauthorized. The noncomplying peace officer, however, may be authorized to effect an

arrest, under certain circumstances, as a private citizen. Mason v. State, 147 Ga. App. 179, 248 S.E.2d 302, 1978 Ga. App. LEXIS 2840 (1978); Williams v. State, 171 Ga. App. 807, 321 S.E.2d 386, 1984 Ga. App. LEXIS 3007 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 966, 83 L. Ed. 2d 970, 1985 U.S. LEXIS 725 (1985).

Defendant's arrest by a DEA special agent for giving a false name to a law enforcement officer was not illegal merely because at the time of the arrest no writing existed making the agent a county sheriff's deputy as required by O.C.G.A. § 35-9-15(b) nor had the agent complied with the requirements of the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq. Fajardo v. State, 191 Ga. App. 295, 381 S.E.2d 560, 1989 Ga. App. LEXIS 546 (1989).

Objecting to legality of arrest insufficient to question officer's power to arrest. — Trial court did not err in refusing to give two requested charges on O.C.G.A. § 35-8-17, specifically on the principle that a law enforcement officer who has not been certified pursuant to O.C.G.A. Ch. 8, T. 35 does not have authority to exercise the power of arrest, since, although the defendant made an issue at trial of the legality of the defendant's arrest, no issue was made of the arresting officer's authority to exercise arrest powers generally. Gay v. State, 179 Ga. App. 430, 346 S.E.2d 877, 1986 Ga. App. LEXIS 2627 (1986).

Certification requirements. — After the arresting officer met all requirements of O.C.G.A. § 35-8-8 and had successfully completed the course required by O.C.G.A. § 35-8-9, the arresting officer was not disqualified to make arrests on ground that the arresting officer had not yet been certified under O.C.G.A. § 35-8-7. Davis v. State, 164 Ga. App. 312, 295 S.E.2d 131, 1982 Ga. App. LEXIS 3298 (1982).

Evidence seized by uncertified officer suppressed. — Noncompliance with the conditions of O.C.G.A. Ch. 8, T. 35 renders the exercise of any powers of a law enforcement officer unauthorized. Thus, due to an officer's lack of certification, the officer had no authority to apply for a search warrant, and the evidence seized pursuant to the execution of the illegal warrant should have been suppressed. Holstein v. State, 183 Ga. App. 610, 359 S.E.2d 360, 1987 Ga. App. LEXIS 2042 (1987), cert. denied, 183 Ga. App. 905.

Evidence seized by uncertified officer not suppressed. — Trial court erred in suppressing contraband seized by an arresting officer who failed to maintain certification under the Georgia Police Officer Standards and Training statute, codified at O.C.G.A. § 35-8-17(a), as the legislature did not intend to invalidate, nullify, or otherwise make such arrest illegal. After the defendant was speeding in the officer's presence, the officer could conduct a search and after finding the defendant possessed marijuana, the officer could arrest the defendant. State v. Pinckney, 255 Ga. App. 692, 566 S.E.2d 325, 2002 Ga. App. LEXIS 666 (2002), cert. denied, No. S02C1570, 2002 Ga. LEXIS 690 (Ga. Sept. 6, 2002).

Indictment, trial, and conviction of a defendant is not "proceeding under" an arrest. It is inconceivable that the legislature intended to absolve an individual of all guilt of a crime charged merely because the individual's arrest was illegal. Hunt v. State, 134 Ga. App. 761, 216 S.E.2d 354, 1975 Ga. App. LEXIS 2160 (1975).

Private civil action not available. — Although a city that formerly employed a police officer failed to disclose the safety violations that the officer committed, which were in the officer's personnel file, to a hiring city, the parents of a child who was fatally shot by the officer's service weapon due to the officer's possible safety negligence could not assert a private cause of action against the former city for violations of the requirements of the Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., as no such civil liability was provided pursuant to O.C.G.A. § 35-8-17(b) or (c). Govea v. City of Norcross, 271 Ga. App. 36, 608 S.E.2d 677, 2004 Ga. App. LEXIS 1546 (2004), cert. denied, No. S05C0602, 2005 Ga. LEXIS 492 (Ga. July 8, 2005), cert. denied, No. S05C0691, 2005 Ga. LEXIS 493 (Ga. July 8, 2005).

OPINIONS OF THE ATTORNEY GENERAL

Authority of "registered" or "exempt" peace officers. — "Registered" or "exempt" peace officer who is in compliance with the requirements for certification under the Georgia Peace Officer Standards and Training Act, O.C.G.A. Ch. 8, T. 35, has the same authority and limitations as that of a "certified" peace officer in all respects relevant to law enforcement duties, including the ability to apply for a search warrant. 1999 Op. Att'y Gen. No. 99-7.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70.
C.J.S.
67 C.J.S., Officers and Public Employees, § 21. 73 C.J.S., Public Administrative Law and Procedures, § 108 et seq.

35-8-18. Applicability of chapter to emergency peace officers.

This chapter shall not apply to emergency peace officers.

History.
Ga. L. 1970, p. 208, § 14; Ga. L. 1975, p. 1165, § 10.

35-8-19. Appointment of citizen of adjoining state as peace officer.

In each city of this state adjacent to the State of Georgia boundary line, the sheriff, mayor, or other person authorized to appoint peace officers may appoint as special deputy, special constable, marshal, policeman, or other peace officer a person who is not a citizen of Georgia but who is a citizen of an adjoining state, provided such appointed person is otherwise qualified to serve as a peace officer.

History.
Code 1981, § 35-8-19, enacted by Ga. L. 1982, p. 2107, § 29; Ga. L. 1992, p. 1325, § 1.

35-8-20. Training requirements for police chiefs, department heads, and wardens; effect of failure to fulfill training requirement; waivers.

(a) During calendar year 1985 and during each calendar year thereafter, the chief of police or department head of each law enforcement unit and wardens of state institutions shall complete 20 hours of training as provided in this Code section.

(b) The training required by subsection (a) of this Code section shall be completed in sessions as selected and provided or approved by the Georgia Association of Chiefs of Police or the Georgia Prison Wardens Association and which have been recognized by the council.

(c) The salary and travel expenses of a chief of police or department head of a law enforcement unit or a warden of a state institution taking the required training shall be paid by the law enforcement unit by which he or she is employed.

(d) Any chief of police or department head of a law enforcement unit or a warden of a state institution who does not fulfill the training requirement of this Code section shall lose his or her power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the council, in its discretion, upon the presentation of evidence by a chief of police or department head of a law enforcement unit or a warden of a state institution that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

History.

Code 1981, § 35-8-20, enacted by Ga. L. 1984, p. 1210, § 1; Ga. L. 1985, p. 149, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 1997, p. 542, § 1; Ga. L. 1997, p. 1488, § 5; Ga. L. 2025, p. 1029, § 35(36)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "the council" for "the Georgia Peace Officer Standards and Training Council" in subsections (b) and (e).

35-8-20.1. Training requirements for newly appointed police chiefs and department heads; effect of failure to fulfill training requirement; waiver.

(a) Any newly appointed chief of police or department head of a law enforcement unit whose term of employment commences after June 30, 1999, shall successfully complete a minimum of 60 hours of law enforcement chief executive training at the next scheduled law enforcement chief executive training class sponsored by the Georgia Association of Chiefs of Police following his or her appointment. Such training shall be in addition to the basic training required of peace officers in Code Section 35-8-9. A sworn employee acting in the capacity of a department head of a law enforcement unit for more than 60 days shall be required to attend training specified under this Code section and Code Section 35-8-20. The provisions of this subsection shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(b) The training required by subsection (a) of this Code section shall be completed in sessions as selected and provided by the Georgia Association of Chiefs of Police which have been recognized by the council.

(c) Reserved.

(d) The salary and travel expenses of a chief of police or department

head of a law enforcement unit taking the required training shall be paid by the law enforcement unit by which he is employed.

(e) Any newly appointed chief of police or department head of a law enforcement unit who does not fulfill the training requirement of this Code section shall lose his power of arrest.

(f) Any newly appointed chief of police or department head of a law enforcement unit who satisfactorily completes the training required by subsection (a) of this Code section shall be exempted for the year in which he completes such training from the training required by subsection (a) of Code Section 35-8-20.

(g) A chief of police or head of a law enforcement department who successfully completes the training required by subsection (a) of this Code section will not be required to repeat such training if he terminates an appointment and is subsequently reappointed to the same or another department.

(h) A waiver of the requirement of training provided in this Code section may be granted by the council, in its discretion, upon the presentation of evidence by a newly appointed chief of police or department head of a law enforcement unit that he or she has served as an appointed chief of police or head of a law enforcement unit since December 31, 1992, without more than a 60 day break in service, that he or she has satisfactorily completed training or education deemed by the council to be equivalent to the training required by this Code section, or that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(i) Any chief of police or department head of a law enforcement unit who is exempted from the training required by subsection (a) of this Code section may choose to attend such training in lieu of the training required by Code Section 35-8-20 for any year.

History.

Code 1981, § 35-8-20.1, enacted by Ga. L. 1989, p. 1637, § 1; Ga. L. 1993, p. 1780, § 1; Ga. L. 1997, p. 542, § 2; Ga. L. 1997, p. 1488, § 6; Ga. L. 1999, p. 777, § 4; Ga. L. 2025, p. 1029, § 35(37)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "the council" for "the Georgia Peace Officer Standards and Training Council" in subsections (b) and (h).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "Georgia Peace Officer Standards and Training Council" was substituted for "Peace Officer Standards and Training Council" in subsection (h).

OPINIONS OF THE ATTORNEY GENERAL

Applicability of training requirement. — Newly appointed police chief who assumes a term of employment in a new police agency after December 31,

1992, must take the 60 hours of chief executive training unless the appointee has previously completed the training. 1996 Op. Att'y Gen. No. 96-16.

35-8-21. Training requirements for peace officers; effect of failure to fulfill training requirement; waiver; exemption for retired peace officers; confirmation of training.

(a) During calendar year 1999 and during each calendar year thereafter, any person employed or appointed as a peace officer shall complete 20 hours of training as provided in this Code section; provided, however, that any peace officer serving with the department who is a commissioned officer shall receive annual training as specified by the commissioner.

(b) The training required by subsection (a) of this Code section shall be completed in sessions approved or recognized by the council.

(c) Peace officers who satisfactorily complete the basic course of training in accordance with the provisions of this chapter shall be excused from the minimum annual training requirement for the calendar year during which the basic course is completed.

(d) Any peace officer who does not fulfill the training requirements of this Code section shall lose his or her power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the council, in its discretion, upon the presentation of evidence by a peace officer that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(f) Any person who is registered or certified with the council as a retired peace officer is excused and exempt from compliance with this Code section for the year in which he or she retires. A retired peace officer may voluntarily comply with the requirements of this Code section and, in that event, such retired peace officer shall receive such minimal annual training without payment of any fees or costs, but only if sufficient class space is available. Nothing in this subsection shall be deemed to grant an exemption to persons required to complete the annual training requirement of this Code section.

(g) Any person required to comply with this Code section shall provide confirmation of his or her training for the previous year to the council in a manner required by the council. Failure to provide the council with confirmation of training in a timely manner or failure to obtain required training in a timely manner shall result in an emergency suspension of the officer's certification by the executive director. The order of emergency suspension issued by the executive director shall be made in writing and shall specify the basis for the determina-

tion. The emergency suspension order shall continue in effect until the training requirements are confirmed or a waiver is issued pursuant to subsection (e) of this Code section. An emergency suspension issued pursuant to this subsection shall be automatically withdrawn upon confirmation of required training or the issuance of a waiver by the council.

History.

Code 1981, § 35-8-21, enacted by Ga. L. 1988, p. 1063, § 1; Ga. L. 1999, p. 777, § 5; Ga. L. 2004, p. 986, § 2A; Ga. L. 2013, p. 864, § 3/HB 366; Ga. L. 2025, p. 1029, § 35(38)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "the council" for "the Georgia Peace Officer Standards and Training Council" in subsections (b) and (e); and in subsection (a), substituted "department" for "Department of Public Safety" and deleted "of public safety" at the end.

35-8-21.1. Use of retired peace and correctional officers in emergency or disaster; training; immunities; compensation; power of arrest.

(a) Any law enforcement unit in this state may supplement its workforce as necessary with qualified, retired peace officers or correctional officers when a disaster or emergency has been declared by a county sheriff, a public safety director, or the Governor or when there is a national emergency.

(b) Retired peace officers and retired correctional officers assisting law enforcement units under the provisions of this Code section shall be in compliance with the annual training and qualification standards for peace officers established under this chapter.

(c) Any retired peace officer or retired correctional officer assisting the requesting entity shall have the same immunities and powers of arrest as he or she has in his or her own jurisdiction, and the same powers of arrest as officers of the requesting entity, including sovereign immunity, official immunity, and the public duty doctrine, for the duration of the declared disaster or emergency. Such powers shall be limited to the location where the retired officer's services are requested to be provided, for the duration of the specific event, and while acting under the direction of the requesting entity's chief law enforcement officer or his or her designee.

(d) Any retired peace officer or correctional officer assisting a requesting entity shall be deemed an employee of the requesting entity for the duration of the declared disaster or emergency and shall be subject to the workers' compensation, overtime, and expense reimbursement provisions provided to him or her as an employee of the requesting entity.

(e) Any compensation awarded to retirees for service under this Code section shall be paid by the requesting entity.

(f) Nothing in this Code section shall be construed to limit the powers of arrest provided to a law enforcement officer by any other law.

History.
Code 1981, § 35-8-21.1, enacted by Ga. L. 2020, p. 481, § 2/SB 341.

35-8-22. Reimbursement of training expenses by subsequent employer of peace officer; collection procedure; required documentation.

(a) Unless otherwise provided by an employment contract to the contrary, if the State of Georgia or any county or municipality thereof employs a peace officer and said peace officer is hired by another agency within 15 months after completing mandated or formalized training requirements, then the total expense of training, including salary paid during training, shall be reimbursed by the hiring agency to the State of Georgia or any county or municipality thereof which initially paid for such training. If said officer is hired by another agency during a period of 15 to 24 months after mandated or formalized training requirements are completed, then one-half of the total expense of training, including salary paid during training, shall be reimbursed by the hiring agency to the State of Georgia or any county or municipality thereof which initially paid for such training. The council shall set standards for reimbursement by hiring agencies based upon actual expenses incurred in mandated or formalized training by individual departments.

(b) The State of Georgia or any county or municipality thereof which initially paid for the training of a peace officer shall submit an itemized, sworn statement to the new employer of the peace officer and shall demand payment thereof and may enforce collection of such obligation through civil remedies and procedures.

(c) Effective July 1, 2003, in order for the State of Georgia or any county or municipality thereof to demand reimbursement, the demanding governmental unit must be able to document that the peace officer in question signed an acknowledgment of the terms of this Code section or an employment contract specifying the provisions of this Code section prior to such peace officer's employment with the demanding governmental unit. Otherwise, this Code section shall not apply to such demand for reimbursement.

History.
Code 1981, § 35-8-22, enacted by Ga. L. 1992, p. 1325, § 2; Ga. L. 2003, p. 327, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Reimbursement of training expenses. — Documentation requirement in O.C.G.A. § 35-8-22 does not prevent a governmental unit from seeking reimbursement after July 1, 2003, for the training of a peace officer hired before July 1, 2003. 2006 Op. Att'y Gen. No. U2006-2.

35-8-23. Basic training course for communications officers; certification requirements; duties of council; rules and regulations.

(a) As used in this Code section, the term "communications officer" means and includes any person employed by the state or a local governmental agency to receive, process, or transmit public safety information and dispatch law enforcement officers, firefighters, medical personnel, or emergency management personnel.

(b) Any person employed on or after July 1, 1995, as a communications officer shall satisfactorily complete a basic training course approved by the council. Persons who are employed on July 1, 1994, shall register with the council and may be certified by voluntarily complying with the certification process. Any person who fails to comply with the registration or certification process of the council shall not perform any duties of a communications officer and may have his or her certificate sanctioned or revoked.

(c) The council shall conduct administrative compliance reviews with respect to the requirements of this Code section. The council, in coordination with the Georgia Emergency Communications Authority, shall be authorized to promulgate rules and regulations to facilitate the administration and coordination of standards, certification, and compliance reviews consistent with the provisions of this Code section.

(d) On and after July 1, 1998, the basic training course for communications officers shall include training in the use of telecommunications devices for the deaf (TDDs), and no person shall on or after that date be certified by the council under this Code section unless such person has satisfactorily completed such training.

(e)(1) On and after January 1, 2024, communications officers shall be required to successfully complete training in the delivery of high-quality telephone cardiopulmonary resuscitation (T-CPR) in addition to the basic training otherwise required by this Code section, and on or after that date no person shall be certified by the council under this Code section unless such person has satisfactorily completed such training; provided, however, that the requirements of this subsection shall be satisfied by any communications officer who is certified in emergency medical dispatch, as such term is defined in Code Section 38-3-181. Such training shall follow the most current evidence based

nationally recognized guidelines for high-quality telephone cardiopulmonary resuscitation which incorporate recognition protocols for out-of-hospital cardiac arrest, compression-only cardiopulmonary resuscitation, and continuing education.

(2) The council shall conduct administrative compliance reviews with respect to the requirements of this subsection, including adherence by communications officers and local government agencies, and may adjust state assistance grants issued pursuant to Code Section 46-5-134.2 based on failure to comply with the requirements of this subsection.

(f) By January 1, 2024, the council, in coordination with the Georgia Emergency Communications Authority, shall establish an amount of continuing education units to be annually completed by communications officers. On or after January 1, 2025, no person shall be certified by the council under this Code section unless such person has satisfactorily completed such training.

History.

Code 1981, § 35-8-23, enacted by Ga. L. 1994, p. 1355, § 2.1; Ga. L. 1997, p. 1488, § 7; Ga. L. 1998, p. 540, § 1; Ga. L. 2018, p. 689, § 3-1/HB 751; Ga. L. 2022, p. 413, § 1/SB 505; Ga. L. 2025, p. 1029, § 35(39)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "(TDDs)" for "(TDD's)" in subsection (d).

Editor's notes.

Ga. L. 2018, p. 689, § 4-1(b)/HB 751, not codified by the General Assembly, provides: "(b) The provisions of this Act shall not in any manner diminish, extinguish, reduce, or affect any cause of action for audits, services, or the recovery of funds from service providers which may have existed prior to January 1, 2019. Any such cause of action is expressly preserved."

35-8-24. Training requirements for jail officers and juvenile correctional officers; exemptions.

(a)(1) Any person employed or appointed as a jail officer six months after January 1, 1999, shall not be authorized to serve as a jail officer in any detention facility after a certain date as provided in subsection (b) of this Code section unless such person has successfully completed a training course for jail officers approved by the council.

(2) Any person employed or appointed as a juvenile correctional officer six months after January 1, 1999, shall not be authorized to serve as a juvenile correctional officer in any juvenile correctional facility after a certain date as provided in subsection (b) of this Code section unless such person has successfully completed a training course for juvenile correctional officers approved by the council.

(b) Any person employed or appointed as a jail officer or juvenile correctional officer six months after January 1, 1999, shall have a

period of six months from the date of initial employment to complete the required training course successfully. Any person who fails to complete such training course successfully within six months of the date of initial employment or appointment as a jail officer or as a juvenile correctional officer shall be prohibited from working as a jail officer in a detention facility or as a juvenile correctional officer in a juvenile correctional facility.

(c) Applicants and persons certified under this Code section shall be subject to the powers and authority of the council applicable to peace officers as defined in this chapter and shall be required to fulfill all requirements of a peace officer, except the requirements of paragraph (8) of subsection (a) of Code Section 35-8-8 and peace officer training requirements applicable to peace officers only.

(d) Persons employed or serving as jail officers or juvenile correctional officers whose employment or service commences prior to and continues on January 1, 1999, are exempt and excused from compliance with the certification provisions of this Code section.

(e) Jail officers or juvenile correctional officers exempt from the certification provisions of this Code section are required to register with the council. The registration shall remain in effect for the period of time said person is employed as a jail officer or as a juvenile correctional officer.

(f) Any registration granted in this Code section shall not become invalid upon termination of employment or appointment as a jail officer or juvenile correctional officer if subsequent employment or appointment as a jail officer or juvenile correctional officer is commenced within 12 months of such prior termination as a jail officer or a juvenile correctional officer.

(g) Any jail officer or juvenile correctional officer exempted from mandatory compliance with this Code section may choose to be certified under this Code section. If so, the council shall have the authority to recognize instruction received by such jail officer or juvenile correctional officer as equivalent to all or part of the instruction required for certification under this Code section.

History.

Code 1981, § 35-8-24, enacted by Ga. L. 1995, p. 880, § 2; Ga. L. 2008, p. 237, § 3/SB 373; Ga. L. 2025, p. 1029, § 35(40)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "the council" for "the Georgia Peace Officer Standards and Training Council" in paragraphs (a)(1) and (a)(2) and in subsection (c).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, "January 1, 1999," was substituted

for "the effective date of this Act" in paragraphs (a)(1) and (a)(2), subsection (b), and subsection (d).

35-8-25. Training and certification of bomb technicians, explosive ordnance disposal technicians, and animal handlers; intergovernmental assistance agreements.

(a)(1) Any person who is employed by an agency or authority of this state or an agency or authority of a political subdivision of this state as a bomb technician, explosive ordnance disposal technician, handler of an animal trained to detect explosives, or any person who is assigned to such duties shall be required to complete successfully a training program prescribed by the council which shall consist of an initial training program, an apprenticeship, and annual recertification.

(2) The council is authorized to award a distinctive device to any person certified as an explosive ordnance disposal technician or as a handler of an animal trained to detect explosives upon completion of the initial training program and apprenticeship period. The council may also establish and award distinctive devices for certified explosive ordnance disposal technicians who qualify as senior or master explosive ordnance disposal technicians. Such devices may be worn on any law enforcement officer's or fire official's uniform.

(b)(1) The head of any agency which employs one or more certified bomb technicians, explosive ordnance disposal technicians, handlers of animals trained to detect explosives, or emergency medical technicians or emergency medical professionals who provide medical support of explosive ordnance disposal operations may establish a mutual aid agreement with any other agency for the purpose of assisting with the detection, rendering safe, and disposal of destructive devices as such term is defined by Code Section 16-7-80. Any such mutual aid agreement shall be subject to approval of the governing authority of such agency.

(2) A political subdivision which is aided pursuant to this subsection shall reimburse the political subdivision providing the aid for any loss or damage to equipment other than fair wear and tear and shall pay any expenses incurred in the operation and maintenance of such equipment; provided, however, that no such claim shall be allowed unless, within 60 days after the same is sustained or incurred, the political subdivision providing the aid provides to the chief financial officer of the political subdivision receiving the aid an itemized notice of the claim made under oath. The political subdivision which received the aid shall also pay and reimburse the political subdivision furnishing the aid for any overtime compensation paid to

any employee furnished under this Code section during the time of the rendering of the aid and shall defray the actual traveling and maintenance expenses of any employee while such employee was engaged in rendering the aid. Such reimbursement shall include any amounts paid or due for compensation due to personal injury or death while such employee was engaged in rendering the aid.

(3) Unless otherwise expressly provided by its terms, a mutual aid agreement established pursuant to this subsection shall not be construed as superseding or amending any mutual aid agreement adopted pursuant to Chapter 6 of Title 25, Chapter 69 of Title 36, or Chapter 3 of Title 38 which applies to emergencies involving explosives or destructive devices.

(c)(1) Whenever a bomb technician, explosive ordnance disposal technician, handler of an animal trained to detect explosive devices, or an emergency medical technician or emergency medical professional who provides medical support of explosive ordnance disposal operations employed by an agency or authority of local government provides assistance at the request of a state agency or authority, such person shall be considered an employee of this state for the purposes of Code Section 50-21-22, paragraph (3) of Code Section 34-9-1, and Code Section 45-9-3. Such person shall also be entitled to reimbursement by the requesting agency or authority for actual expenses incurred in the same manner as other employees of the agency or authority.

(2) A state agency or authority receiving assistance from an agency or authority of a local government shall reimburse such political subdivision for any loss or damage, other than fair wear and tear, to any equipment owned by such political subdivision. No claim for the loss, damage, or expense shall be allowed unless, within 60 days after the same is sustained or incurred, the local government submits an itemized notice of the claim under oath to the fiscal officer of the state agency or authority.

(3) A state agency or authority which receives aid from a local government shall also pay and reimburse such political subdivision for any overtime compensation paid to an employee furnished under this Code section during the time of the rendering of the aid. Such reimbursement shall include any amounts paid or due for compensation due to personal injury or death while such employee was engaged in rendering the aid.

(d) An employee of a political subdivision or agency or authority thereof who is engaged in the rendering of outside aid pursuant to a mutual aid agreement adopted pursuant to this Code section shall have the same powers, duties, rights, privileges, and immunities as if such

employee was engaged in the performing of his or her duties in the political subdivisions in which he or she is normally employed.

(e) Any other provision of law to the contrary notwithstanding, any records, books, or documents, as such terms are defined by subsection (e) of Code Section 45-11-1, which are prepared for use in any training program conducted pursuant to the provisions of this Code section and any rules or regulations relating to such training which contain or may disclose techniques and procedures for the manufacture or rendering safe of any destructive device, as such term is defined by Code Section 16-7-80, or would disclose guidelines for law enforcement investigations or prosecutions of violations of the laws of this state or of the United States relating to destructive devices, explosives, or chemical, biological, or nuclear materials shall not be subject to public disclosure pursuant to Article 5 of Chapter 11 of Title 9 or Chapter 16 of Title 17 or Article 4 of Chapter 18 of Title 50 unless the request for disclosure is served on the Attorney General as provided by Code Section 9-10-2 and a judge of the superior court finds that such disclosure is required to prevent a manifest injustice and that the information is not available from any other source. Any such order requiring disclosure shall impose such restrictions on access or copying of the material as will ensure that such material is not disclosed beyond that required to preserve the rights of the parties. Any order requiring disclosure of such material may be appealed by the district attorney of the circuit in which such order is entered or by the Attorney General.

History.

Code 1981, § 35-8-25, enacted by Ga. L. 1996, p. 416, § 10; Ga. L. 1997, p. 160, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, "paragraph (3) of Code Section 34-9-1" was substituted for "subsection (3) of Code Section 34-9-1" in paragraph (c)(1).

Law reviews.

For review of 1996 damage to and intrusion upon property legislation, see 13 Ga. St. U. L. Rev. 108 (1996).

For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 179 (1997).

35-8-26. (For effective date, see note.) TASER and electronic control weapons; requirements for use; establishment of policies; training.

(a) This Code section shall be known and may be cited as the "TASER and Electronic Control Weapons Act."

(b) It is the intent and purpose of the Georgia General Assembly to establish legal requirements for the official use of electronic control weapons and similar devices by law enforcement officers, including those officers employed in detention facilities, which requirements shall be consistent with generally accepted industry practices. It is the

further intent of the General Assembly to require that such devices, commonly referred to as TASERs or stun-guns, which disrupt the central nervous system of the human body, be used for law enforcement purposes in a manner consistent with established standards and with federal and state constitutional provisions.

(c) A law enforcement unit authorizing the use of electronic control weapons or similar devices shall establish lawful written policies and directives providing for the use and deployment of such weapons and devices that are consistent with the training requirements established by the council. The policies and directives required by this subsection shall be issued prior to the issuance of such devices.

(d) (For effective date, see note.) Prior to the official use of electronic control weapons or similar devices, peace officers authorized by the officer's law enforcement unit to use such devices shall be required to satisfactorily complete a course of instruction and certification requirements approved by the council. All persons certified to use electronic control weapons shall complete an update or refresher training course of such duration and at such time as may be prescribed by the council in order for their electronic control weapons certification to remain in force and effect.

(e) A department head authorizing the use of an electronic control weapon or similar device or a peace officer using an electronic control weapon or similar device in violation of this Code section shall be subject to disciplinary action as provided for in this chapter. The council is authorized to withdraw or suspend the certification to operate an electronic control weapon of any person for failure to meet the update or refresher requirements specified in this Code section or for violation of any portion of this chapter relating to conditions which may lead to the withdrawal, suspension, or probation of a peace officer's certification.

(f) (For effective date, see note.) The Georgia Public Safety Training Center shall provide council approved training to peace officers for the use of electronic control weapons and similar devices.

History.

Code 1981, § 35-8-26, enacted by Ga. L. 2006, p. 666, § 1/HB 1019; Ga. L. 2025, p. 1029, § 35(41)/SB 153, effective July 1, 2025.

Delayed effective date.

Ga. L. 2006, p. 666, § 2, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2007, excepting that provisions applying to council certification and provisions for training offered by the Georgia Public Safety Training Center shall become effective six months after the effective date of an appropriations Act containing a specific appropriation to fund certification by the council and training by the center." Funds were not appropriated at the 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, or 2025 sessions of the General Assembly.

Effective date.

This Code section became effective January 1, 2007, except for subsections (d) and (f). For effective date of these subsections, see the delayed effective date note.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "the council" for "the Georgia Peace Officer Standards and Training Council" in subsection (c).

RESEARCH REFERENCES

ALR.

Liability of manufacturer for injuries arising from use of, or failure to use, stun gun or taser device, 56 A.L.R. 6th 467.

35-8-27. Training requirements for school resource officers.

(a) It is the best practice for any person assigned or appointed as a school resource officer to successfully complete a training course for school resource officers approved by the council.

(b) For purposes of subsection (a) of this Code section, the council shall maintain a training course consisting of 40 hours of training for school resource officers. Such training course shall, at a minimum, provide training in the role of a peace officer assigned to an elementary or secondary school, search and seizure in elementary and secondary schools, criminal offenses, gang awareness, drug awareness, interviews and interrogations, emergency preparedness, and interpersonal interactions with adolescents, including the encountering of mental health issues.

History.

Code 1981, § 35-8-27, enacted by Ga. L. 2017, p. 673, § 1-2/SB 149.

CHAPTER 9

SPECIAL POLICEMEN

Sec.		Sec.	
35-9-1.	Definitions.	35-9-10.	Special policemen subject to rules and regulations of appointing authority.
35-9-2.	Appointment of special policemen upon application of Governor or subdivision of another state.	35-9-11.	Termination and revocation of appointment.
35-9-3.	Form and content of application for appointment.	35-9-12.	Immunity of state from liability for acts or omissions.
35-9-4.	Qualifications for appointment.	35-9-13.	Governor authorized to apply to other states for appointment of special policemen; compensation.
35-9-5.	Issuance of certificate of appointment; effect of certificate.	35-9-14.	Exercise of powers by person knowing of revocation of appointment; effect of filing and mailing of notice of revocation of appointment.
35-9-6.	Oath of office.	35-9-15.	Appointment of law enforcement officer of United States or any state as officer of this state.
35-9-7.	Compensation.		
35-9-8.	Status as employee of state.		
35-9-9.	Powers and duties generally; wearing of special badge; reporting of change of address.		

Cross references.
Special officers for protection of railroad property, § 46-8-230 et seq.

35-9-1. Definitions.

As used in this chapter, the term "appointing authority" means the Governor of this state or any officer or agency to whom the power to appoint and deputize special policemen is delegated.

35-9-2. Appointment of special policemen upon application of Governor or subdivision of another state.

Upon the application of the governor of any state or subdivision thereof owning or having an interest in any property situated wholly or partly in this state, the Governor of this state, or any officer or agency to whom or which he may delegate his powers and duties under this chapter, may appoint and deputize as special policemen, with the powers and duties provided for in Code Section 35-9-9, such number of persons designated in the application as may be deemed necessary for the additional protection of such property.

History.
Ga. L. 1943, p. 595, § 1.
Cross references.
Emergency powers of Governor, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Governor, §§ 4, 5.

C.J.S.
81A C.J.S., States, § 254 et seq.

35-9-3. Form and content of application for appointment.

Applications under Code Section 35-9-2 shall be made in writing upon forms prescribed by the appointing authority and shall contain the name, age, nationality, and address of each person for whom an appointment as special policeman is sought and such other information concerning the person as the appointing authority may require.

History.
Ga. L. 1943, p. 595, § 2.

35-9-4. Qualifications for appointment.

No person shall be appointed a special policeman under Code Sections 35-9-2 and 35-9-3, this Code section, and Code Sections 35-9-5 through 35-9-12 unless he is a citizen of the United States, is a person of good moral character, and has not previously been convicted of a felony.

History.
Ga. L. 1943, p. 595, § 4; Ga. L. 1993, p. 91, § 35.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Penal Code 1910, § 337, are included in the annotations for this Code section.

De facto marshal has the same right to make an arrest as one regularly appointed. McDuffie v. State, 121 Ga. 580, 49 S.E. 708, 1905 Ga. LEXIS 7 (1905) (decided under former Penal Code 1910, § 337).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 48 et seq., 70. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 7 et seq.
C.J.S.
63 C.J.S., Municipal Corporations, § 611 et seq. 67 C.J.S., Officers and Public Employees, §§ 21, 69 et seq.. 73 C.J.S., Public Administrative Law and Procedures, § 108 et seq.

35-9-5. Issuance of certificate of appointment; effect of certificate.

(a) The appointing authority shall issue a certificate of appointment to each person appointed as a special policeman under Code Sections 35-9-2 through 35-9-4, this Code section, and Code Sections 35-9-6 through 35-9-14 in such form as it may prescribe.

(b) The certificate of appointment shall constitute the appointee's authority for exercising the powers and carrying out the duties conferred and imposed upon him by Code Sections 35-9-2 through 35-9-4, this Code section, and Code Sections 35-9-6 through 35-9-12.

History.
Ga. L. 1943, p. 595, § 3; Ga. L. 1993, p. 91, § 35.

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 14.
C.J.S.
63 C.J.S., Municipal Corporations, § 615 et seq. 67 C.J.S., Officers and Public Employees, §§ 89 et seq., 140 et seq.

35-9-6. Oath of office.

Each person appointed under Code Sections 35-9-2 through 35-9-5, this Code section, and Code Sections 35-9-7 through 35-9-12 shall, within 15 days after his certificate of appointment has been issued and before entering upon the duties of his office, take and subscribe the oath prescribed by Code Section 45-3-1 and file it in the office of the appointing authority.

History.
Ga. L. 1943, p. 595, § 4; Ga. L. 1993, p. 91, § 35.

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 16.

35-9-7. Compensation.

The compensation of a special policeman shall be fixed in such amount as may be agreed upon between him and the state, political subdivision, department, agency, or district requesting his employment; and the latter shall be liable for the payment thereof.

History.
Ga. L. 1943, p. 595, § 6.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 5, 258 et seq. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 42 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, § 621 et seq. 67 C.J.S., Officers and Public Employees, § 365 et seq.

35-9-8. Status as employee of state.

Each person appointed as a special policeman under Code Sections 35-9-2 through 35-9-7, this Code section, and Code Sections 35-9-9 through 35-9-12 shall for all purposes be deemed to be an employee of the state, political subdivision, department, agency, or district requesting his appointment.

History.
Ga. L. 1943, p. 595, § 6; Ga. L. 1993, p. 91, § 35.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 1, 7. 70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 1 et seq.

C.J.S.
62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 2 et seq.

35-9-9. Powers and duties generally; wearing of special badge; reporting of change of address.

(a) Each person appointed as a special policeman under Code Sections 35-9-2 through 35-9-8, this Code section, and Code Sections 35-9-10 through 35-9-12 shall:

(1) Be charged with the duty of protecting and preserving the property described in the application for his appointment;

(2) Have power to arrest all persons trespassing or committing offenses or crimes on the property described in the application for his appointment;

(3) Have and may exercise the powers of a peace officer, but only upon the property or in connection with the property described in the application for his appointment; and

(4) Have power to possess and carry such firearms and other weapons while on duty as may be prescribed by the appointing authority.

(b) When on duty, a special policeman shall wear a metallic badge upon which shall be inscribed the words "special policeman."

(c) Whenever a person appointed as a special policeman shall change his residence, he shall forthwith give notice of his new address to the appointing authority.

History.
Ga. L. 1943, p. 595, § 5; Ga. L. 1993, p. 91, § 35.

OPINIONS OF THE ATTORNEY GENERAL

Limitation on authority. — Special policemen may not be appointed pursuant to O.C.G.A. §§ 35-9-1 through 35-9-14 by a political subdivision of this state for such purposes as enforcement of traffic laws and ordinances. 1999 Op. Att'y Gen. No. 99-6.

Property in need of "protecting and preserving" must be property which is owned or in which an interest is held by a foreign state, political subdivision, department, agency, or district requesting appointment of a special policeman. 1999 Op. Att'y Gen. No. 99-6.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 227.

C.J.S.
67 C.J.S., Officers and Public Employees, § 312 et seq.

35-9-10. Special policemen subject to rules and regulations of appointing authority.

Every special policeman appointed under Code Sections 35-9-2 through 35-9-9, this Code section, and Code Sections 35-9-11 and 35-9-12 shall at all times be subject to the rules and regulations of the appointing authority and to the supervision and control of such person or persons as the Governor of this state may from time to time designate.

History.
Ga. L. 1943, p. 595, § 9; Ga. L. 1993, p. 91, § 35.

35-9-11. Termination and revocation of appointment.

(a) The appointment of any special policeman under Code Sections 35-9-2 through 35-9-10, this Code section, and Code Section 35-9-12 shall terminate and his authority thereunder shall cease whenever the governor of the state requesting his appointment shall file a notice in the office of the appointing authority, in such form as the latter may prescribe, to the effect that his services are no longer required.

(b) The appointing authority shall also have power, on its own motion at any time and for any reason or cause deemed sufficient by the

appointing authority, to revoke the appointment of any special policeman by filing a revocation thereof in its office and mailing a notice of such filing to the governor of the state requesting his appointment and also to the person whose appointment is revoked at his address as it appears in the application for appointment or the latest statement thereof on file.

History.
Ga. L. 1943, p. 595, § 8; Ga. L. 1993, p. 91, § 35.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 100 et seq.
C.J.S.
63 C.J.S., Municipal Corporations, § 611 et seq. 67 C.J.S., Officers and Public Employees, § 61 et seq.

35-9-12. Immunity of state from liability for acts or omissions.

Neither this state nor any political subdivision of this state nor any department, officer, board, bureau, or other agency of either the state or any political subdivision thereof shall be liable or accountable in any way for or on account of the appointment of any special policeman or for or on account of any act or omission on the part of any special policeman in connection with his powers and duties under Code Sections 35-9-2 through 35-9-11 and this Code section.

History.
Ga. L. 1943, p. 595, § 7; Ga. L. 1993, p. 91, § 35.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 293, 294, 295, 299, 315 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 99, 126.
C.J.S.
63 C.J.S., Municipal Corporations, § 627 et seq. 67 C.J.S., Officers and Public Employees, § 338 et seq. 81A C.J.S., States, §§ 330, 331.
ALR.
Civil liability of law enforcement officers for malicious prosecution, 28 A.L.R.2d 646; 81 A.L.R.4th 1031.
Governmental tort liability for failure to provide police protection to specifically threatened crime victim, 46 A.L.R.4th 948.

35-9-13. Governor authorized to apply to other states for appointment of special policemen; compensation.

(a) The Governor of this state is authorized, in his discretion, to make application to the governor of any other state for the appointment

of special policemen for the additional protection of any property situated wholly or partly in such other state, which property is owned by this state or any subdivision thereof or in which this state or any subdivision thereof has any interest.

(b) This state or the subdivision thereof owning or having an interest in the property for the protection of which any such special policeman is appointed shall be liable for the compensation and expenses of such policeman and shall have full power and authority to provide or otherwise arrange for the payment of such compensation and expenses.

(c) Nothing contained in this Code section shall be construed to relieve the state or the political subdivision thereof in which such property is wholly or partly located from providing such normal police protection as it ordinarily and customarily provides for other property situated therein.

History.
Ga. L. 1943, p. 595, § 10.

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Governor, §§ 4, 5.

C.J.S.
81A C.J.S., States, § 254 et seq.

35-9-14. Exercise of powers by person knowing of revocation of appointment; effect of filing and mailing of notice of revocation of appointment.

Any person knowing of the revocation of his appointment as a special policeman or having in any manner received notice thereof who exercises or attempts to exercise any of the powers of a special policeman under Code Sections 35-9-2 through 35-9-12 shall be guilty of a misdemeanor. The filing and mailing of the notice of revocation of the appointment as provided in Code Section 35-9-11 shall be presumptive evidence that the person whose appointment was revoked knew of the revocation.

History.
Ga. L. 1943, p. 595, § 8.

35-9-15. Appointment of law enforcement officer of United States or any state as officer of this state.

(a) On request of the sheriff or the chief or director of a law enforcement agency of this state or of any political subdivision thereof, and with the consent of the employee concerned, a law enforcement officer of the United States or any of the several states may be appointed as a law enforcement officer of this state for the purpose of

providing mutual assistance in the enforcement of the laws of this state or of the United States. A law enforcement officer who is appointed pursuant to this Code section shall be considered a law enforcement officer of the appointing agency and shall have the same powers, duties, privileges, and immunities as a law enforcement officer employed by the appointing agency.

(b) Any such appointment shall be in writing, signed by the sheriff or the chief or director of the appointing agency, and shall specify the powers, duties, and responsibilities of the employee so appointed. Such appointment shall be at the pleasure of the sheriff or the chief or director of the appointing law enforcement agency. The appointment shall terminate if the person appointed ceases to be employed by an agency of the United States or of the several states. A copy of the appointment shall be filed in the executive office of the appointing agency.

(c) In lieu of any other oath prescribed by the laws of this state, a law enforcement officer appointed pursuant to this Code section shall take an oath to support and defend the Constitution of this state and to execute well and faithfully the laws of this state during the term of such appointment.

(d) As used in this Code section, the term "law enforcement agency" includes, but is not limited to, any sheriff 's office, municipal police department, county police department, prosecuting attorney's office, or any agency of the state or a political subdivision of this state whose employees are authorized to enforce the laws of this state.

(e) The following laws shall not apply to law enforcement officers appointed pursuant to this Code section:

(1) Code Section 45-2-1, relating to persons ineligible to hold civil office; and

(2) Chapter 8 of this title, known as the "Georgia Peace Officer Standards and Training Act."

History.
Ga. L. 1982, p. 1089, § 1; Code 1981, § 35-9-15, enacted by Ga. L. 1982, p. 1089, § 4; Ga. L. 2012, p. 775, § 35/HB 942.

OPINIONS OF THE ATTORNEY GENERAL

Qualifications of appointee. — While the Georgia Peace Officer Standards and Training Act, O.C.G.A. Ch. 8, T. 35, does not apply to a person appointed pursuant to O.C.G.A. § 35-9-15, such person must be a law enforcement officer of the United States or of any state prior to such appointment. 1999 Op. Att'y Gen. No. 99-6.

Authority of out-of-state trooper. — Absent a written appointment as a special policeman pursuant to O.C.G.A. § 35-9-15 by an authorized agency of this state, an out-of-state trooper who is in

official attendance with a visiting professional or school athletic team is a private citizen with no law enforcement powers beyond those possessed by any private citizen. 1987 Op. Att'y Gen. No. 87-14.

Off-duty military police may not be employed by a chief of police as part-time city police officers. 1991 Op. Att'y Gen. No. 91-3.

CHAPTER 10

MUNICIPAL AND COUNTY POLICE DEPARTMENTS' NOMENCLATURE

Sec.		Sec.	
35-10-1.	Short title.	35-10-6.	Procedure for seeking permission to use nomenclature or symbols; discretion of local governing body.
35-10-2.	Declaration of public purpose.	35-10-7.	Injunctions against violations.
35-10-3.	Definitions.	35-10-8.	Civil penalties.
35-10-4.	Permission required for use of nomenclature pertaining to particular police department.	35-10-9.	Damage suits against violators.
35-10-5.	Permission required for use of symbols pertaining to particular police department.	35-10-10.	Criminal penalties.
		35-10-11.	Name required on vehicles used to enforce traffic laws.

Editor's notes.

Ga. L. 1996, p. 445, § 1, effective April 2, 1996, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 35-10-1 through 35-10-8 and was based on Code 1981, §§ 35-10-1 through 35-10-8, enacted by Ga. L. 1994, p. 1392, § 1.

35-10-1. Short title.

This chapter shall be known and may be cited as the "Municipal and County Police Departments' Nomenclature Act of 1996."

History.

Code 1981, § 35-10-1, enacted by Ga. L. 1996, p. 445, § 1.

35-10-2. Declaration of public purpose.

It is declared to be contrary to the health, safety, and public welfare of the people of this state for any individual or organization to act in a manner which would mislead the public into believing that a member of the public is dealing with any municipal or county police department or with a member thereof when in fact the individual or organization is not the municipal or county police department or a member thereof. Furthermore, the municipal or county police department, which has provided quality law enforcement services to the citizens of this state, has established a name for excellence in its field. This name should be protected for the department, its members, and the citizens of this state. Therefore, no person or organization should be allowed to use any municipal or county police department's name or any term used to identify the department or its members without the expressed permis-

sion of the local governing authority. The provisions of this chapter are in furtherance of the promotion of this policy.

History.
Code 1981, § 35-10-2, enacted by Ga. L. 1996, p. 445, § 1.

35-10-3. Definitions.

As used in this chapter, the term:

(1) "Badge" means any official badge used in the past or present by members of municipal or county police departments.

(2) "Chief of police" means the chief of police for any municipal or county police department.

(3) "Department" means any municipal or county police department.

(4) "Director of public safety" means the director of public safety for any municipal or county police department.

(5) "Emblem" means any official patch or other emblem worn currently or formerly or used by the department to identify the department or its employees.

(6) "Local governing authority" means, with respect to a county, the governing authority of the county and, with respect to a municipality, the governing authority of the municipality.

(7) "Person" means any person, corporation, organization, or political subdivision of this state.

(8) "Willful violator" means any person who knowingly violates the provisions of this chapter. Any person who violates this chapter after being advised in writing by the local governing authority that such person's activity is in violation of this chapter shall be considered a willful violator and shall be considered in willful violation of this chapter. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this chapter, unless upon learning of the violation he or she immediately terminates the agency or other relationship with such violator.

History.
Code 1981, § 35-10-3, enacted by Ga. L. 1996, p. 445, § 1.

35-10-4. Permission required for use of nomenclature pertaining to particular police department.

Whoever, except with the express written permission of the local governing authority, knowingly uses words pertaining to a particular municipal or county police department in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the department shall be in violation of this chapter.

History.
Code 1981, § 35-10-4, enacted by Ga. L. 1996, p. 445, § 1.

35-10-5. Permission required for use of symbols pertaining to particular police department.

Any person who uses or displays any current or historical symbol, including any emblem, seal, or badge, used by the department in connection with the planning, conduct, or execution of any solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production in a manner reasonably calculated to convey the impression that such solicitation; advertisement, circular, book, pamphlet, or other publication; or play, motion picture, broadcast, telecast, telemarketing, or other production is approved, endorsed, or authorized by or associated with the department without written permission from the local governing authority shall be in violation of this chapter.

History.
Code 1981, § 35-10-5, enacted by Ga. L. 1996, p. 445, § 1.

35-10-6. Procedure for seeking permission to use nomenclature or symbols; discretion of local governing body.

Any person wishing permission to use the nomenclature or a symbol of a department may submit a written request for such permission to the chief of police or director of public safety. Within 15 calendar days after receipt of the request, the chief of police or director of public safety shall send a notice with his or her recommendation to the local governing authority stating whether the person may use the requested nomenclature or symbol. Within 30 calendar days after receipt of a recommendation from the chief of police or director of public safety, the local

governing authority shall send a notice to the requesting party of their decision on whether or not the person may use the requested nomenclature or symbol. If the local governing authority does not respond within the 30 day time period, then the request is presumed to have been approved. The grant of permission under Code Section 35-10-4 or 35-10-5 shall be in the discretion of the local governing authority under such conditions as the local governing authority may impose.

History.
Code 1981, § 35-10-6, enacted by Ga. L. 1996, p. 445, § 1; Ga. L. 1999, p. 81, § 35.

35-10-7. Injunctions against violations.

Whenever there shall be an actual or threatened violation of Code Section 35-10-4 or 35-10-5, the local governing authority shall have the right to apply to the superior court of the county of residence of the violator for an injunction to restrain the violation.

History.
Code 1981, § 35-10-7, enacted by Ga. L. 1996, p. 445, § 1.

35-10-8. Civil penalties.

In addition to any other relief or sanction for a violation of Code Section 35-10-4 or 35-10-5, where the violation is willful, the local governing authority shall be entitled to collect a civil penalty in the amount of $500.00 for each violation. Further, when there is a finding of willful violation, the local governing authority shall be entitled to recover reasonable attorney's fees for bringing any action against the violator. The local governing authority shall be entitled to seek civil sanctions in the superior court in the county of residence of the violator.

History.
Code 1981, § 35-10-8, enacted by Ga. L. 1996, p. 445, § 1.

35-10-9. Damage suits against violators.

Any person who has given money or any other item of value to another person due in part to such person's use of department nomenclature or symbols in violation of this chapter may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees.

History.
Code 1981, § 35-10-9, enacted by Ga. L. 1996, p. 445, § 1.

35-10-10. Criminal penalties.

Any person who violates the provisions of this chapter shall be guilty of a felony and upon conviction thereof shall be subject to a fine of not less than $1,000.00 or more than $5,000.00 or to imprisonment for not less than one or more than five years, or both. Each violation shall constitute a separate offense.

History.
Code 1981, § 35-10-10, enacted by Ga. L. 1996, p. 445, § 1.

35-10-11. Name required on vehicles used to enforce traffic laws.

No law enforcement agency shall enforce the traffic laws of this state or any traffic ordinances with any name of law enforcement authority on its vehicles other than the name of the applicable county or municipality or the state.

History.
Code 1981, § 35-10-11, enacted by Ga. L. 1996, p. 445, § 1.

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87. Participation in Federal Programs, 36-87-1 through 36-87-2.

88. Enterprise Zones, 36-88-1 through 36-88-10.

89. Homeowner Tax Relief Grants, 36-89-1 through 36-89-6.

90. Local Government Cable Fair Competition, 36-90-1 through 36-90-8.

91. Public Works Bidding, 36-91-1 through 36-91-119.

92. Waiver of Immunity for Motor Vehicle Claims, 36-92-1 through 36-92-5.

Cross references.

Definition of term "county governing authority" as used in laws of state, § 1-3-3(7).

Establishment, powers, duties, and responsibilities of county board of health in each county of state, § 31-3-1 et seq.

Jurisdiction and authority of counties as to public roads generally, § 32-4-40 et seq.

Authority of counties to license roadhouses, public dance halls, and similar establishments, § 43-21-50 et seq.

Prohibition against requiring municipal or county officers or employees to reside within boundaries of municipality or county, § 45-2-5.

Purchase of liability insurance for members of municipal, county, or other governing bodies, § 45-9-20 et seq.

Contracts between counties and State Personnel Board relating to inclusion of county employees in health insurance plans established under T. 45, C. 18, A. 1.

County taxation generally, § 48-5-220 et seq.

Creation, powers, and duties of area planning and development commissions, § 50-8-30 et seq.

Law reviews.

For article, "The Use of the Police Power by Local Governments and Some Problems of Intergovernmental Relations," see 8 J. Pub. L. 109 (1959).

For article, "Discretion in Georgia Local Government Law," see 8 Ga. L. Rev. 614 (1974).

For article analyzing the changing relationship between state and local governments in Georgia in light of "Amendment 19," see 9 Ga. L. Rev. 757 (1975).

For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

For article discussing developments in Georgia's local government law in 1976 and 1977, see 29 Mercer L. Rev. 189 (1977).

For article surveying Georgia cases in the area of local government law from June 1977 through May 1978, see 30 Mercer L. Rev. 133 (1978).

For annual survey on local government law, see 36 Mercer L. Rev. 255 (1984).

For article surveying local government law in 1984-1985, see 37 Mercer L. Rev. 313 (1985).

For annual survey of local government law, see 39 Mercer L. Rev. 275 (1987).

For annual survey of local government law, see 40 Mercer L. Rev. 303 (1988).

For annual survey of local government law, see 42 Mercer L. Rev. 359 (1990).

For annual survey of local government law, see 43 Mercer L. Rev. 317 (1991).

For annual survey article on local government law, see 45 Mercer L. Rev. 325 (1993).

For annual survey article on local government law, see 46 Mercer L. Rev. 363 (1994).

For student article, "Georgia Local Government Law: Court Resolution of County Government Disagreements," see 46 Mercer L. Rev. 599 (1994).

For annual survey article on local government law, see 49 Mercer L. Rev. 215 (1997).

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999).

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

For article on cases in which the supreme court reversed the court of appeals on the subject of local government law, see 56 Mercer L. Rev. 1 (2004).

Provisions Applicable to Counties Only

CHAPTER 1

GENERAL PROVISIONS

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36-1-1.	Names of 159 counties.
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36-1-19.1.	Authority to make charitable donations; state authority to establish procedures.
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36-1-22.	[Reserved] Business and occupational license taxes and fees.
36-1-23.	Purchase of construction materials from county.
36-1-24.	Training classes for clerks of governing authority of county.
36-1-25.	Official minutes of meetings.
36-1-26.	Contracts for utility services; terms and conditions.
36-1-27.	Procedure for expenditure of public funds for fixed guideway transit; referendum; ballot language.

Law reviews.

For annual survey of local government law, see 35 Mercer L. Rev. 233 (1983).

RESEARCH REFERENCES

ALR.
Liability to refund local taxes as within coverage of liability insurance, 21 A.L.R.4th 895.

36-1-1. Names of 159 counties.

The state is divided into 159 counties, whose boundaries and limits shall be ascertained by the several Acts laying off the same and those Acts amendatory thereof. The names of the counties are as follows: Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Catoosa, Charlton, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth.

History.
Orig. Code 1863, § 30; Code 1868, § 28; Code 1873, § 28; Code 1882, § 28; Civil Code 1895, § 29; Civil Code 1910, § 31; Code 1933, § 23-101.

Cross references.
Limitation of number of counties to 159, Ga. Const. 1983, Art. IX, Sec. I, Para. II.
Prohibition of creation of new counties other than by consolidation or merger of existing counties, Ga. Const. 1983, Art. IX, Sec. I, Para. II.

Editor's notes.
For laws creating counties, changing county boundaries or names, or otherwise affecting counties, see the Local Laws Index of this Code.

OPINIONS OF THE ATTORNEY GENERAL

County name may be changed by statute. 1945-47 Ga. Op. Att'y Gen. 65.

36-1-2. Extent of jurisdiction of counties divided by water.

Whenever a stream of water is the boundary of a county, the jurisdiction of the county shall extend to the center of the main channel of the

stream, provided that whenever a stream of water is the boundary of a county and such stream or a bank thereof is the boundary of the State of Georgia, the jurisdiction of the county shall extend to that point which is the boundary of the state.

History.
Orig. Code 1863, § 39; Code 1868, § 37; Code 1873, § 35; Code 1882, § 35; Civil Code 1895, § 30; Civil Code 1910, § 32; Code 1933, § 23-102; Ga. L. 1984, p. 131, § 1.

Cross references.
Boundaries of counties generally, § 36-3-1 et seq.

Respective rights of owners of property divided by nonnavigable stream, § 44-8-2.

Boundaries of state generally, § 50-2-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 23.

C.J.S.
20 C.J.S., Counties, § 18. 40 C.J.S., Highways, § 339 et seq.

36-1-3. County a body corporate; power to sue and be sued generally.

Every county is a body corporate, with power to sue or be sued in any court.

History.
Orig. Code 1863, § 463; Code 1868, § 525; Code 1873, § 491; Code 1882, § 491; Civil Code 1895, § 340; Civil Code 1910, § 383; Code 1933, § 23-1501.

Law reviews.
For article, "Quasi-Municipal Tort Liability in Georgia," see 6 Mercer L. Rev. 287 (1955).

For article, "Actions for Wrongful Death in Georgia: Part Three and Four," see 21 Ga. B. J. 339 (1959).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B. J. 494 (1969).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Extent of power conferred. — County, it is true, is a corporation. But this is only for certain specific purposes. Counties are, in fact, but quasi corporations, and this section of the Code is not to be understood as conferring any powers, except the right to sue and be sued, since the other powers are all conferred and regulated by other statutes and provisions of the Code. Millwood v. DeKalb County, 106 Ga. 743, 32 S.E. 577, 1899 Ga. LEXIS 742 (1899).

County is a body corporate and may sue and be sued, but the county's functions are government, and it has no power except as conferred by statute. Town of Decatur v. DeKalb County, 130 Ga. 483, 61 S.E. 23, 1908 Ga. LEXIS 321 (1908).

This section subjects the counties of this state to suit, but not to suits upon all causes of action. It does not make them generally liable to suits like individuals or as municipal corporations. Being political subdivisions of the state, they cannot be sued unless made subject to suit expressly or by necessary implication. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247, 1927 Ga. LEXIS 97 (1927).

Who may sue. — Right to sue a county is not restricted to citizens of this state. Board of Comm'rs v. Hurd, 49 Ga. 462, 1873 Ga. LEXIS 403 (1873).

Construction with Code Section 36-1-4. — Former Code 1910, §§ 383 and 384 (see now O.C.G.A. §§ 36-1-3 and 36-1-4) must be construed together, and those statutes must receive a reasonable construction. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247, 1927 Ga. LEXIS 97 (1927).

County's violation of constitutional right raises cause of action. — Violation by a county of a constitutional right of the citizen must, by necessary implication, raise a cause of action in favor of the citizen against the county, unless some means of redress other than suit has been afforded by the legislature. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935).

Applicability of sovereign immunity in action between city and county. — In a suit by a city against a county, seeking a portion of tax revenue raised by the county from alcoholic beverage sales, there was a threshold question of whether sovereign immunity applied in suits between political subdivisions of the same sovereign (such as the city and the county), which the trial court had not addressed; therefore, remand was required. Clayton County v. City of College Park, 301 Ga. 653, 803 S.E.2d 63, 2017 Ga. LEXIS 553 (2017).

Judicial notice. — Courts will take judicial cognizance of the fact that each county is a body corporate. Taylor v. State, 123 Ga. 133, 51 S.E. 326, 1905 Ga. LEXIS 398 (1905).

Power to employ counsel. — County commissioners are authorized by clear implication to employ counsel for the county. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248, 1931 Ga. LEXIS 237 (1931).

Action by county for enforcement not authorized. — County did not have authority to pursue tort damages based on the county's complaint alleging that unlawful acts by the defendants, including "occupation of buildings without obtaining inspections or certificates of occupancy, zoning violations, building code, safety, and fire violations, operation of businesses in a residential zone, and the like," caused the county to spend money enforcing the county's laws and protecting the county's citizens. Torres v. Putnam County, 246 Ga. App. 544, 541 S.E.2d 133, 2000 Ga. App. LEXIS 1291 (2000).

Tort claims by county not authorized. — When a county had recovered, identified, and properly disposed of bodies found at a crematorium, O.C.G.A. § 36-1-3 did not authorize the county to recover the county's costs of doing so as compensatory damages in a tort action against the crematorium, funeral homes, and funeral directors alleging negligence and public nuisance claims. Walker County v. Tri-State Crematory, 284 Ga. App. 34, 643 S.E.2d 324, 2007 Ga. App. LEXIS 249 (2007), cert. denied, No. S07C1025, 2007 Ga. LEXIS 459 (Ga. June 4, 2007).

Relation between the county and the county attorney does not rest upon contract, but arises from appointment authorized by a legislative enactment. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248, 1931 Ga. LEXIS 237 (1931).

Liability of Counties

No right given to sue for any breach of duty. — This section does not ex vi termini give a citizen a right to sue the

Liability of Counties (Cont'd)

county for the nonperformance of any duty. A county rests upon a different footing from cities and towns. Scales v. Ordinary of Chattahoochee County, 41 Ga. 225, 1870 Ga. LEXIS 70 (1870).

Liability based on statute or breach of valid contract. — County can always be sued upon any liability against the county created by statute, or for breach of any valid contract which the county is authorized by law to make. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247, 1927 Ga. LEXIS 97 (1927).

Supreme Court has long construed former Code 1933, §§ 23-1501 and 23-1502 (see now O.C.G.A. §§ 36-1-3 and 36-1-4) as permitting suits against counties based on contracts made pursuant to legislative authorization. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285, 1979 Ga. LEXIS 1452 (1979).

County not liable without constitutional or statutory cause of action. — Constitutional provision that a county is a body corporate and this section do not authorize a suit against a county for damages when the county is not made liable for such damages by the Constitution or by statute. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445, 1975 Ga. LEXIS 871 (1975).

Counties, as corporations, are mere subdivisions of the state, and the state is never subject to suit except by express enactment, and this is also true of subdivisions of the state. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935).

County, being a political division of the state, is not liable to be sued, unless special authority can be shown; it is incumbent upon the person filing the suit to bring a case within the legislative authority upon which the person relies to bring the suit. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935).

Whenever a county is by statute made liable for a given demand, an action against the county will lie therefor, though the statute does not in express terms authorize or provide for the bringing of such an action. Taylor v. Jenkins County, 116 Ga. App. 718, 158 S.E.2d 322, 1967 Ga. App. LEXIS 936 (1967).

County not liable for tort of guard. — County is not responsible in damages for the tort of a guard in unlawfully beating a convict in the chain gang, or for the negligence of other guards in not protecting the convict from the unlawful beating. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935).

Procedure

Injunction available against governing officials. — Though suits by and against a county are properly brought in the name of the county, an injunction may be sought in a court of equity in an action which is brought against the governing officials of the county. Olley Valley Estates, Inc. v. Fussell, 232 Ga. 779, 208 S.E.2d 801, 1974 Ga. LEXIS 1086 (1974).

All suits by, or against, a county shall be in the name thereof. Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 451, 1 S.E.2d 222, 1939 Ga. App. LEXIS 318 (1939).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 2, 8, 724, 729.

C.J.S.

20 C.J.S., Counties, §§ 1 et seq., 393 et seq.

ALR.

County as subject to garnishment process, 60 A.L.R. 823.

Power of city, town, or county or its officials to compromise claim, 105 A.L.R. 170; 15 A.L.R.2d 1359.

Right of governmental entity to maintain action for defamation, 45 A.L.R.3d 1315.

36-1-4. When county liable to be sued.

A county is not liable to suit for any cause of action unless made so by statute.

History.
Civil Code 1895, § 341; Civil Code 1910, § 384; Code 1933, § 23-1502.

History of Section.
This Code section is derived in part from the decisions in Hammond v. County of Richmond, 72 Ga. 188 (1883), and Smith v. Wilkes & McDuffie Counties, 79 Ga. 125, 4 S.E. 20 (1887).

Law reviews.
For article, "Quasi-Municipal Tort Liability in Georgia," see 6 Mercer L. Rev. 287 (1955).

For article, "Actions for Wrongful Death in Georgia: Parts Three and Four," see 21 Ga. B. J. 339 (1959).

For article discussing necessity of liability insurance for Georgia counties and municipalities, and constitutional authority of the units to provide such insurance, see 25 Ga. B.J. 35 (1962).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B. J. 494 (1969).

For article surveying tort liability insurance in Georgia local government law, see 24 Mercer L. Rev. 651 (1973).

For note analyzing sovereign immunity in this state and proposing implementation of a waiver scheme and creation of a court of claims pursuant to Ga. Const. 1976, Art. VI, Sec. V, Para. I, see 27 Emory L.J. 717 (1978).

For article on insurance and indemnity for Georgia local government officers under Georgia law, see 13 Ga. L. Rev. 747 (1979).

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For article, "Defending the Lawsuit: A First-Round Checklist," see 22 Ga. St. B.J. 24 (1985).

For article, "Georgia Local Government Tort Liability: The 'Crisis' Conundrum," see 2 Ga. St. U. L. Rev. 19 (1986).

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

For article, "Georgia County Liability: Nuisance or Not?," see 43 Mercer L. Rev. 1 (1991).

For article, "Local Government Tort Liability: The Summer of '92," see 9 Ga. St. U.L. Rev. 405 (1993).

JUDICIAL DECISIONS

Analysis

General Consideration
Violations of Constitutional Rights
Taking of or Damage to Private Property
Contracts
Torts
1. Liability Generally
2. Roads and Bridges
Pleading

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 543 and former Code 1933, § 95-1001, are included in the annotations for this Code section.

Constitutionality. — This section does not violate the state and federal Constitutions. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445, 1975 Ga. LEXIS 871 (1975).

This section does not violate U.S. Const., amend. 14 or Ga. Const. 1945, Art. I, Sec. I, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I). Williams v. Georgia Power Co., 233 Ga. 517, 212 S.E.2d 348, 1975 Ga. LEXIS 1362 (1975).

Codification of case law rule. — This

General Consideration (Cont'd)

section is a codification of the principal rule in Hammond v. County of Richmond, 72 Ga. 188 (1883), and Smith v. Wilkes & McDuffie Counties, 79 Ga. 125, 4 S.E. 20 (1887). Lynch v. Harris County, 188 Ga. 651, 4 S.E.2d 573, 1939 Ga. LEXIS 593 (1939).

Sovereign immunity still rule. — Supreme Court of this state has so often affirmed and acknowledged that the doctrine of sovereign immunity prevents a suit by a citizen against the state, or a political subdivision thereof, until it is hardly necessary to again formally assert this rule. Haber v. Fulton County, 124 Ga. App. 789, 186 S.E.2d 152, 1971 Ga. App. LEXIS 1106, 1971 Ga. App. LEXIS 1423, 1971 Ga. App. LEXIS 1434 (1971).

Sovereign immunity recognized since common law. — Doctrine of sovereign immunity has been recognized in this state since the adoption of the common law. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, 1992 Ga. App. LEXIS 617 (1992).

Applicability of sovereign immunity in suit between county and city. — In a suit by a city against a county, seeking a portion of tax revenue raised by the county from alcoholic beverage sales, there was a threshold question of whether sovereign immunity applied in suits between political subdivisions of the same sovereign (such as the city and the county), which the trial court had not addressed; therefore, remand was required. Clayton County v. City of College Park, 301 Ga. 653, 803 S.E.2d 63, 2017 Ga. LEXIS 553 (2017).

In a case involving taxation of alcoholic beverages, the city's claims against the county were not barred by sovereign immunity since the city and county were merely exercising their own respective home rule powers by collecting tax revenues for their own purposes, and neither was acting on behalf of the State of Georgia; thus, there was no sovereignty to be maintained. City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Immunity statutory, not common law. — Unlike the immunity of the state which had been judicially created, the immunity of a county from suit is found in statutory law. Nelson v. Spalding County, 249 Ga. 334, 290 S.E.2d 915, 1982 Ga. LEXIS 819 (1982).

Even if Ga. Const. 1976, Art. VI, Sec. V, Para. I (see now Ga. Const. 1983, Art. I, Sec. II, Para. IX) were not meant to reserve immunity for counties in all cases, such immunity has the additional support of O.C.G.A. § 36-1-4. Nelson v. Spalding County, 249 Ga. 334, 290 S.E.2d 915, 1982 Ga. LEXIS 819 (1982).

Extent of immunity. — Sovereign immunity enjoyed by a county extends to discretionary as well as ministerial functions and, indeed, even to personal injury claims based on nuisance. Early County v. Fincher, 184 Ga. App. 47, 360 S.E.2d 602, 1987 Ga. App. LEXIS 2123 (1987).

Sovereign immunity barred the plaintiff's claims against the defendant county because, under O.C.G.A. § 36-1-4, a county was not liable to suit for any cause of action unless made so by statute, and the county's sovereign immunity had not been waived with respect to the claims asserted by the plaintiff. McRae v. Perry, No. CV 211-193, 2012 U.S. Dist. LEXIS 169081 (S.D. Ga. Nov. 28, 2012).

O.C.G.A. § 36-1-4 includes actions brought under a theory of negligence. Schulze v. DeKalb County, 230 Ga. App. 305, 496 S.E.2d 273, 1998 Ga. App. LEXIS 28 (1998).

Language of section broad and comprehensive. — Language could not be broader or more comprehensive, or more free from doubt, than the words of this section. When it says the county shall not be liable for any cause of action, the statute expressly negatives the idea of exceptions other than provided therein, to wit, "unless made so by statute." Wood v. Floyd County, 161 Ga. 743, 131 S.E. 882, 1926 Ga. LEXIS 330 (1926).

General rule for liability. — Whenever a county is by statute made liable for a given demand, an action against the county will lie therefor, though the statute does not in express terms authorize or provide for the bringing of such an action. Decatur County v. Praytor, Howton & Wood

Contracting Co., 163 Ga. 929, 137 S.E. 247, 1927 Ga. LEXIS 97 (1927).

Negligence not sufficient for action against county. — Neither negligent performance of duties which the county authorities are compelled to perform, nor the negligent discharge of duties voluntarily assumed, except in cases provided by statute, gives a cause of action against the county. Millwood v. DeKalb County, 106 Ga. 743, 32 S.E. 577, 1899 Ga. LEXIS 742 (1899); Mitchell County v. Dixon, 20 Ga. App. 21, 92 S.E. 405, 1917 Ga. App. LEXIS 693 (1917).

County exempt from suit generally. — This section has the effect of exempting a county from liability to suit in the absence of a statute authorizing a suit for the breach of duty alleged, though that duty is one imposed on the county by statute. Wolf v. Upson County, 44 F.2d 925, 1930 U.S. App. LEXIS 3462 (5th Cir. 1930).

County is exempt from suit except when the suit is specifically authorized by the Constitution and statutes. Bibb County v. Green, 42 Ga. App. 552, 156 S.E. 745, 1931 Ga. App. LEXIS 49 (1931).

County is not liable to suit for any cause of action unless made so by statute. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, 1992 Ga. App. LEXIS 617 (1992).

Medical care for inmates. — Trial court correctly determined that the state law claims made against a county and against a sheriff and medical contract compliance administrator in their official capacities were barred because, although O.C.G.A. § 42-5-2(a) imposed upon the county the duty and cost of medical care for inmates in the county's custody, the statute did not waive sovereign immunity of the county or the county's agents or employees. Graham v. Cobb County, 316 Ga. App. 738, 730 S.E.2d 439, 2012 Ga. App. LEXIS 643 (2012).

Counties, as corporations, are mere subdivisions of state, and the state is never suable except by express enactment, and this is also true of subdivisions of the state. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935).

County, being a political division of the state, is not liable to be sued unless special authority can be shown; it is incumbent upon the person filing the suit to bring a case within the legislative authority upon which the person relies to bring the suit. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935).

County in virtue of being a subdivision of the sovereign state "is not liable to suit for any cause of action unless made so by statute." For similar reason the State Highway Board (now State Transportation Board) is not so liable unless made so by law. Taylor v. Richmond County, 185 Ga. 610, 196 S.E. 37, 1938 Ga. LEXIS 484 (1938).

Doctrine of sovereign immunity also applies to political subdivisions of the state, including counties. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, 1992 Ga. App. LEXIS 617 (1992).

Rule for county liability different from that of city. — While it was true that the liability of cities on the cities' contracts was determined just as it was at common law and under former Code 1933, § 69-301 (see now O.C.G.A. § 36-33-1) and their liability as to torts conforms to the rule at common law, the rule of liability as to counties was different, in that former Code 1933, § 23-1502 (see now O.C.G.A. § 36-1-4) relaxed the rule which forbid altogether any suit against a county for any cause of action so as to authorize suits against the city when so authorized by express constitutional or statutory authority. Purser v. Dodge County, 188 Ga. 250, 3 S.E.2d 574, 1939 Ga. LEXIS 490 (1939).

Express authorization of liability not necessary. — Whenever a county is by statute made liable for a given demand, an action against the county will lie therefor, though the statute does not in express terms authorize or provide for the bringing of such an action. Taylor v. Jenkins County, 116 Ga. App. 718, 158 S.E.2d 322, 1967 Ga. App. LEXIS 936 (1967).

Waiver of immunity. — Immunity provided to a county by O.C.G.A. § 36-1-4 is waived, pursuant to Ga. Const., 1983, Art. I, Sec. VI, Para. IX, when the county purchases a liability insurance policy. Early County v. Fincher, 184 Ga. App. 47,

General Consideration (Cont'd)

360 S.E.2d 602, 1987 Ga. App. LEXIS 2123 (1987).

No constitutional or statutory authority for recovery of punitive damages. — Since damages recoverable in an action by a property owner whose property is harmed by a county for public purposes is a substitute for damages recoverable in a condemnation action, there is no constitutional or statutory authority for the recovery of punitive damages against a county. Fulton County v. Baranan, 240 Ga. 837, 242 S.E.2d 617, 1978 Ga. LEXIS 844 (1978).

Without express authority by statute, county is not subject to garnishment. Dotterer v. Bowe, 84 Ga. 769, 11 S.E. 896, 1890 Ga. LEXIS 340 (1890).

When county officials exceed powers. — When public officers, in discharging duties imposed upon the officers by law, undertake other duties not imposed by law, although intending it to be a benefit to the public, the latter, as represented by county governments, cannot be made responsible for torts or ultra vires contracts. Wood v. Floyd County, 161 Ga. 743, 131 S.E. 882, 1926 Ga. LEXIS 330 (1926).

Acts done within scope of authority and without wilfulness, fraud, or malice. — Under sovereign immunity principles, a public officer or employee, acting within the scope of their authority and engaged in discretionary as opposed to ministerial functions, is entitled to immunity from suit provided the acts complained of are done within the scope of the officer's authority and without wilfulness, fraud, malice, or corruption. Hendon v. DeKalb County, 203 Ga. App. 750, 417 S.E.2d 705, 1992 Ga. App. LEXIS 617 (1992).

Board of education liable for acts outside board's authority. — County is a public corporation and acts through the county's officers and agents. In matters pertaining to education, the county acts through the county's board of education. When the board of education acts upon matters lawfully within the board's jurisdiction, the board is the county acting through the board's corporate authority, and a county is not liable to suit for any cause of action unless made so by statute. But when the board of education, through the board's members, acts beyond the scope of the board's lawful jurisdiction and commits an actionable wrong, the act so committed is not "county action," and in such a case a suit may be maintained in the courts of this state against the wrongdoers. Duffee v. Jones, 208 Ga. 639, 68 S.E.2d 699, 1952 Ga. LEXIS 295 (1952).

Charter provision constitutional. — A 1983 amendment to the charter of the consolidated local government of Columbus which provided that the tort liability of the consolidated government would be the tort liability applicable to counties was valid and constitutional. Bowen v. City of Columbus, 256 Ga. 462, 349 S.E.2d 740, 1986 Ga. LEXIS 907 (1986).

County is liable to suit in action to recover land owned by the plaintiffs and which has been taken possession of by the county, when the plaintiff refuses on demand to deliver possession. Lynch v. Harris County, 188 Ga. 651, 4 S.E.2d 573, 1939 Ga. LEXIS 593 (1939).

"Equitable liens." — O.C.G.A. § 36-1-4 was not an impediment to an unpaid subcontractor's "equitable lien" claim against a county as to any funds which were being held by the county but which belonged to the general contractor. DeKalb County v. J & A Pipeline Co., 263 Ga. 645, 437 S.E.2d 327, 1993 Ga. LEXIS 830 (1993).

County liable for money illegally received. — If a county illegally obtains the money of another and refuses, on demand, to make restitution, an action for money had and received lies against the county for money so appropriated and used. Owens v. Floyd County, 94 Ga. App. 532, 95 S.E.2d 389, 1956 Ga. App. LEXIS 605 (1956).

Suit for money had and received, when the suit is against equity and good conscience for the one receiving it to keep it (and this includes a county), is not based on a contract nor a statute. Owens v. Floyd County, 94 Ga. App. 532, 95 S.E.2d 389, 1956 Ga. App. LEXIS 605 (1956).

Requirement for writ of mandamus. — Before a writ of mandamus will issue to compel the county

commissioners to issue a warrant upon the treasurer to pay a debt, it must appear that the debt comes within the classes provided in the Constitution for which a tax may be levied. Daniel v. Hutchinson, 169 Ga. 492, 150 S.E. 681, 1929 Ga. LEXIS 387 (1929).

When landowners were compensated by a county in condemnation proceedings, the landowners could not seek additional recovery based upon nuisance or trespass, nor could the landowners bring suit against the county for negligent misrepresentation or fraudulent inducement in the original condemnation actions. Butler v. Gwinnett County, 223 Ga. App. 703, 479 S.E.2d 11, 1996 Ga. App. LEXIS 1275 (1996), cert. denied, No. S97C0480, 1997 Ga. LEXIS 335 (Ga. Mar. 7, 1997).

County's immunity regarding tax sale. — Pursuant to O.C.G.A. § 36-1-4 and Ga. Const. 1983, Art. I, Sec. II, Para. IX (e), a county was immune from a lender's suit because the lender pointed to no statute creating a waiver of immunity or any factual scenario warranting a waiver with respect to the lender's claim that the county failed to give the lender notice of the availability of excess funds following a tax sale as required by O.C.G.A. § 48-4-5. Bartow County v. S. Dev., III, L.P., 325 Ga. App. 879, 756 S.E.2d 11, 2014 Ga. App. LEXIS 90 (2014).

Violations of Constitutional Rights

Violation by county of constitutional right of citizen raises cause of action in favor of the citizen against the county, unless some means of redress other than suit has been afforded by the legislature. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935); Waters v. DeKalb County, 208 Ga. 741, 69 S.E.2d 274, 1952 Ga. LEXIS 341 (1952); Baranan v. Fulton County, 232 Ga. 852, 209 S.E.2d 188, 1974 Ga. LEXIS 1112 (1974).

Arrestee's 42 U.S.C. § 1983 suit against a county, alleging that the arrestee was raped by a deputy at the county jail, failed as a matter of law because, under O.C.G.A. § 36-1-4, a county was not liable for any cause of action unless provided by statute, and the county had not waived the county's sovereign immunity. Boyd v. Nichols, 616 F. Supp. 2d 1331, 2009 U.S. Dist. LEXIS 37750 (M.D. Ga. 2009).

Taking of or Damage to Private Property

Right arises from Constitution. — Right to sue a county for damages for the taking or damaging of private property under the circumstances alleged is not dependent on any statute, but arises out of the constitutional provision which applies to counties as well as to individuals. Brooks County v. Elwell, 63 Ga. App. 308, 11 S.E.2d 82, 1940 Ga. App. LEXIS 81 (1940).

Declaration of the Constitution that private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid gives rise to an action for damages against a county for injuries to private property caused by public improvements. Baranan v. Fulton County, 232 Ga. 852, 209 S.E.2d 188, 1974 Ga. LEXIS 1112 (1974).

Taking or damaging property. — Lawsuits involving taking or damaging of property under Ga. Const. 1976, Art. I, Sec. III, Para. I (see now Ga. Const. 1983, Art. I. Sec. III, Para. II, and Art. III, Sec. VI, Para. II) may be maintained against counties. Ingram v. Baldwin County, 149 Ga. App. 422, 254 S.E.2d 429, 1979 Ga. App. LEXIS 1878 (1979).

Taking private property. — As a general rule, a county is not liable to suit unless there is a law which so declares. Yet the appropriate law can be found in the Constitution. When private property is taken by county authorities for the benefit of the public, a right of action arises in favor of the owner of the property. Elbert County v. Brown, 16 Ga. App. 834, 86 S.E. 651, 1915 Ga. App. LEXIS 233 (1915); Bates v. Madison County, 32 Ga. App. 370, 123 S.E. 158, 1924 Ga. App. LEXIS 405 (1924).

County can be held liable to the extent of an injury to property, not on the theory that the county is liable, as are other tort-feasors, for the negligent acts and conduct of its agents while acting within the scope of their authority, but for the reason that it cannot, either with or without the guise of contractual authority,

Taking of or Damage to Private Property (Cont'd)

damage the property of another for the public use without just and adequate compensation being paid. Felton Farm Co. v. Macon County, 49 Ga. App. 239, 175 S.E. 29, 1934 Ga. App. LEXIS 343 (1934).

Construing together Ga. Const. 1877, Art. I, Sec. III, Para. I (see now Ga. Const. 1983, Art. I, Sec. III, Para. II, and Art. III, Sec. VI, Para. II) and this section, a right of action is afforded against a county for damage to private property for public uses or taking private property for public uses. Consequently, a county is liable to suit at the instance of an individual for damages to the individual's property done by the county for a public purpose. Taylor v. Richmond County, 185 Ga. 610, 196 S.E. 37, 1938 Ga. LEXIS 484 (1938) (decided under former Code 1933, § 95-1001).

Owner entitled to compensation. — If private property is taken or damaged by a county for public use, even by the prudent and proper exercise of a power conferred by statute, the owner is entitled to just compensation. Felton Farm Co. v. Macon County, 49 Ga. App. 239, 175 S.E. 29, 1934 Ga. App. LEXIS 343 (1934).

When a county causes a nuisance to exist which amounts to a taking of property of one of its citizens for public purposes, the county is liable. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

Recovery of prejudgment interest. — Sovereign immunity does not prohibit the recovery of prejudgment interest in an action for a refund of wrongfully collected taxes. Eastern Air Lines v. Fulton County, 183 Ga. App. 891, 360 S.E.2d 425, 1987 Ga. App. LEXIS 2115 (1987), superseded by statute as stated in Ga. Dep't of Corr. v. Couch, 295 Ga. 469, 759 S.E.2d 804, 2014 Ga. LEXIS 489 (2014), cert. denied, 183 Ga. App. 905.

Diversion of surface water. — Counties are subject to suit for damages, as well as injunctive relief, in the maintenance of an activity so as to constitute a continuing nuisance by diverting surface water onto a property owner's property, and which is violative of a citizen's constitutional right that private property shall not be taken or damaged for public purposes without just and adequate compensation being paid. Anderson v. Columbus, 152 Ga. App. 772, 264 S.E.2d 251, 1979 Ga. App. LEXIS 3081 (1979).

Operation and maintenance of public works project. — While the power to construct sewer and drainage systems is a governmental function, the county cannot create and maintain such system as a nuisance which damages private property without subjecting itself to civil liability. Ingram v. Baldwin County, 149 Ga. App. 422, 254 S.E.2d 429, 1979 Ga. App. LEXIS 1878 (1979).

Single instance of backup of county sewage system into private home would not be sufficient to create nuisance for which county liability would attach. Ingram v. Baldwin County, 149 Ga. App. 422, 254 S.E.2d 429, 1979 Ga. App. LEXIS 1878 (1979).

As long as a county operates and maintains a public works project so as not to result in the creation of a nuisance, O.C.G.A. § 36-1-4 renders the county immune from suit for damage resulting from the operation and maintenance of the project. Desprint Servs., Inc. v. DeKalb County, 188 Ga. App. 218, 372 S.E.2d 488, 1988 Ga. App. LEXIS 918 (1988).

As a matter of law, the post-construction non-nuisance damage done to private property by a single malfunction in the operation of a public works project is not damage which has been done for a "public purpose" within the meaning of Ga. Const. 1976, Art. I, Sec. III, Para. I (see now Ga. Const. 1983, Art. I, Sec. III, Para. II, and Art. III, Sec. VI, Para. II). Desprint Servs., Inc. v. DeKalb County, 188 Ga. App. 218, 372 S.E.2d 488, 1988 Ga. App. LEXIS 918 (1988).

Private property which was flooded as the result of a burst water main, which had been equipped with a new "butterfly" valve in connection with a road construction project undertaken a few weeks earlier by a county was not damaged for the "public purpose" of actually constructing any public works project within the meaning of Ga. Const. 1983, Art. I, Sec. III, Para. I. Desprint Servs., Inc. v. DeKalb

County, 188 Ga. App. 218, 372 S.E.2d 488, 1988 Ga. App. LEXIS 918 (1988).

Damage through construction of bridge. — Right of action exists against county for damaging private property for public uses in constructing the approaches to county bridge. Smith v. Floyd County, 85 Ga. 420, 11 S.E. 850, 1890 Ga. LEXIS 59 (1890).

No liability unless "taking". — When nuisance created by county does not amount to taking for public purposes county is not liable. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

Theory not applicable to negligence. — County is not liable to a father of a minor child injured by the negligence of one of the servants of the county in operating a truck, for loss of the services of the child, on the theory that the deprivation of the father of the services is the taking or damaging of property for public use without just compensation, nor would it make any difference that the driver of the truck was employed in repairing a public road. Born v. Fulton County, 51 Ga. App. 537, 181 S.E. 106, 1935 Ga. App. LEXIS 396 (1935).

Action to recover for nuisance after 12 months against legal policy. — Policy of the law is explicit that all claims against a county for taking or damaging private property for public uses must be filed within 12 months, and suit thereon for the depreciation in the market value must be instituted within the period of limitations stipulated by the law, and it is not the policy of the law to permit the bringing of suits against counties from time to time for damages which might result by reason of negligently constructed public improvements constituting a nuisance. Bibb County v. Green, 42 Ga. App. 552, 156 S.E. 745, 1931 Ga. App. LEXIS 49 (1931).

Damages are actual depreciation in market value of premises. — Right of action exists against a county for damaging private property for public uses; the liability of counties for damages to property in all cases being the actual depreciation in the market value of the premises injured. Felton Farm Co. v. Macon County, 49 Ga. App. 239, 175 S.E. 29, 1934 Ga. App. LEXIS 343 (1934).

Sovereign immunity. — In an action in which the plaintiff landowners filed suit against the defendant county alleging trespass, negligence, negligence per se, and violation of the landowners' riparian rights, in connection with the county's recreational development of the county's adjoining property, the county was entitled to sovereign immunity because there was no showing by the landowners that the county waived sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX and O.C.G.A. § 36-1-4. Carney v. Gordon County, No. 4:06-CV-36-RLV, 2006 U.S. Dist. LEXIS 82634 (N.D. Ga. Sept. 12, 2006).

Contracts

Liability for breach of contract. — Whenever counties are authorized to contract, and counties make valid contracts in pursuance of such power, the counties are liable to suits for breaches thereof, although there is no statute expressly authorizing the bringing of such an action for such purpose. Washington County v. Sheppard, 46 Ga. App. 240, 167 S.E. 339, 1933 Ga. App. LEXIS 9 (1933).

Exception to general rules exists when a county breaches a contract the county was authorized by law to undertake. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

County can always be sued upon any liability against the county created by statute, or for breach of any valid contract which the county is authorized by law to make. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

Whenever a county is made liable by statute for a demand, or is authorized by statute to contract, and in pursuance of such power does contract, then an action will lie against the county to enforce such liability, or to enforce any rights growing out of such contract, although there is no statute expressly authorizing the bringing of an action for such purpose. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

If a statute authorizes a county to contract, the statute also implicitly creates a cause of action for breach. Miree v. United States, 526 F.2d 679, 1976 U.S. App. LEXIS 11980 (5th Cir. 1976).

Contracts (Cont'd)

Supreme Court has long construed former Code 1933, §§ 23-1501 and 23-1502 (see now O.C.G.A. §§ 36-1-3 and 36-1-4) as permitting suits against counties based on contracts made pursuant to legislative authorization. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285, 1979 Ga. LEXIS 1452 (1979).

Liability on employment contract. — Employee who has obtained permanent employment status under county merit system and who is wrongfully discharged may maintain suit against the county for the employee's salary even though such suit is not expressly authorized by statute. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

County liable for rental value of farm. — When a county obtains possession of land, with crops growing thereon belonging to another, under a void contract, the county is nevertheless liable to the owner of the land for the land's rental value for the time during which the land was actually occupied and used by the county, and for the value of the crops thereon. Bailey v. Miller County, 24 Ga. App. 746, 102 S.E. 178, 1920 Ga. App. LEXIS 501 (1920) (decided under former Code 1910, § 543).

Torts

1. Liability Generally

No liability for torts generally. — Rule of general nonliability for torts is true whether the alleged cause of action arises from the negligent performance of duties which the county authorities are compelled to perform, or a negligent discharge of duties voluntarily assumed in the exercise of a discretion vested in the authorities by law. McLeod v. Pulaski County, 50 Ga. App. 356, 178 S.E. 198, 1935 Ga. App. LEXIS 322 (1935).

County, when exercising governmental functions and acting as an agency of the state is not liable, in the absence of statutes imposing liability, for the county's failure to perform a duty or for the county's negligent performance of the duty, not even when the duty is imposed by statute; and there is no distinction in the application of this rule between the neglect to perform an act which ought to have been performed, and the performance of the duty in a negligent manner. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

Sovereign immunity not waived. — In an action arising out of an arrest, despite the way the arrestee was treated, the trial court properly dismissed a complaint as asserted against a county, and granted summary judgment on the same complaint as asserted against a city, on sovereign immunity grounds since the arrestee failed to show that the immunity had been waived. Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472, 2006 Ga. App. LEXIS 877 (2006).

Dismissal of inmate's complaint against sheriff on sovereign immunity grounds was upheld because inmate failed to show waiver of sovereign immunity on part of county and sheriff. Ramos v. Owens, 366 Ga. App. 216, 881 S.E.2d 464, 2022 Ga. App. LEXIS 539 (2022).

No law authorizes suit against county for torts of conversion and defamation and since a county is immune from suit for torts of conversion and defamation and the defendants in their official capacities can be sued only as representatives of the county, thereby exposing the county to liability, plaintiff's complaint alleging conversion and defamation must be dismissed as to the county and the defendants in their official capacities. Military Circle Pet Ctr. No. 94, Inc. v. Cobb County, 665 F. Supp. 909, 1987 U.S. Dist. LEXIS 6578 (N.D. Ga. 1987), aff'd in part and rev'd in part, 877 F.2d 973, 1989 U.S. App. LEXIS 7514 (11th Cir. 1989).

County is immune from suit under a theory of negligence, even when the negligence arises from the violation by the county of specific contractual and statutorily imposed duties. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

Legislature has not provided for suits in negligence against a county, nor is there any other authority for such. Johnson v. Chatham County, 167 Ga. App. 283, 306 S.E.2d 310, 1983 Ga. App. LEXIS 2431 (1983).

County is immune from suit under theory of nuisance, even if the nuisance is created in violation of specific contractual and statutorily imposed duties. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

Waiver of sovereign immunity for claims alleging the negligent performance of ministerial duties only applies to cities and does not apply to counties. O.C.G.A. § 36-33-1(b) provides that for neglect to perform or improper or unskillful performance of their ministerial duties, municipal corporations shall be liable. O.C.G.A. § 36-1-4 sets out the sovereign immunity of counties and contains no such waiver for ministerial duties. Klingensmith v. Long County, 352 Ga. App. 21, 833 S.E.2d 608, 2019 Ga. App. LEXIS 521 (2019).

Immunity is complete unless suit is permitted or impliedly authorized by statute. — Unless a complainant is a party to such contract, or a named beneficiary of such contract, the fact that a county may have been guilty of a nuisance in not carrying out or performing the contract between the county government and a third party affords no right of action to the complainant. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

Plaintiff's state law tort claims against a police chief, two police officers, and a county were barred by the doctrine of sovereign immunity, Ga. Const. 1983, Art. I, Sec. II, Para. IX(e), since the individual defendants were sued in the defendants' official capacities, and there was no statutory waiver of immunity as required by O.C.G.A. § 36-1-4. Payne v. Dekalb County, 414 F. Supp. 2d 1158, 2004 U.S. Dist. LEXIS 29226 (N.D. Ga. 2004).

Because a county enjoyed sovereign immunity from a pedestrian's negligence and nuisance claims asserted in a personal injury action against the county for the county's alleged failure to maintain a water meter cover, the trial court properly dismissed the claims; furthermore, O.C.G.A. § 36-1-4 provided that a county was not liable for any cause of action unless made so by statute. Rutherford v. DeKalb County, 287 Ga. App. 366, 651 S.E.2d 771, 2007 Ga. App. LEXIS 971 (2007).

Unified city/county government was not a municipality for purposes of the waiver of sovereign immunity by operation of O.C.G.A. § 36-33-1 because the charter creating the unified government expressly provided that its tort and nuisance liability would follow the law and rules of tort liability applicable to counties in Georgia. Athens-Clarke County v. Torres, 246 Ga. App. 215, 540 S.E.2d 225, 2000 Ga. App. LEXIS 1195 (2000).

County not liable for consequential damages from water meter leakage. — Plaintiff in a federal civil rights action had an adequate state law tort remedy, consequently plaintiff was not deprived of plaintiff's rights without due process of law when a water meter leaked, the county did not repair the meter, water flowed onto a nearby road and froze, and plaintiff's car skidded on the ice and collided with another car, causing extensive injuries, notwithstanding the fact that the county and the county's officers were immune from suit for negligence. Rittenhouse v. DeKalb County, 764 F.2d 1451, 1985 U.S. App. LEXIS 30880 (11th Cir. 1985), cert. denied, 475 U.S. 1014, 106 S. Ct. 1193, 89 L. Ed. 2d 308, 1986 U.S. LEXIS 277 (1986).

Liability for injury at airport. — County's exposure of liability to every member of the flying public, their associates, the adjoining property owners, and any other person who may happen to be in the area, is too broad to permit a contention that every injured party is an intended beneficiary under a public contract calling for the county to operate and maintain an airport, especially since there is no intention manifested in the contract that the county compensate any member of the public for injurious consequences. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

County is immune from action brought by pilot's widow for wrongful death of such pilot when the pilot's plane crashed because of ingestion of birds into the plane's engines. Sellfors v. DeKalb County, 157 Ga. App. 731, 278 S.E.2d 489, 1981 Ga. App. LEXIS 1992 (1981).

Liability for intentional torts. — County is not responsible in damages for

Torts (Cont'd)
1. Liability Generally (Cont'd)

the tort of a guard in unlawfully beating a convict in the chain gang, or for the negligence of the other guards in not protecting the convict from the unlawful beating. Tounsel v. State Hwy. Dep't, 180 Ga. 112, 178 S.E. 285, 1935 Ga. LEXIS 190 (1935).

Liability for wrongful death. — County is not liable to suit for any cause of action unless made so by statute, and thus escapes liability in a wrongful death action involving refuse containers the county owned. Greenway v. DeKalb County, 151 Ga. App. 556, 260 S.E.2d 552, 1979 Ga. App. LEXIS 2634 (1979).

Injuries on courthouse property. — General Assembly has not made counties liable to suit on account of injuries sustained by persons falling on courthouse property. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445, 1975 Ga. LEXIS 871 (1975).

Liability at county hospitals. — This section includes ex delicto causes of action such as "causes of action arising out of the negligent performance of authorized but not compulsory, ministerial, or proprietary functions, as distinguished from governmental functions" whether the hospital be operated "primarily for charitable purposes," or operated "primarily for profit." Ware County v. Cason, 189 Ga. 78, 5 S.E.2d 339, 1939 Ga. LEXIS 656 (1939).

Liability of county for injuries from tar machine. — In a worker's suit alleging negligence on the part of a county with regard to the county allegedly failing to properly instruct and supervise the worker in the use of a portable tar kettle machine, the trial court erred by granting the county's motion for a judgment on the pleadings based on sovereign immunity as the worker sufficiently alleged that the machine was a vehicle as contemplated by O.C.G.A. § 33-24-51, which established a waiver of sovereign immunity if the county had purchased liability insurance to cover damages and injuries arising from the use of motor vehicles under the county's management. Hewell v. Walton County, 292 Ga. App. 510, 664 S.E.2d 875, 2008 Ga. App. LEXIS 806 (2008).

Purchase of insurance is no waiver of liability. — Procurement of insurance under Ga. L. 1960, p. 289, § 1 (see now O.C.G.A. § 33-24-51) does not constitute a waiver of sovereign immunity in regard to damages caused by the county's negligence not connected with motor vehicles. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445, 1975 Ga. LEXIS 871 (1975).

Compensation of some other person or persons for comparable injuries on the same county property, or the purchase of insurance for such purposes, does not create a cause of action in a plaintiff suing a city in a tort action. The defendant city would not be estopped by such unauthorized waiver of the sovereign immunity of the county. Revels v. Tift County, 235 Ga. 333, 219 S.E.2d 445, 1975 Ga. LEXIS 871 (1975).

County does not waive the county's immunity in the purchase of a contract of liability insurance, even though the policy of insurance may include a clause allegedly waiving immunity. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573, 1978 Ga. LEXIS 1125 (1978).

Sovereign immunity barred the claimants' personal injury and nuisance claims against the members of a county board of commissioners in the commissioners' official capacities because the claimants did not show that the county waived the county's sovereign immunity with regard to the county's operation of a mosquito control helicopter which sprayed one of the claimants with chemicals. Further, the county did not waive the county's sovereign immunity under O.C.G.A. § 33-24-51 by purchasing a liability insurance policy covering the helicopter because the helicopter was not a "motor vehicle" as that term was understood in the statute. Bd. of Comm'rs v. Johnson, 311 Ga. App. 867, 717 S.E.2d 272, 2011 Ga. App. LEXIS 820 (2011).

Waiver of sovereign immunity for motor vehicle insurance. — In determining if a county waived the county's sovereign immunity through the voluntary purchase of liability insurance

under the second sentence of O.C.G.A. § 33-24-51(b), a trial court erred in considering the definition of "motor vehicle" provided in O.C.G.A. § 36-92-1; rather, "any motor vehicle" was defined as a vehicle that was capable of being driven on the public roads that was covered by a liability insurance policy purchased by the county. Glass v. Gates, 311 Ga. App. 563, 716 S.E.2d 611, 2011 Ga. App. LEXIS 789 (2011), aff'd, 291 Ga. 350, 729 S.E.2d 361, 2012 Ga. LEXIS 647 (2012).

2. Roads and Bridges

No liability for defect in highway. — There is no constitutional or statutory provision which can be taken to render a county liable for a tort on account of personal injuries arising from a defect in a highway constructed or repaired by the county. This is true irrespective of whether the construction or repair of the highway is done in the performance of the county's own governmental functions in maintaining the county's system of highways, or whether the construction or repair is done under a contract made by the county with the State Highway Department (now Department of Transportation) solely for pecuniary gain. Purser v. Dodge County, 188 Ga. 250, 3 S.E.2d 574, 1939 Ga. LEXIS 490 (1939).

There being no liability provided by any statute against a county for negligence arising out of the county's maintenance or construction of a public road, a county, notwithstanding the county may in the construction of a public road be operating under a contract from which the county derives a pecuniary gain made with the highway department pursuant to law, is not liable for the county's negligence in obstructing the roadway by leaving a pile of rock or gravel in the road in preparation for the construction by the county of a bridge, and as a result of which a person traveling along the road in an automobile runs into the pile of rock and is injured. Purser v. Dodge County, 60 Ga. App. 316, 3 S.E.2d 744, 1939 Ga. App. LEXIS 572 (1939).

There is no constitutional or statutory provision which can be taken to render a county liable for a tort on account of personal injuries arising from a defect in a highway constructed or repaired by the county. Williams v. Georgia Power Co., 233 Ga. 517, 212 S.E.2d 348, 1975 Ga. LEXIS 1362 (1975).

No recovery for poisoning cows. — This provision does not give a cause of action when a county by road work pollutes a stream and thereby plaintiff's cows are poisoned. Howard v. County of Bibb, 127 Ga. 291, 56 S.E. 418, 1907 Ga. LEXIS 236 (1907).

County not liable for drowning of car occupants in river ford. — County was under no duty to build bridge across creek which under normal circumstances was safe to ford and therefore not liable for death of car occupants who drowned when creek flooded over ford as car passed over the ford. Dollar v. Haralson County, 704 F.2d 1540, 1983 U.S. App. LEXIS 27548 (11th Cir.), cert. denied, 464 U.S. 963, 104 S. Ct. 399, 78 L. Ed. 2d 341, 1983 U.S. LEXIS 2295 (1983).

Express statutory authority exists for defective bridges. — While a county is not liable to suit unless made so by statute, it has been provided by statute that a county is primarily liable for all injuries caused by reason of any defective bridges, whether erected by contractors or county authorities. Berrien County v. Vickers, 73 Ga. App. 863, 38 S.E.2d 619, 1946 Ga. App. LEXIS 437 (1946) (decided under former Code 1933, § 95-1001).

Liability in case of bridges. — When the statute provides for the liability of counties, a recovery may be had against the counties as when no sufficient bond is taken to keep bridges in repair. Hammond v. County of Richmond, 72 Ga. 188, 1883 Ga. LEXIS 58 (1883).

County is liable to suit by contractors for breach of a valid and binding contract for the building of a bridge over a river in such county, upon the assumption that the difference between the representations in the plans and specifications as to the facts and conditions under the bed of the river, and the actual facts and conditions thereof, amounted to a breach of the contract by the county. Decatur County v. Praytor, Howton & Wood Contracting Co., 163 Ga. 929, 137 S.E. 247, 1927 Ga. LEXIS 97 (1927).

Suit may be maintained against a county and a verdict and judgment ob-

Torts (Cont'd)
2. Roads and Bridges (Cont'd)

tained against the county for damages resulting from a defect in a bridge, although it may appear that jurisdiction over the highway on which the bridge was located had been assumed by the State Highway Department (now Department of Transportation) under the terms of the law, and that the State Highway Department and not the county was guilty of negligence in the maintenance and construction of the bridge or its approaches which caused the injury. Berrien County v. Vickers, 73 Ga. App. 863, 38 S.E.2d 619, 1946 Ga. App. LEXIS 437 (1946) (decided under former Code 1933, § 95-1001).

For a county to be liable for injuries resulting from defective bridge repairs there must have been a failure to take a bond from a contractor when such a bond was required, and the injury complained of must have occurred within the time which would have been covered by the contractor's bond, if such a bond had been given. Wolf v. Upson County, 44 F.2d 925, 1930 U.S. App. LEXIS 3462 (5th Cir. 1930).

Pleading

Petition must show liability by statute. Seymore v. Elbert County, 116 Ga. 371, 42 S.E. 727, 1902 Ga. LEXIS 105 (1902); Fulton County v. Gordon Water Co., 37 Ga. App. 290, 140 S.E. 45, 1927 Ga. App. LEXIS 635 (1927); Newberry v. Hall County, 52 Ga. App. 472, 183 S.E. 664, 1936 Ga. App. LEXIS 159 (1936); Anderson v. DeKalb County, 107 Ga. App. 328, 130 S.E.2d 140, 1963 Ga. App. LEXIS 829 (1963).

Petition sufficient when petition shows right to recover under statute. — Petition sufficiently shows the suit is brought under a particular statute when the facts alleged clearly show the plaintiff's right to recovery under the provisions of the statute. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

Petition sufficient which alleges employment under county law. — When a petition alleges the plaintiff was employed and obtained a permanent status under the law and the regulations promulgated by the county commissioners, then the county is subject to suit. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

Liability may arise from performance of statutorily authorized act. — Liability to suit may be shown by indicating that the claim arises as an incident in the performance of an undertaking by the county authorized by statute. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Liability of Boards of Education

General Consideration

Generally, counties have broader immunity from suits than municipalities. 1975 Op. Att'y Gen. No. 75-32.

No liability for acts of probationer. — County's potential liability for acts of a probationer working on a community service project depends upon the existence of a statute authorizing a tort action against the county. 1975 Op. Att'y Gen. No. 75-32.

No liability for collision with roadside object. — Generally, a county will not be subject to liability for damages resulting from a motorist's collision with a garbage container placed by the county beside the county's road. 1974 Op. Att'y Gen. No. U74-66.

Liability for misfeasance. — Slash Pine Area Planning and Development Commission is not liable for damage to private individuals resulting from improper performance or nonperformance

of duties of the Commission's officers, agents, or servants. 1967 Op. Att'y Gen. No. 67-255.

Liability of Boards of Education

No tort liability generally. — Local school district is not liable in tort under the law of Georgia for injuries sustained by a pupil engaged in school athletic activities. 1957 Ga. Op. Att'y Gen. 100.

Neither a county board of education nor the board's members, by virtue of their membership, are liable for injuries incurred by a pupil riding on one of the board's school buses. 1965-66 Op. Att'y Gen. No. 65-84.

Board of education liable if acting beyond scope of authority. — When the board of education acts upon matters lawfully within the board's jurisdiction, it is the county acting through the county's corporate authority, and the county is not liable to suit for any cause of action unless made so by statute; but when the board of education, through the board's members, acts beyond the scope of the board's lawful jurisdiction and commits an actionable wrong, the act so committed is not "county action," and in such a case a suit may be maintained in the courts of this state against the wrongdoers. 1958-59 Ga. Op. Att'y Gen. 98.

County board of education, acting beyond the scope of the board's lawful jurisdiction in leasing school buildings to private citizens to be used as a recreational center, might thereby subject the board's members to individual liability to suit in case someone was hurt or an accident happened on this property. 1958-59 Ga. Op. Att'y Gen. 98.

No shield from liability for individual negligence. — This shield from liability, which is generally referred to as the doctrine of "sovereign immunity" is applicable only if the act or conduct causing the loss is one which was taken by the board within the scope of the board's authority or official discretion; it does not protect a board member when it is such member's own personal and individual negligence which causes the injury rather than an action of the school board; another exception is the fact that while the doctrine protects the school board and the members of the board from liability when the injury results from ordinary negligence of the board, it would not apply when the action of the board amounts to malicious, willful, or wanton misconduct. 1965-66 Op. Att'y Gen. No. 65-84.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 724, 729.

C.J.S.

20 C.J.S., Counties, §§ 393, 394.

ALR.

Liability of county or municipality for tortious injury in or about building which is used for both governmental and proprietary functions, 64 A.L.R. 1545.

Applicability to federal courts of state constitutional or statutory provisions regarding liability of county or other political subdivision to suit, 86 A.L.R. 1019.

Liability of county for torts in connection with activities which pertain, or are claimed to pertain, to private or proprietary functions, 16 A.L.R.2d 1079.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge, 2 A.L.R.4th 635.

Liability of governmental entity to builder or developer for negligent issuance of building permit subsequently suspended or revoked, 41 A.L.R.4th 99.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits, 55 A.L.R.4th 806.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 A.L.R.4th 204.

Measure and elements of damages for injury to bridge, 31 A.L.R.5th 171.

What Constitutes Custom or Policy in

Determining Local Government Liability Under 42 U.S.C.A. § 1983, 84 A.L.R. Fed. 3d Art. 1.

36-1-5. Service upon county.

In all cases in which a county is a party defendant, service shall be sufficient if perfected upon a majority of the commissioners, in those counties in which the affairs of the county are committed to a county commissioner or a board of county commissioners.

History.

Ga. L. 1872, p. 39, § 1; Code 1873, § 492; Code 1882, § 492; Civil Code 1895, § 342; Civil Code 1910, § 385; Code 1933, § 23-1503; Ga. L. 1987, p. 1482, § 4.

Cross references.

Further provisions regarding service of process on counties, § 9-11-4(e)(5).

Editor's notes.

The directory language of Ga. L. 1987, p. 1482, § 4 provided "Chapter 5 of Title 36 of the Official Code of Georgia Annotated, relating to the organization of county government, is amended . . . ." The Code section amended by Ga. L. 1987, p. 1482, § 4, however, is Code Section 36-1-5 which appears in this chapter. Ga. L. 1987, p. 1482, § 4 has been incorporated above as an amendment to this Code section.

Law reviews.

For article comparing sections of Ch. 11, T. 9, the Georgia Civil Practice Act, with preexisting provisions of the Georgia Code, see 3 Ga. St. B. J. 295 (1967).

JUDICIAL DECISIONS

Service on one commissioner insufficient. — Since the statute prescribing the method of service on counties requires service on a majority of the commissioners, service on the county cannot be perfected by serving one member of a board of commissioners. Clayton County v. Sarno, 112 Ga. App. 379, 145 S.E.2d 283, 1965 Ga. App. LEXIS 710 (1965).

Service on chair sufficient. — Service upon the chair of the board of county commissioners under Ga. L. 1972, p. 689, §§ 1-3 (see now O.C.G.A. § 9-11-4) provides an alternative to serving a suit against a county by serving a majority of the members of the board of commissioners as required by former Code 1933, § 23-1503 (see now O.C.G.A. § 36-1-5). Board of Comm'rs v. Allgood, 234 Ga. 9, 214 S.E.2d 522, 1975 Ga. LEXIS 1003 (1975).

Irregularity in service cured by appearance. — General appearance by answering a petition waives all irregularities in the service of process. Franklin County v. Payne, 115 Ga. App. 52, 153 S.E.2d 732, 1967 Ga. App. LEXIS 995 (1967).

County may employ counsel. — County generally has, in the absence of express authority, implied statutory authority through the county's proper officers or agents, to employ counsel to represent the county in civil suits in which the county is interested, or to which the county is a party. The power to control the fiscal affairs of a county carries with it the power to employ counsel. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248, 1931 Ga. LEXIS 237 (1931).

All suits by or against a county shall be in the name thereof. — Suit cannot be against the board of commissioners, and a suit so brought cannot be corrected by amendment. Arnett v. Board of Comm'rs, 75 Ga. 782, 1885 Ga. LEXIS 229 (1885).

Since the Constitution of 1877 all suits by or against a county must be in the name of a county. Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 541, 1 S.E.2d 222 (1939).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 730.
C.J.S.
20 C.J.S., Counties, § 401.
ALR.
Power of city, town, or county or its officials to compromise claim, 105 A.L.R. 170; 15 A.L.R.2d 1359.
Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 A.L.R. 637.
Limitation period as affected by requirement of notice or presentation of claim against governmental body, 3 A.L.R.2d 711.
Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body, 65 A.L.R.2d 1278.
Waiver of, or estoppel to assert, failure to give or defects in notice of claim against state or local political subdivision — modern status, 64 A.L.R.5th 519.

36-1-6. Publication of annual financial statement; contents.

All boards of county commissioners, county commissioners, county managers, or other persons or bodies having charge of receipts and expenditures of county moneys shall publish a financial statement once each calendar year in the paper in which sheriff's advertisements are published in their respective counties. A copy of this statement shall also be posted twice each year for a period of not less than 30 days on the bulletin boards of the various county courthouses. The statement shall set forth the source of all income and a summary of all expenditures in a plain and simple manner that can be easily understood by all taxpaying citizens. The statement shall also contain a report of all money owed by the county, current bills excepted, of the number of tax delinquents, and the total amount of tax delinquency.

History.
Ga. L. 1952, p. 337, §§ 1, 2.

OPINIONS OF THE ATTORNEY GENERAL

Use of public funds to publish tax delinquent list approved. — Board of commissioners of a county can spend public funds to publish a list of delinquent taxpayers in the local newspaper. 1970 Op. Att'y Gen. No. U70-203.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 301.

36-1-7. Submission to grand jury of sworn returns of receipts and disbursements; approval or disapproval; appearance to explain errors; failure to make return.

(a) The judges of the probate courts, county treasurers, clerks of the superior courts, and sheriffs of the various counties shall make a

return, under oath, to the grand juries of their respective counties on the first day of each term of the superior court. The return shall set forth a just and true statement of the amount of money belonging to the county which was received by them and the source from which the money was received, along with their expenditures, accompanied by a copy of the most recent financial statement or annual audit of the financial affairs of the county offices subject to this Code section.

(b) When the returns provided for in subsection (a) of this Code section have been made, the grand jury shall examine the same. If the returns are found to be correct, the grand jury shall endorse its approval thereon and attach the same to its general presentments, to be filed in the office of the clerk of the superior court. If the returns are found to be incorrect, the grand jury, through its foreman, shall return them to the officer making the same, shall plainly and distinctly set forth in writing the grounds of its disapproval, and shall require the officer to appear before the jury and explain the errors.

(c) Should any officer fail or refuse to make the return required by subsection (a) of this Code section, the foreman of the grand jury shall immediately notify the presiding judge of such failure. The judge shall issue an order requiring the delinquent officer to come forward and make the return required or, in default thereof, to be attached for contempt.

History.
Ga. L. 1876, p. 13, §§ 1-3; Code 1882, §§ 508a, 508b, 508c; Civil Code 1895, §§ 364, 365, 366; Civil Code 1910, §§ 413, 414, 415; Code 1933, §§ 23-1201, 23-1202, 23-1203; Ga. L. 1996, p. 842, § 1.

Cross references.
Frequency with which grand jury must perform duties, § 15-12-71.
Accounting for public funds generally, § 45-8-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Grand Jury, § 32 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 256 et seq., 340.

C.J.S.
20 C.J.S., Counties, § 297 et seq. 38A C.J.S., Grand Juries, § 88 et seq.

36-1-8. Investment of certain tax proceeds in authorized bonds; registration of bonds.

(a) The officer or officers charged with the administration of the fiscal affairs of the several counties and with the custody and control of such funds may invest all sums collected under the requirements of Article IX, Section V, Paragraph VI of the Constitution of this state, for the purpose of paying the principal of bonded indebtedness of such counties, which sums are not actually payable on the principal within 12 months from the date of collection thereof, in valid outstanding

bonds of the county or some other county of the state which have been duly validated, or in valid outstanding bonds of this state or of the United States. Such officer or officers may keep the funds so invested in such bonds, with the privilege of changing the investment from the character of the bonds named to another from time to time as such officer or officers may direct until such time before the maturity of outstanding obligations as may be necessary to dispose of the bonds in order to meet such obligations at maturity.

(b) Whenever and as soon as the sinking fund of any county has been invested in the manner specified in subsection (a) of this Code section, the officer or officers of the county charged with the administration of the fiscal affairs of the county shall proceed forthwith to have the securities in which such funds are so invested registered in the name of the county, provided the bonds by their terms under the conditions of their issue are capable of being registered in the name of the owner.

History.

Ga. L. 1924, p. 86, §§ 1, 2; Code 1933, §§ 87-706, 87-707; Ga. L. 1983, p. 3, § 57.

Law reviews.

For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964).

JUDICIAL DECISIONS

Requirements not absolute. — It must be observed that neither Ga. L. 1917, p. 199, § 1 (see now O.C.G.A. § 36-6-16) nor Ga. L. 1924, p. 86, §§ 1, 2 (see now O.C.G.A. § 36-1-8) makes their requirements absolute; county treasurers may follow the provisions of either of these statutes, and thereby become absolutely safe from loss, as well as making safe the public funds with which the treasurers are entrusted; however, it appears the county treasurer may keep the funds in the treasurer's possession so long as the county treasurer is prepared to pay them out when lawfully authorized and required so to do. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932); Allen v. Henderson, 48 Ga. App. 74, 172 S.E. 94, 1933 Ga. App. LEXIS 457 (1933).

This section provides that funds collected for the purpose of payment of principal and interest of bonded indebtedness under the Constitution "may" be invested in valid outstanding bonds of such county or some other county of the state, which have been duly validated, or valid outstanding bonds of the State of Georgia or of the United States. Allen v. Henderson, 48 Ga. App. 74, 172 S.E. 94, 1933 Ga. App. LEXIS 457 (1933).

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, §§ 256, 339 et seq.

36-1-9. Payment into county treasury.

Any county official, officer, or employee who is charged with the responsibility of collecting, receiving, or disbursing any fees, fines,

forfeitures, costs, commissions, allowances, penalties, funds, or moneys, or any other emolument or perquisite for any other county official, officer, or employee who has been placed upon a salary payable from county funds in lieu of receiving such compensation, when provision has been made by law for such compensation to become the property of and payable to the county, may pay said funds directly into the county treasury upon their receipt.

History.
Ga. L. 1964, p. 337, § 1; Ga. L. 1969, p. 3655, § 1; Ga. L. 1971, p. 3563, § 1; Ga. L. 1982, p. 2107, § 30; Ga. L. 1992, p. 1219, § 1.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 297 et seq.

36-1-10. Employment of accountant.

The county governing authority is authorized, whenever it deems it necessary to do so, to employ an expert accountant to examine and report on the books, vouchers, and accounts of any county officer whose duty it is under the law to handle county funds. The expert accountant may reside in the county in which he is to be employed or elsewhere.

History.
Ga. L. 1901, p. 57, § 1; Civil Code 1910, § 418; Code 1933, § 23-1301.

Cross references.
Budgets and audits of counties and municipalities, § 36-81-1 et seq.

JUDICIAL DECISIONS

Section does not impair power of grand jury. — Sections 416, 417, and 418 of former Civil Code 1910 (see O.C.G.A. § 36-1-10) were not intended to and do not take away from the grand jury the grand jury's power to investigate, inspect, and examine the books and records of county officers, or, where the officers deem it necessary, to appoint one or more citizens of the county to do so, as prescribed by former Penal Code 1910, §§ 840 and 841. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646, 1936 Ga. App. LEXIS 660 (1936).

Applicability of section to county having city of over 85,000. — Section 841 of Penal Code 1910 (see § 15-12-76 [repealed]) is valid and applies to counties having a city of more than 85,000, except that it does not authorize the appointment of expert accountants by the county commissioners or ordinary (now judge of the probate court), as the case may be, to examine the books and accounts of county officers, as by virtue of former Code 1910, §§ 416 through 418 (see now O.C.G.A. § 36-1-10). In such counties the clerk of the county commissioners is ex officio auditor and the clerk is required to make such examination whenever called on by the county commissioners. McLarty v. Fulton County, 52 Ga. App. 445, 183 S.E. 646, 1936 Ga. App. LEXIS 660 (1936).

Officer employed under section a public officer. — When a statute by implication authorizes the county commissioners to appoint an officer in and for a county, the action of the commissioners in so doing is done by the commissioners as an agency of the state. The relation between the county and the county attorney does not rest upon contract, but arises from appointment authorized by a legislative enactment. An

individual who has a designation or title given the individual by law, and who exercises functions concerning the public assigned to the individual by law, is a public officer. Stelling v. Richmond County, 81 Ga. App. 571, 59 S.E.2d 414, 1950 Ga. App. LEXIS 943 (1950).

Residency requirement. — In the case of a county auditor, the residency requirement of former Code 1933, § 89-101(7) (see now O.C.G.A. § 15-6-59) was dispensed with by former Code 1933, § 23-1301 (see now O.C.G.A. § 36-1-10). However, the requirement that a county officer, whether elected or appointed, be a qualified voter remained absolute. Lester Witte & Co. v. Rabun County, 245 Ga. 382, 265 S.E.2d 4, 1980 Ga. LEXIS 805 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Accountant not a certified public accountant. — County commissioners are authorized to employ an accountant who is not a certified public accountant to audit county books. 1968 Op. Att'y Gen. No. 68-46.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 198 et seq.

36-1-11. Additional temporary personnel and equipment for assistance of county officers or departments.

The governing authorities of the various counties shall have the authority to expend county funds for the purpose of employing such additional temporary personnel and providing such equipment and supplies as in their respective judgments shall be necessary and advisable, in order that such personnel and equipment might assist any county officer, official, or department in discharging his or its duties and responsibilities in an efficient and orderly fashion. Nothing contained within this Code section shall be construed so as to abrogate the authority of such officers and officials to select the personnel who shall be employed within their respective offices and departments.

History.
Ga. L. 1968, p. 447, § 1.

JUDICIAL DECISIONS

Authority to pay salary. — County commissioners can expend county funds for the limited purpose of paying salary of personnel to aid and assist in administration of county government. Whatley v. Taylor County, 224 Ga. 669, 164 S.E.2d 121, 1968 Ga. LEXIS 893 (1968).

OPINIONS OF THE ATTORNEY GENERAL

County may employ additional personnel. — County is authorized to employ personnel to assist the tax assessors in maintaining the tax digest and the tax equalization program in the county. 1969 Op. Att'y Gen. No. 69-25.

Governing authority of a county may hire temporary personnel to assist the

clerk of the superior court. 1969 Op. Att'y Gen. No. 69-400.

This section authorizes the county commissioners to employ a secretary for the sheriff on a temporary basis. Op. Att'y Gen. No. U71-11.

County may not pay salary to employee on fee basis. — Governing authority of a county is not authorized to pay the salary of a semipermanent employee of a county officer who is on a fee basis. 1969 Op. Att'y Gen. No. 69-478.

When compensation of deputy sheriff is fixed by a local Act, the county commissioners have no authority to increase the compensation. 1970 Op. Att'y Gen. No. U70-64.

RESEARCH REFERENCES

ALR.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes, 124 A.L.R. 883.

36-1-11.1. Expenditure of funds for insurance and employment benefits.

(a) The governing authority of any county is authorized to provide, and to expend county funds for the provision of, group health, life, disability, and liability insurance, retirement or pension coverage, social security and employment security coverage, and other similar or related employment benefits for members of the county governing authority and for elected county officers and the personnel thereof, as well as for the dependents and beneficiaries of such officials and personnel; provided, however, that no member of a county governing authority may become vested in the provision of any retirement or pension benefits authorized by this subsection until after the next general election in which said official stands for reelection.

(b) Any prior expenditure of county funds in the manner authorized by this Code section is validated and confirmed; and no person shall be liable in any respect by reason of his or her participation in any prior provision of the benefits authorized by this Code section.

History.

Code 1981, § 36-1-11.1, enacted by Ga. L. 1989, p. 1284, § 1; Ga. L. 1995, p. 924, § 1; Ga. L. 1996, p. 1258, § 1.

36-1-12. Courthouse hours.

It shall be the duty and responsibility of the governing authority of each county of this state to keep the county courthouse and the county offices maintained therein open during normal working hours for the transaction of the public's business. As used in this Code section, "normal working hours" means a minimum of 40 working hours during each calendar week, except for those weeks during which public and legal holidays, which are recognized and designated as such by Georgia law or by the governing authority of the county, are observed.

History.
Code 1933, § 23-103, enacted by Ga. L. 1976, p. 1522, § 1.

Cross references.
Hours of operation of office of superior court clerk, § 15-6-93.

JUDICIAL DECISIONS

Courthouse and offices must be open for public's business. — Under this section it is not only the duty of the county commissioners to keep the courthouse building and county offices therein available, but it is also the commissioner's duty to see that county offices are open for the transaction of the public's business. Mobley v. Polk County, 242 Ga. 798, 251 S.E.2d 538, 1979 Ga. LEXIS 752 (1979).

Governing authority to determine hours. — Legislature has delegated to the governing authority the right to determine normal working hours with a minimum of 40 working hours during each week. Mobley v. Polk County, 242 Ga. 798, 251 S.E.2d 538, 1979 Ga. LEXIS 752 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Applicability of section. — This section, in referring to "county offices", is intended to regulate the hours of only those offices over which the governing authority of the county exercises control. 1976 Op. Att'y Gen. No. U76-35 (see O.C.G.A. § 36-1-12).

36-1-13. Speculation by county officer prohibited.

Any public officer of any county in this state who buys up at a discount or in any manner speculates in what are known as "county orders," "jury scrip," or any other order or scrip which is to be paid out of any public fund of this state or of any county in this state shall be guilty of a misdemeanor and shall be removed from office.

History.
Ga. L. 1878-79, p. 79, § 1; Code 1882, § 4562g; Penal Code 1895, § 277; Penal Code 1910, § 281; Code 1933, §§ 23-9909, 23-1610.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 365.

36-1-14. Interested transactions prohibited.

(a) No county governing authority, any member thereof, or any other county officer authorized by law to use public or county funds for the purchase of goods or property of any kind for public or county purposes shall purchase such goods or property from any store in which such county governing authority, any member thereof, or other county officer

is an employee, or in which he is directly or indirectly interested, or from any person or partnership of which he is a member or by whom he is employed, unless by sanction of the majority of the members of the county governing authority or unless it is made clearly to appear that such individual, partnership, or owner of the store offers and will sell the goods or property as cheaply as or cheaper than the same can be bought elsewhere.

(b) Any county governing authority, any member thereof, or any county officer violating subsection (a) of this Code section shall be removed from office upon proper proceedings instituted by any taxpayer in the county. Any contract made in violation of subsection (a) of this Code section shall be illegal.

History.

Ga. L. 1898, p. 105, §§ 1, 2; Ga. L. 1899, p. 68, § 1; Ga. L. 1901, p. 81, § 1; Civil Code 1910, §§ 393, 394; Code 1933, §§ 23-1713, 23-1714.

Law reviews.

For article surveying important general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965).

JUDICIAL DECISIONS

By its terms this section is of general application. Moore v. Whaley, 189 Ga. 647, 7 S.E.2d 394, 1940 Ga. LEXIS 374 (1940).

Section subject to qualification by special Act. — This section, so far as it refers to county commissioners, is subject to qualification by special Acts under Ga. Const. 1877, Art. XI, Sec. III, Para. I (see now Ga. Const. 1983, Art. IX, Sec. I, Para. I), and the special Acts need not be uniform. Robitzsch v. State, 189 Ga. 637, 7 S.E.2d 387, 1940 Ga. LEXIS 373 (1940); Moore v. Whaley, 189 Ga. 647, 7 S.E.2d 394, 1940 Ga. LEXIS 374 (1940).

Section not preempted by Georgia Constitution. — Georgia Const. 1976, Art. IX, Sec. I, Para. VIII (see now Ga. Const. 1983, Art. IX, Sec. I, Para. III), providing for removal of county officers for malpractice in office, does not preempt O.C.G.A. § 36-1-14 which prohibits use of county funds by county commissioners for purchases of goods or property in which the commissioners have an interest. Palmer v. Wilkins, 163 Ga. App. 104, 294 S.E.2d 355, 1982 Ga. App. LEXIS 3188 (1982).

General Assembly had authority to effect a pro tanto repeal of the general law contained in this section, by making the provisions of this section inapplicable to the commissioners of a named county. Moore v. Whaley, 189 Ga. 647, 7 S.E.2d 394, 1940 Ga. LEXIS 374 (1940).

Not applicable to mere acceptance of order for payment. — This section does not apply to an acceptance of an order for payment submitted by a materialman on a contract for the building of a road. Eatonton Oil & Auto Co. v. Greene County, 53 Ga. App. 145, 185 S.E. 296, 1936 Ga. App. LEXIS 28 (1936).

Quo warranto is not the proper remedy for violation of this section. McDonough v. Bacon, 143 Ga. 283, 84 S.E. 588, 1915 Ga. LEXIS 393 (1915).

Due process requirement for proceedings. — Phrase "upon proper proceedings" used in subsection (b) implies that proceedings will be conducted in accordance with due process requirements, and it is not necessary to specify the exact procedure to be followed. Palmer v. Wilkins, 163 Ga. App. 104, 294

S.E.2d 355, 1982 Ga. App. LEXIS 3188 (1982).

Commissioner's transfer of building, which benefitted county, did not require commissioner's removal. — Trial court properly harmonized Ga. L. 1983, pp. 4594, 4603, § 14, the Local Act creating the Miller County Board of Commissioners, and O.C.G.A. § 36-1-14 to find that a commissioner's actions in transferring a building the commissioner owned to the county, which benefitted the county at no cost to taxpayers, did not require the commissioner's removal. Richardson v. Phillips, 309 Ga. App. 773, 711 S.E.2d 358, 2011 Ga. App. LEXIS 448 (2011), cert. denied, No. S11C1553, 2011 Ga. LEXIS 837 (Ga. Oct. 17, 2011).

Sufficiency of evidence for summary judgment. — Evidence that the hauling fee paid to a county commissioner was the same as that which would have been paid to anyone else does not, on motion for summary judgment where all inferences are construed against the movant, satisfy the requirement that it shall clearly appear that the goods purchased were as cheap or cheaper than the goods could be bought elsewhere. Dalton Rock Prods. Co. v. Fannin County, 136 Ga. App. 649, 222 S.E.2d 93, 1975 Ga. App. LEXIS 1454 (1975).

Claim for removal from office not rendered moot by the completion of the questioned transaction. — Taxpayer's claims seeking the removal of a county commissioner from office for violation of conflict of interest laws, Ga. Laws 1983, pp. 4594, 4603, § 14, and O.C.G.A. § 36-1-14, had never been determined; nor were the issues moot, although the transaction leading to the claims had been completed. Therefore, a trial court erred in dismissing the claims as moot. Richardson v. Phillips, 302 Ga. App. 305, 690 S.E.2d 918, 2010 Ga. App. LEXIS 126 (2010).

Ordinance not preempted by statute. — Miller County, Ga., Ordinance No. 10-01, § 3 could not be preempted by O.C.G.A. § 36-1-14 because § 3 did not impair the statute's operation but rather strengthened and augmented the statute; the exception in § 3 was more narrow than in O.C.G.A. § 36-1-14, requiring that a majority of the Board of Commissioners of Miller County approve the contract or transaction after establishing that the goods and the County had authority, as an incident of the county's home rule power, to amend Ga. L. 1983, p. 4594, § 14. Bd. of Comm'rs v. Callan, 290 Ga. 327, 720 S.E.2d 608, 2012 Ga. LEXIS 20 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Purchase of insurance from wife. — County board of education may purchase insurance from the wife of a member of the board when there is no direct or indirect benefit gained by the member. 1960-61 Ga. Op. Att'y Gen. 158.

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, §§ 169 et seq., 181 et seq., 194, 371.

C.J.S.

67 C.J.S., Officers and Public Employees, § 336 et seq.

ALR.

Relation as creditor of contracting party as constituting interest within statute or rule of common law against public officer being interested in contract with the public, 73 A.L.R. 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract, 74 A.L.R. 792.

Public officer's relation to corporation as

officer or stockholder as constituting interest within statute or rule of common law against public officer being interested in contract with public, 140 A.L.R. 344.

36-1-15. Prohibition, regulation, and taxation of fortunetelling and similar practices.

The county governing authority may by proper ordinance prohibit, regulate, or tax the practice of fortunetelling, phrenology, astrology, clairvoyance, palmistry, or other kindred practices, businesses, or professions where a charge is made or a donation accepted for the services and where the practice is carried on outside the corporate limits of the municipality. The tax, if any, which is imposed shall not exceed the sum of $1,000.00 per year. Such ordinances may prescribe the punishment to be imposed for violations, but such punishment shall not exceed imprisonment for 60 days or a fine of $500.00 or both. Prosecutions for violations shall be in the magistrate court of the county as provided in Chapter 10 of Title 15.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 311, § 1; Ga. L. 1984, p. 505, § 1.

JUDICIAL DECISIONS

City ordinance presumed valid. — Presumption in favor of the validity of a city ordinance is not overcome in a case involving a constitutional attack thereon when it is merely assumed that the practice of fortunetelling is a legitimate calling which cannot be prohibited by the city under the city's police power. Williams v. Jenkins, 211 Ga. 10, 83 S.E.2d 614, 1954 Ga. LEXIS 471 (1954).

RESEARCH REFERENCES

Am. Jur. 2d.
36 Am. Jur. 2d, Fortunetelling, § 1 et seq.

C.J.S.
16A C.J.S., Constitutional Law, §§ 777 et seq., 839, 851 et seq., 906 et seq.

ALR.
Validity of license tax or fee on show or place of amusement, 111 A.L.R. 778.

Regulation of astrology, clairvoyancy, fortunetelling, and the like, 91 A.L.R.3d 766.

36-1-16. Dumping outside jurisdiction without permission prohibited; exemption.

(a) No person, firm, corporation, or employee of any municipality shall transport, pursuant to a contract, whether oral or otherwise, garbage, trash, waste, or refuse across state or county boundaries for the purpose of dumping the same at a publicly or privately owned dump, unless permission is first obtained from the governing authority of the county in which the dump is located and from the governing authority of the county in which the garbage, trash, waste, or refuse is collected.

(b) Subsection (a) of this Code section shall not apply to the transportation of any material which is regulated pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act," or Article 1 of Chapter 9 of Title 12, "The Georgia Air Quality Act."

History.

Ga. L. 1971, p. 445, § 1; Ga. L. 1978, p. 1911, § 1; Ga. L. 1990, p. 1345, § 1; Ga. L. 1992, p. 918, § 3; Ga. L. 1993, p. 91, § 36.

Cross references.

Individual sewage disposal permits, § 12-8-1 et seq.

Law reviews.

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 186 (1992).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 262 (2008).

For survey article on zoning and land use law, see 60 Mercer L. Rev. 457 (2008).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-1-16 is constitutional, and the statute gives Georgia counties a role in protecting the public health and welfare with respect to the operation of waste dumps within the counties' respective boundaries. Diamond Waste, Inc. v. Monroe County, 939 F.2d 941, 1991 U.S. App. LEXIS 19451 (11th Cir. 1991).

O.C.G.A. § 36-1-16(a) is unconstitutional because the statute impairs interstate commerce by improperly giving Georgia counties the power to veto the importation of solid waste. Fulton County v. City of Atlanta, 280 Ga. 353, 629 S.E.2d 196, 2006 Ga. LEXIS 199 (2006).

Unconstitutional application. — County's application of O.C.G.A. § 36-1-16 to prohibit a waste management company from operating a landfill, which was owned by a municipality but located in the county, as a regional landfill, i.e., from receiving waste from outside the county and from outside the state, violated the company's constitutional commerce clause right to engage in interstate commerce without discriminatory intervention. Diamond Waste, Inc. v. Monroe County, 731 F. Supp. 505, 1990 U.S. Dist. LEXIS 2030 (M.D. Ga. 1990), aff'd in part, vacated in part, 939 F.2d 941, 1991 U.S. App. LEXIS 19451 (11th Cir. 1991).

County resolution preventing a waste management firm from importing waste of any kind into the county from other counties and other locations violated the commerce clause of the federal constitution. Diamond Waste, Inc. v. Monroe County, 939 F.2d 941, 1991 U.S. App. LEXIS 19451 (11th Cir. 1991).

Judgments from federal court binding on state court during appeal. — Since simultaneous actions challenging the constitutionality of O.C.G.A. § 36-1-16 were pending in state and federal court, and an appeal from the federal district court order was pending, estoppel by judgment precluded state court consideration of the matter on appeal because judgments from a federal court remain binding during the pendency of an appeal. Mayor of Forsyth v. Monroe County, 260 Ga. 296, 392 S.E.2d 865, 1990 Ga. LEXIS 256 (1990).

RESEARCH REFERENCES

ALR.

Validity of statutory or municipal regulations as to garbage, 72 A.L.R. 520; 135 A.L.R. 1305.

Regulation and licensing of private garbage or rubbish removal services, 83 A.L.R.2d 799.

36-1-17. Authority to issue citations; failure to appear.

In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, any employee who is authorized to enforce any county code, ordinance, regulation, rule, or other order, including such related ordinances, codes, and regulations as drainage regulations, soil erosion and sedimentation control regulations, subdivision and zoning regulations, water and sewer regulations, and any other land development or construction regulations of such counties, shall have the authority to issue citations to any person who shall violate any such county code, ordinance, regulation, or order which shall be in effect in such counties. Such citations shall command the appearance of such person at a designated regular session of a court in such county having the jurisdiction of a commitment court throughout the entire county. At such time and place, the court shall act as a court of inquiry with all the powers and authorities specified in Article 2 of Chapter 7 of Title 17. In the event that any such person shall fail to appear in response to such citation, a warrant shall be issued for the arrest of the person for violation of such county code, ordinance, regulation, rule, or order without the necessity of any further action.

History.
Ga. L. 1981, p. 3261, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Probate court jurisdiction over violations of county ordinances. — Probate court has jurisdiction over violations of county ordinances in counties of 550,000 or more pursuant to O.C.G.A. § 36-1-17. 1995 Op. Att'y Gen. No. U95-1.

36-1-18. Authority to issue assessments relating to roadways; liens.

(a) In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, the county governing authority shall be empowered by ordinance or resolution to assess against any property the cost of reopening or repairing any public way, street, road, right of way, or highway, or the cost of cleaning up from any public way, street, road, right of way, or highway any debris, dirt, sediment, soil, trash, building materials, and other physical materials originating on such property, as a result of any private construction activity carried on by any developer, contractor, subcontractor, or owner of such property.

(b) Any assessment authorized under subsection (a) of this Code section, as well as the interest thereon and the expense of collection, shall be a lien against the property so assessed coequal with the lien of other taxes and shall be enforced in the same manner as are state and

county ad valorem property taxes by issuance of a fi. fa. and levy and sale as set forth in Title 48, the "Georgia Public Revenue Code."

History.
Ga. L. 1981, p. 3259, §§ 1, 2.

36-1-19. [Reserved] Appropriation for charitable grants or contributions in counties having population greater than 550,000; establishment of boards or councils to devise procedures and advise governing authority.

History.
Ga. L. 1980, p. 3406, §§ 1, 2; Ga. L. 1982, p. 2107, § 31; repealed by Ga. L. 1996, p. 1415, § 1, effective July 1, 1996.

Editor's notes.
Ga. L. 1996, p. 1415, § 1 repealed and reserved this Code section, effective July 1, 1996.

36-1-19.1. Authority to make charitable donations; state authority to establish procedures.

(a) In all counties of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census, the governing authorities of such counties are authorized to provide by ordinance for the appropriation of money for and the making of grants or contributions to any corporation, association, institution, or individual for purely charitable purposes, provided that the activities funded by any such grants or contributions shall take place within the county making such grant or contribution.

(b) In connection with the appropriation of money for or the making of any grant or contribution for purely charitable purposes, the governing authority of any county within this state may establish such boards or councils as it may determine to establish the procedures by which such grants or contributions are made and to advise the governing authorities of such counties generally with respect to such grants or contributions.

(c) Appropriations, grants, and contributions made pursuant to this Code section shall be in the form of contracts for services.

(d) For the purpose of this Code section, "purely charitable purposes" shall mean charitable, benevolent, or philanthropic purposes for health, education, social welfare, arts and humanities, or environmental organizations.

(e) No funds may be appropriated, granted, or contributed under this Code section for a purpose which is in violation of the laws of this state; provided, however, that this subsection shall not be interpreted to prohibit a good faith expenditure of funds for purposes authorized by law.

History.
Code 1981, § 36-1-19.1, enacted by Ga. L. 1996, p. 1415, § 2; Ga. L. 1999, p. 81, § 36.

36-1-20. Ordinances for governing and policing of unincorporated areas of county.

(a) The governing authority of each county, for the purpose of protecting and preserving the public health, safety, and welfare, is authorized to adopt ordinances for the governing and policing of the unincorporated areas of the county, violations of which ordinances may be punished by fine or imprisonment or both. Without limiting the generality of the foregoing, such ordinances may provide for traffic regulation, including adoption of the uniform rules of the road under Chapter 6 of Title 40, may provide for the regulation and control of litter in the same manner as municipal ordinances under Code Section 16-7-48, and may provide for the implementation and enforcement of any power or duty vested in the county governing authority.

(b) Each such ordinance shall specify the maximum punishment which may be imposed for a violation of the ordinance; and in no case shall the maximum punishment for the violation of any such ordinance exceed a fine of $1,000.00 or imprisonment for 60 days or both; provided, however, that, for violation of a pretreatment standard or requirement adopted pursuant to the federal Clean Water Act, the ordinance may specify that the fine may be up to $1,000.00 per day for each violation by an industrial user.

(c) Jurisdiction over violations of such county ordinances shall be in the magistrate court of the county; and procedure for enforcement of such ordinances shall be as provided in Article 4 of Chapter 10 of Title 15; provided, however, jurisdiction over ordinances having to do with traffic offenses shall be in the court or courts having jurisdiction over state traffic offenses.

(d) This Code section shall not affect the jurisdiction of or procedure in any other court which has jurisdiction over violations of county ordinances.

History.
Code 1981, § 36-1-20, enacted by Ga. L. 1984, p. 1086, § 1; Ga. L. 1990, p. 1345, § 2; Ga. L. 1991, p. 993, § 1; Ga. L. 2025, p. 1029, § 36(1)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, inserted a comma following "however, that" and following "Clean Water Act" in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Jurisdiction over offense of open container of alcohol in vehicle. — In counties in which there is a state court, both the state court and the magistrate court of the county possess concurrent jurisdiction over the prosecution of individuals charged with violating a county ordinance prohibiting the possession of open containers of alcohol while operating a motor vehicle. 1992 Op. Att'y Gen. No. U92-3.

Regulation of trucks on residential roads. — County sheriff's department may enforce ordinances prohibiting trucks over ten wheels from using residential roads within county except when making temporary deliveries. 1996 Op. Att'y Gen. No. U96-17.

Traffic control ordinances. — Counties may enact ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U2000-12.

36-1-21. Civil service system for county employees.

(a) The governing authority of any county is authorized to provide by ordinance or resolution for the creation of a civil service system for employees of the county, other than elected officials or persons appointed to positions for specified terms.

(b) Subsequent to the creation of a civil service system, the county governing authority which created the system may provide by ordinance or resolution that positions of employment within departments subject to the jurisdiction of elected county officers or subject to the jurisdiction of other commissions, boards, or bodies of the county shall be subject to and covered by the civil service system upon the written application of the elected county officer, commission, board, or body having the power of appointment, employment, or removal of employees of the officer, department, commission, board, or body. Once positions of employment are made subject to the civil service system, such positions shall not be removed thereafter from the coverage of the civil service system.

(c) A civil service system created pursuant to the authority of this Code section shall be administered in such manner and pursuant to such rules and regulations as may be provided for by resolution or ordinance of the county governing authority which created the system.

(d)(1) The powers granted to the governing authorities of counties by this Code section:

(A) Shall not supersede or replace any power granted by any local constitutional amendment to the General Assembly to provide by law for a civil service or merit system for any county;

(B) Shall not supersede or replace any law enacted by the General Assembly pursuant to the authority of a local constitutional amendment described in subparagraph (A) of this paragraph; and

(C) Shall be in addition to any power granted by local constitutional amendment directly to the governing authority of any county to provide by ordinance or resolution for a civil service or merit system for such county.

(2) As used in paragraph (1) of this subsection, the term "local constitutional amendment" means any constitutional amendment described in subparagraph (a) of Paragraph IV of Section I of Article XI of the Constitution of the State of Georgia which has been continued in force and effect pursuant to the authority of said subparagraph (a) of said cited constitutional provision and which has not been repealed pursuant to the authority of subparagraph (b) of said cited constitutional provision.

History.

Code 1981, § 36-1-21, enacted by Ga. L. 1986, p. 764, § 1; Ga. L. 1988, p. 1627, § 1; Ga. L. 2001, p. 4, § 36.

Law reviews.

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Motion to create system. — Motion adopted by the board of county commissioners creating a county personnel system was a "resolution" within the meaning of O.C.G.A. § 36-1-21. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793, 1993 Ga. App. LEXIS 1336 (1993), cert. denied, No. S94C0249, 1994 Ga. LEXIS 265 (Ga. Jan. 28, 1994), cert. denied, No. S94C0248, 1994 Ga. LEXIS 238 (Ga. Jan. 28, 1994).

Inapplicable to system created by General Assembly. — Because a county tax commissioner's employees were within the county's civil service system, the county was properly granted summary judgment as to that issue, and hence, the county's personnel director was authorized to refuse to implement raises to the employees as the commissioner sought; moreover, the commissioner's reliance on O.C.G.A. § 36-1-21 did not change the result, as that statute expressly applied only to civil service systems created by county governing authorities, and the civil service system at issue was created by the Georgia General Assembly. Ferdinand v. Bd. of Comm'rs, 281 Ga. 643, 641 S.E.2d 787, 2007 Ga. LEXIS 187 (2007).

Subsequent ordinance or resolution. — After the governing body of a county has authorized, by ordinance or resolution, the creation of a civil service commission to cover county employees other than elected officials or persons appointed for a definite term, it may by subsequent ordinance or resolution provide that employees of the departments of elected officials or other county bodies may, by written application of the elected official or other department head, seek to be brought under the civil service commission as well. Burbridge v. Hensley, 194 Ga. App. 523, 391 S.E.2d 5, 1990 Ga. App. LEXIS 186 (1990), cert. denied, No. S90C0748, 1990 Ga. LEXIS 778 (Ga. Apr. 5, 1990).

Interim appointed sheriff's attempt, by letter to the county clerk, to have the sheriff's employees covered by the provisions of a civil service ordinance was invalid, since the county had not enacted a second ordinance or resolution pursuant to subsection (b) of O.C.G.A. § 36-1-21 providing that employees of elected officials could be made subject to the civil service system by written application of the elected official. Burbridge v. Hensley, 194 Ga. App. 523, 391 S.E.2d 5, 1990 Ga. App. LEXIS 186 (1990), cert. denied, No. S90C0748, 1990 Ga. LEXIS 778 (Ga. Apr. 5, 1990).

Resolution of the board of county commissioners that allowed elected county

officials to bring portions of employment within their department into the personnel system complied with the dictates of O.C.G.A. § 36-1-21. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793, 1993 Ga. App. LEXIS 1336 (1993), cert. denied, No. S94C0249, 1994 Ga. LEXIS 265 (Ga. Jan. 28, 1994), cert. denied, No. S94C0248, 1994 Ga. LEXIS 238 (Ga. Jan. 28, 1994).

Appointment and discharge of deputies. — Once positions in a sheriff's office have been made subject to a personnel or civil service system, a sheriff's authority to appoint deputies pursuant to O.C.G.A. § 15-16-23 is limited to vacancies created by the removal of employees in the manner provided under the applicable personnel or civil service system or vacancies created when employees resign or retire. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793, 1993 Ga. App. LEXIS 1336 (1993), cert. denied, No. S94C0249, 1994 Ga. LEXIS 265 (Ga. Jan. 28, 1994), cert. denied, No. S94C0248, 1994 Ga. LEXIS 238 (Ga. Jan. 28, 1994).

Since the county created a personnel system applicable to the sheriff's department, a newly elected sheriff's termination of current employees without affording the employees due process rights in connection with the employees' dismissal and the sheriff's hiring of employees to replace the dismissed employees was improper. Wayne County v. Herrin, 210 Ga. App. 747, 437 S.E.2d 793, 1993 Ga. App. LEXIS 1336 (1993), cert. denied, No. S94C0249, 1994 Ga. LEXIS 265 (Ga. Jan. 28, 1994), cert. denied, No. S94C0248, 1994 Ga. LEXIS 238 (Ga. Jan. 28, 1994).

Since it was not clearly established at the time in question that a sheriff was bound by a county merit system and that employees of the sheriff had a property interest in the employees' jobs, the sheriff was entitled to qualified immunity from the employees' claim of wrongful termination from the employee's jobs. Aspinwall v. Herrin, 879 F. Supp. 1227, 1994 U.S. Dist. LEXIS 19950 (S.D. Ga. 1994).

Deputy sheriffs in a county that had not adopted a civil service program were employees at will and lacked a property interest in the deputies' employment. Zimmerman v. Cherokee County, 925 F. Supp. 777, 1995 U.S. Dist. LEXIS 21072 (N.D. Ga. 1995).

Under O.C.G.A. § 15-16-23, sheriffs have absolute discretion in the hiring and firing of deputies and the only process by which this discretion may be limited is through adoption of a civil service system in compliance with subsection (b) of O.C.G.A. § 36-1-21; when a sheriff had not complied with such provision, deputies had no protected property interest in the deputies' positions. Brett v. Jefferson County, 925 F. Supp. 786, 1996 U.S. Dist. LEXIS 6153 (S.D. Ga. 1996), aff'd in part, vacated in part, 123 F.3d 1429, 1997 U.S. App. LEXIS 27160 (11th Cir. 1997).

Because sheriff had failed to satisfy statutory requirements for placing deputies under a civil service program, the deputies were at-will employees with no protected property interest in continued employment. Brett v. Jefferson County, 123 F.3d 1429, 1997 U.S. App. LEXIS 27160 (11th Cir. 1997).

Political patronage of sheriff deputies. — Deputy sheriff's First Amendment political patronage claim failed because political loyalty was an appropriate requirement for the position of deputy sheriff as Georgia deputies had the same powers and duties as the sheriff; the civil service system, which prohibited the sheriff from making employment decisions on the basis of political affiliation, did not modify the duties of the sheriff's deputies and therefore had no effect on the First Amendment claim. Ezell v. Wynn, 802 F.3d 1217, 2015 U.S. App. LEXIS 16851 (11th Cir. 2015).

Termination of employee. — Employee who was hired by a county solicitor general under O.C.G.A. § 15-18-71 was not an employee of the county, and the solicitor general did not bring the employee into the county's civil service system under O.C.G.A. § 36-1-21(b). Therefore, the employee lacked a protected property interest in the job and could be terminated without cause and without a hearing. Thomas v. Lee, 286 Ga. 860, 691 S.E.2d 845, 2010 Ga. LEXIS 171 (2010).

Court clerk not subject to county merit system. — County merit board can take no action affecting the clerk of the

superior court and the clerk's employees unless the clerk of the superior court has asked that the clerk's office be subject to the merit system and the county has provided for such coverage through an appropriate resolution or ordinance. Gwinnett County v. Yates, 265 Ga. 504, 458 S.E.2d 791, 1995 Ga. LEXIS 345 (1995).

Clerk of the Superior Court of Gwinnett County is not subject to the Gwinnett County Merit System. Gwinnett County v. Yates, 265 Ga. 504, 458 S.E.2d 791, 1995 Ga. LEXIS 345 (1995).

No vested interest in continued employment shown. — In a racial discrimination suit, the trial court properly denied mandamus relief to the former employee because the former employee failed to show that the employer had a clear legal duty to maintain the former employee as an employee and there was no evidence showing that the former employee was ever a merit system employee with a vested interest in continued employment with the tax commissioner. Cochran v. Kendrick, 297 Ga. 655, 778 S.E.2d 1, 2015 Ga. LEXIS 645 (2015).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms.

5B Am. Jur. Pleading and Practice Forms, Civil Service, § 2.

36-1-22. [Reserved] Business and occupational license taxes and fees.

History.

Ga. L. 1986, p. 1586, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1734, § 1; Ga. L. 1989, p. 14, § 36; repealed by Ga. L. 1993, p. 1292, § 6, effective January 1, 1995.

Editor's notes.

Ga. L. 1993, p. 1292, § 6 repealed and reserved this Code section, effective January 1, 1995.

36-1-23. Purchase of construction materials from county.

(a) No county shall require any person who performs services on his property or on private property pursuant to an agreement with an individual, corporation, partnership, association, or other private entity to purchase from the county any materials used in the construction or repair of any water system, sewer system, storm or drainage system, building, or other facilities on such property. Any county which sells such materials used in the construction of such facilities shall be required to publish the acceptable manufacturing or engineering standards of such materials sold by the county and such other materials, if any, which the county finds acceptable for the construction of such facilities. In the construction of any such facility, the use by any person or other entity of materials which are not purchased from the county shall not render any such facility or project ineligible for acceptance as a public right of way or utility project if the materials used meet the acceptable standards published by the county.

(b) Nothing in this Code section shall affect the authority of a county

to enact building, construction, electrical, fire, or other codes which require materials used in the construction or repair of water systems, sewer systems, storm or drainage systems, buildings, or other facilities to meet or satisfy certain standards.

(c) Any county officer or employee who, without sufficient cause, refuses to accept as a public right of way or utility project any water and sewer system or other facility constructed with acceptable materials not purchased from the county shall be guilty of a misdemeanor.

(d) Upon the final conviction of any county officer or employee of violating subsection (c) of this Code section, the employment of such officer or employee by the county shall immediately be terminated.

History.
Code 1981, § 36-1-23, enacted by Ga. L. 1991, p. 1002, § 1; Ga. L. 1992, p. 3212, § 1.

Editor's notes.
Former Code Section 36-1-23, relating to preservation and protection of abandoned or unmaintained cemeteries, was based on Ga. L. 1988, p. 318, § 1 and repealed by Ga. L. 1989, p. 14, § 36.

36-1-24. Training classes for clerks of governing authority of county.

(a) Any person hired or appointed to serve as the clerk of the governing authority of any county in this state shall attend and complete a course of training on matters pertaining to the basic performance of his or her official duties. Such training shall be conducted by the University of Georgia under the supervision of the Carl Vinson Institute of Government at such time and place as shall be determined by the Carl Vinson Institute of Government.

(b) The personnel of the Carl Vinson Institute of Government are authorized to work with the members of the Association County Clerks of Georgia and the Association County Commissioners of Georgia in establishing and operating the training course provided for in subsection (a) of this Code section, as well as establishing the rules and regulations governing attendance of such training.

(c) All reasonable expenses of attending the training class required by this Code section shall be paid from funds appropriated by the county governing authority for such purposes.

History.
Code 1981, § 36-1-24, enacted by Ga. L. 1990, p. 1689, § 1.

36-1-25. Official minutes of meetings.

Official minutes of the meetings of a county governing authority shall

be maintained in the offices of the county governing authority. Copies of contracts, maps, or similar material or documents related to actions taken by a county governing authority may be included in the minutes or incorporated by reference to an alternate location. Where incorporated by reference, such documents shall be stored in a central location or locations identified by ordinance or resolution of the county governing authority.

History.
Code 1981, § 36-1-25, enacted by Ga. L. 1994, p. 662, § 1.

JUDICIAL DECISIONS

Zoning map properly incorporated by reference. — County zoning ordinance properly incorporated by reference an official zoning map as the board of commissioners had a zoning map before the board when the board considered the ordinance, the zoning map was in existence when a limited liability limited partnership (LLLP) bought the property and that map was kept in the zoning administrator's office, the new zoning administrator's uncertainty about which of two maps was the official map did not render the entire zoning ordinance invalid, and it was clear that the LLLP's land was not zoned for a landfill. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344, 2004 Ga. LEXIS 264 (2004).

36-1-26. Contracts for utility services; terms and conditions.

The governing authority of any county in this state may authorize the execution of one or more contracts which specify the rates, fees, or other charges which will be charged and collected by the county for electric, natural gas, or water utility services to be provided by the county to one or more of its utility customers. Any such contract shall be subject to the following conditions and limitations:

(1)(A) Except as provided in subparagraph (B) of this paragraph, no such contract shall be for a term in excess of ten years.

(B) No such contract for solar utility services or for wind utility services shall be for a term in excess of 20 years;

(2) Any such contract which is for a term in excess of two years shall include commercially reasonable provisions under which the rates, fees, or other charges shall be adjusted with respect to inflationary or deflationary factors affecting the provision of the utility service in question; and

(3) Any such contract shall include commercially reasonable provisions relieving the county from its obligations under the contract in the event that the county's ability to comply with the contract is impaired by war, natural disaster, catastrophe, or any other emergency creating conditions under which the county's compliance with

the contract would become impossible or create a substantial financial burden upon the county or its taxpayers.

History. Code 1981, § 36-1-26, enacted by Ga. L. 1998, p. 1113, § 1; Ga. L. 2019, p. 605, § 1/SB 95.

36-1-27. Procedure for expenditure of public funds for fixed guideway transit; referendum; ballot language.

(a) As used in this Code section, the term:

(1) "Expenditure of public funds" means:

(A) Utilizing the proceeds of any tax, proceeds from the county general fund, or any other county proceeds;

(B) Incurring general obligation debt, revenue debt, or other multiyear obligations; or

(C) Entering into any intergovernmental agreement with an authority or instrumentality of the state which would impact future tax revenue or obligate the payment of tax revenue, general obligation debt, revenue debt, or other multiyear obligations.

(2) "Fixed guideway transit" means a public transportation system using and occupying a permanent, separate right of way for the exclusive use of public transportation, including, but not limited to, rails for use by trains or a bus rapid transit system.

(3) "Mass transportation" means any mode of transportation serving the general public which is appropriate to transport people by highways or rail.

(4) "Mass transportation regional system participant" means any county within a special district created pursuant to Article 5 of Chapter 8 of Title 48 in which mass transportation is provided within such special district, to such special district, or from such special district by a multicounty regional transportation authority created by an Act of the General Assembly, including but not limited to the Atlanta-region Transit Link "ATL" Authority or the Metropolitan Atlanta Rapid Transit Authority.

(b) Prior to an expenditure of any public funds for the establishment, maintenance, and operation of a fixed guideway transit in any county that is a mass transportation regional system participant, the governing authority of such county shall obtain approval from:

(1) The Atlanta-region Transit Link "ATL" Authority that such project is on the regional transit plan adopted by such authority pursuant to Code Section 50-39-12; and

(2) A majority of qualified voters of the county in a separate referendum question as provided for in this Code section.

(c) Prior to the issuance of the call for the referendum, the governing authority of the county that is a mass transportation regional system participant shall adopt a resolution which shall specify the type and location of a fixed guideway transit, the capital costs to establish such fixed guideway transit, the date upon which the capital costs to establish such fixed guideway transit shall be paid in full, and an estimate of the projected annual costs for maintenance and operation of such fixed guideway transit.

(d)(1) Whenever the governing authority of any county that is a mass transportation regional system participant wishes to submit to the electors of such county the question of whether to expend public funds for a fixed guideway transit, any such governing authority shall notify the election superintendent of such county by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Such election shall be held with a general election, general primary election, or presidential preference primary. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of authorizing the expenditure of public funds for a fixed guideway transit to the voters of the county for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election along with a copy of the resolution adopted pursuant to subsection (c) of this Code section to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

"( ) YES Shall the expenditure of public funds for a fixed
( ) NO guideway transit within _____ County be approved?"

(2) All persons desiring to vote in favor of the question shall vote "Yes," and all persons desiring to vote against the question shall vote "No." If more than one-half of the votes cast are in favor of the question, then the expenditure of public funds by such county for a fixed guideway transit shall be deemed approved; otherwise, such expenditures shall continue to be prohibited. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern general elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State. The expense of the election shall be borne by the county holding the election.

(e) This Code section shall not apply to the extension of a fixed guideway transit or levy of applicable sales and use taxes authorized pursuant to an Act known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, or Part 2 of Chapter 9 of Title 32 for which any referendum required under such Act or part shall control, or to any project within a county or between counties which have approved such sales and use tax, provided that such project is wholly within the territorial boundaries of such county or counties.

History.

Code 1981, § 36-1-27, enacted by Ga. L. 2016, p. 862, § 1/SB 420; Ga. L. 2018, p. 377, § 4-5/HB 930.

Editor's notes.

Ga. L. 2018, p. 377, § 5-1(c)/HB 930, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities for prior taxable years shall not be affected by the passage of Part I of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of Part I of this Act." Part I of this Act became effective January 1, 2019.

CHAPTER 2

MILITIA DISTRICTS

Sec.
36-2-1. Division of county into militia districts.
36-2-2. Minimum requirements for districts.
36-2-3. Procedure to change district lines.
36-2-4. Transmittal of proceedings changing districts to Governor; publication.
36-2-5 through 36-2-7. [Reserved].

JUDICIAL DECISIONS

Effect of recognition of old district line by commissioners after change of line. — Public would not be estopped by any subsequent acts of the board of commissioners in recognizing an old line between two districts as the correct dividing line, had the district lines been changed in compliance with the requirements of law. Camp v. Trapp, 209 Ga. 298, 71 S.E.2d 534, 1952 Ga. LEXIS 454 (1952).

36-2-1. Division of county into militia districts.

(a) Each county is divided into militia districts according to its territory and population.

(b) Militia districts are to remain the same as presently organized until changed in the manner prescribed in this chapter.

History.
Orig. Code 1863, §§ 453, 454; Code 1868, §§ 515, 516; Code 1873, §§ 481, 482; Code 1882, §§ 481, 482; Civil Code 1895, §§ 330, 331; Civil Code 1910, §§ 373, 374; Code 1933, §§ 23-201, 23-202.

36-2-2. Minimum requirements for districts.

Each militia district organized or changed must contain within its limits at least 200 persons 18 years of age or over who are residents at the time of the organization of the district and, in its formation, must not leave any older district with less than 200 such persons.

History.
Orig. Code 1863, § 455; Code 1868, § 517; Code 1873, § 483; Code 1882, § 483; Civil Code 1895, § 332; Civil Code 1910, § 375; Code 1933, § 23-203; Ga. L. 1982, p. 825, § 1.

Cross references.
Composition of unorganized militia of the state, § 38-2-3.

JUDICIAL DECISIONS

O.C.G.A. § 36-2-2 is mandatory. — Proceeding which seeks to create a new district, but leaves an old district with less than the required number of male persons subject to militia duty, is repugnant to this section. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909, 1944 Ga. LEXIS 457 (1944).

Order void when existing district left understrength. — Order, by the proper county authority, approving a report of the commissioners appointed to lay out and establish a new militia district, is void since, by the establishment of the new district, an existing district is left with less than the required number of persons liable to militia duty. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909, 1944 Ga. LEXIS 457 (1944).

OPINIONS OF THE ATTORNEY GENERAL

The 1982 amendment to O.C.G.A. § 36-2-2 does not require that any militia district boundaries be changed; any changes are to be initiated by the board of county commissioners in counties where the board is vested with this power by local law. 1982 Op. Att'y Gen. No. 82-94.

RESEARCH REFERENCES

ALR.

Enlistment or mustering of minors into military service, 140 A.L.R. 1508.

36-2-3. Procedure to change district lines.

Whenever it is necessary and expedient to lay out a new militia district, to change the lines of old districts, or to consolidate or abolish old districts, the judge of the probate court may, at any time, appoint three commissioners who are citizens of the district or districts from which it is proposed to make the new district or to change the lines thereof, whose duty it shall be to lay out and define the lines and to report the same to the judge of the probate court. The commissioners shall have authority to engage the services of a competent surveyor to assist them in their duties. The surveyor shall be paid for his services, out of the county treasury, the same compensation county surveyors are paid for similar services rendered to a citizen. If the judge of the probate court approves the report of the commissioners, he shall have all proceedings in the matter entered on his minutes, after which the district laid out or the line changed or defined shall be known and regarded accordingly.

History.

Laws 1840, Cobb's 1851 Digest, p. 187.; Code 1863, §§ 456, 457, 458; Code 1868, §§ 518, 519, 520; Code 1873, §§ 484, 485, 486; Code 1882, §§ 484, 485, 486; Civil Code 1895, §§ 333, 334, 335; Civil Code 1910, §§ 376, 377, 378; Code 1933, §§ 23-204, 23-205, 23-206.

Cross references.

Compensation of county surveyors, § 36-7-9 et seq.

JUDICIAL DECISIONS

This statute is a general law. Drummond v. Lowry, 88 Ga. 716, 16 S.E. 28, 1892 Ga. LEXIS 88 (1892); Hackney v. Leake, 91 Ga. 141, 16 S.E. 966, 1892 Ga. LEXIS 537 (1892).

Commissioners appointed by the ordinaries to lay out new militia districts, or change the lines of those existing, have authority to engage the services of a competent surveyor to assist the commissioners in the commissioners' duties. The commissioners are not limited to the county surveyor. Graham v. Hall, 68 Ga. 354, 1882 Ga. LEXIS 12 (1882).

Power of ordinary (now judge of the probate court) and time of action. — Ordinary (now judge of the probate court) may appoint the commissioners, receive the commissioners' reports, and establish new districts either in term or vacation. Poole v. Sims, 67 Ga. 36, 1881 Ga. LEXIS 125 (1881).

Ordinary (now judge of the probate court) determines expediency. — Commissioners are mere agents to lay off the lines of a new district; the ordinary (now judge of the probate court) determines the expediency of creating it. The creation of a new district is not, therefore, illegal because deemed inexpedient by the commissioners. Conley v. Poole, 67 Ga. 254, 1881 Ga. LEXIS 404 (1881).

Finality of decision. — Judge of a superior court has no jurisdiction to review by certiorari the action of an ordinary (now judge of the probate court) or board of commissioners for there is no decision of a judicial question between parties litigant. Hillsman v. Harris, 84 Ga. 432, 11 S.E. 400, 1889 Ga. LEXIS 279 (1889); Hudson v. Sullivan, 93 Ga. 631, 20 S.E. 77, 1894 Ga. LEXIS 374 (1894).

Decision to create district not subject to review. — Exercise of the discretion of the county authority in creating a militia district, in the absence of fraud or the willful abuse of discretion, could not be made the subject of review by the superior court or the Supreme Court. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909, 1944 Ga. LEXIS 457 (1944).

New district must not leave old district undermanned. — An order, by the proper county authority, approving a report of the commissioners appointed to lay out and establish a new militia district, is void since, by the establishment of the new district, an existing district is left with less than the required number of persons liable to militia duty. Johnson v. Chappell, 198 Ga. 162, 30 S.E.2d 909, 1944 Ga. LEXIS 457 (1944).

Proof of district lines and residence. — Change of district lines is a matter of record, but the location of a residence with reference thereto must be proved by parol evidence. Graham v. Hall, 68 Ga. 354, 1882 Ga. LEXIS 12 (1882).

Isolated tracts. — This statute does not authorize the inclusion in a district of isolated tracts not contiguous thereto. Howell v. Kinney, 99 Ga. 544, 27 S.E. 204, 1896 Ga. LEXIS 444 (1896).

Justice of the peace (now magistrate) whose fees will be diminished by change in the militia district is not entitled to notice of proceedings. Poole v. Sims, 67 Ga. 36, 1881 Ga. LEXIS 125 (1881).

Form of petition and report. — Petition for a change of boundary line should distinctly specify the location of the new line, and the commissioners' report should lay out and define the new line. Howell v. Kinney, 99 Ga. 544, 27 S.E. 204, 1896 Ga. LEXIS 444 (1896).

OPINIONS OF THE ATTORNEY GENERAL

Judge may change district name. — Since the judge of the probate court has all of the powers specified in this section, which are quite extensive, then certainly the judge has the power as implied by law to merely change the name of a militia district without changing the district's boundaries. 1963-65 Ga. Op. Att'y Gen. 339.

Commissioners of a county have

authority to consolidate militia districts of that county into one militia district; the responsibility for changing the boundaries of, or consolidation of militia districts is that of the ordinary (now judge of the probate court) only when jurisdiction over such matters has not been granted by legislative act to the county commissioners. 1968 Op. Att'y Gen. No. 68-177.

Change in city limits is not one of means specified in the laws of Georgia for changing the boundaries of militia districts. 1968 Op. Att'y Gen. No. 68-237.

The 1982 amendment to O.C.G.A. § 36-2-2 does not require that any militia district boundaries be changed; any changes are to be initiated by the board of county commissioners in counties where the board is vested with this power by local law. 1982 Op. Att'y Gen. No. 82-94.

36-2-4. Transmittal of proceedings changing districts to Governor; publication.

It is the duty of the judge of the probate court, when a new district is laid out, immediately to transmit to the Governor the proceedings in the matter, duly certified, from his minutes and to publish them for 30 days at the door of the courthouse and in the newspaper where he does his official advertising.

History.

Laws 1840, Cobb's 1851 Digest, p. 187; Code 1863, § 459; Code 1868, § 521; Code 1873, § 487; Code 1882, § 487; Civil Code 1895, § 336; Civil Code 1910, § 379; Code 1933, § 23-207.

JUDICIAL DECISIONS

Numbers and names of militia districts are not required to be kept in executive department. Aultman v. Hodge, 150 Ga. 370, 104 S.E. 1, 1920 Ga. LEXIS 183 (1920).

36-2-5 through 36-2-7. [Reserved].

History.

Ga. L. 1899, p. 24, § 1; Civil Code 1910, §§ 380 to 382; Code 1933, §§ 23-208 to 23-210; and Ga. L. 1981, Ex. Sess., p. 8; repealed by Ga. L. 1983, p. 884, § 4-2, effective July 1, 1983.

Editor's notes.

The former Code sections, relating to the effect on justice of the peace courts to changes in militia district lines, consisted of Code Sections 36-2-5 through 36-2-7.

Ga. L. 1983, p. 884, § 4-2 repealed and reserved these Code sections, effective July 1, 1983.

CHAPTER 3

COUNTY BOUNDARIES

Article 1

Change of Boundaries

Sec.
36-3-1. Filing and contents of petition for change of boundary line; publication of notice.
36-3-2. Proceedings before grand juries; action by county governing authorities upon approval of change by grand juries; publication of notice.
36-3-3. When new boundary lines deemed established.
36-3-4. Payment of costs of proceedings.
36-3-5. Required filings with Secretary of State; records with superior court.

Article 2

Settlement of Boundary Disputes

36-3-20. Required procedure.
Sec.
36-3-21. Service of notice of survey upon county authorities.
36-3-21.1. Counties' agreement to boundary lines; filing of resolutions.
36-3-22. Copy of survey and plat furnished to county authorities.
36-3-23. Required filings with Secretary of State; protests.
36-3-24. Notice and hearing of protest or exceptions by Secretary of State.
36-3-25. Effect of recording survey and plat; subsequent changes of boundary line.
36-3-26. Compensation of land surveyor; notification of county authorities of fee; advisory committee.
36-3-27. Responsibility for land surveyor fee; levy of tax authorized.

Cross references.
County boundaries generally, Vol. 42, Index of Local and Special Laws.

JUDICIAL DECISIONS

Presumption of compliance with statute. — An order of the Governor appointing a surveyor to make a survey and plat of a disputed county line will be presumed, until the contrary appears, to have been made in full compliance with statutes providing for settlement of disputed county line. Fine v. Dade County, 198 Ga. 655, 32 S.E.2d 246, 1944 Ga. LEXIS 433 (1944).

When lands sought to be taxed by one county become part of another county, this status remains until there is another survey of line, after which the lands became a part of the former county. Kennedy v. Howard, 183 Ga. 410, 188 S.E. 673, 1936 Ga. LEXIS 250 (1936).

ARTICLE 1

CHANGE OF BOUNDARIES

Cross references.
Limitation of number of counties to 159, Ga. Const. 1983, Art. IX, Sec. I, Para. II(a).

Changing of county lines by operation of general law only and consolidation, merger, or division of counties generally, Ga. Const. 1983, Art. IX, Sec. I, Para. II(b) and (c).

Change in boundaries of election districts within counties, § 21-2-261 et seq.

County boundaries generally, Vol. 42, Index of Local and Special Laws.

36-3-1. Filing and contents of petition for change of boundary line; publication of notice.

Whenever one or more citizens of any county desire to have the boundary line of the county changed, they shall file in the offices of the judges of the probate courts of the counties to be affected a petition in writing, setting forth the exact character of the change desired to be made, specifying particularly the situation, direction, and existing marks and monuments, if any, of the original line, and describing particularly the direction, location, and length of the proposed new line, and setting forth the reasons for the change. The person or persons applying for the change shall also give notice of the intention to apply for the change by publishing the same for at least 30 days next preceding the term of the superior court or courts to be held in the counties to be affected, which term shall be that next occurring after the filing of the petition with the judges of the probate courts:

(1) By publishing the notice in a public newspaper having general circulation in each of the counties to be affected by the change; and

(2) By posting the notice at the door of the courthouse in each of the counties and at three public places in every militia district adjacent to the line to be changed.

History.

Ga. L. 1880-81, p. 52, § 1; Code 1882, § 508n; Civil Code 1895, § 382; Civil Code 1910, § 468; Code 1933, § 23-301.

Law reviews.

For article questioning the constitutionality of this section and the constitutional provision under which it was enacted, see 10 Ga. L. Rev. 169 (1975).

JUDICIAL DECISIONS

Constitutionality. — This and the following sections of this chapter constitute a general law and are not unconstitutional. Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297, 1918 Ga. LEXIS 79 (1918).

Quantity of land transferred limited by discretion of officials. — When provisions of law have been fully complied with, the quantity of land that may be transferred from one county to another by a change of county line is limited only by the restrictions contained in law; that is, by discretion of those officials named, and by the constitutional provision against removal of county site, or dissolution of a county except in the manner prescribed in Ga. Const. 1877, Art. XI, Sec. 1, Para. IV (see now Ga. Const. 1983, Art. IX, Sec. I, Para. II). Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297, 1918 Ga. LEXIS 79 (1918).

Injunction in discretion of judge. — On a petition to enjoin commissioners from passing on recommendation of grand jury sanctioning change of county line, the

judge of the superior court did not abuse judicial discretion in refusing an interlocutory injunction on the facts of the case. Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297, 1918 Ga. LEXIS 79 (1918).

Notice not required to be posted throughout length of county line. — Provision in this section as to the posting of notice in militia districts does not require the posting of notice in every district throughout the length of the county line unless the line is to be changed throughout the line's entire length. Aultman v. Hodge, 147 Ga. 626, 95 S.E. 297, 1918 Ga. LEXIS 79 (1918).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 39, 49 et seq., 56 et seq.

ALR.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-3-2. Proceedings before grand juries; action by county governing authorities upon approval of change by grand juries; publication of notice.

It shall be the duty of the judges of the probate courts of the counties whose dividing line is sought to be changed to lay before the grand juries of their respective counties, on the first day of the next term of the superior courts after the publication of the notice and the filing of the petition provided for in Code Section 36-3-1, the original petition, together with all maps, plats, and other papers that may have been filed therewith. If such grand juries, by a two-thirds' vote of their respective bodies, approve the change applied for, they shall so declare in their general presentments. This action of the grand juries shall be certified at once by the clerks of the superior courts to the county governing authority in the counties to be affected, who shall, within 30 days from the date of the certification, approve or disapprove the application and certify their action to the judges of the probate courts of their respective counties. When the judges of the probate courts have satisfactory evidence of the concurrent approval of the grand juries and of the county governing authority in the counties to be affected, they shall cause an official notice of concurrent approval and a description of the line approved to be published for at least 30 days in a public newspaper having general circulation in their respective counties.

History.

Ga. L. 1880-81, p. 52, § 2; Code 1882, § 508o; Civil Code 1895, § 383; Civil Code 1910, § 469; Code 1933, § 23-302.

Cross references.

Grand juries, § 15-12-1 et seq.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 21 et seq.

36-3-3. When new boundary lines deemed established.

When all the proceedings have been had in the manner prescribed in Code Sections 36-3-1 and 36-3-2 and when the same have been fairly recorded by the judges of the probate courts on the minutes of their respective courts, the new line or lines shall be held to have been established in lieu of the original line or lines.

History.
Ga. L. 1880-81, p. 52, § 3; Code 1882, § 508r; Civil Code 1895, § 384; Civil Code 1910, § 470; Code 1933, § 23-303.

Cross references.
Rerecording of deeds, mortgages, or other papers to land affected by change in county boundaries, § 44-2-13.

JUDICIAL DECISIONS

Sovereign immunity not waived. — In an action arising out of an arrest, despite the way the arrestee was treated, the trial court properly dismissed a complaint against a county, and granted summary judgment on the same complaint against a city, on sovereign immunity grounds and because the arrestee failed to show that the immunity had been waived. Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472, 2006 Ga. App. LEXIS 877 (2006).

36-3-4. Payment of costs of proceedings.

The entire costs of advertising and recording the petition, descriptions, and all other papers and proceedings relating to the proposed change in the boundary line of a county shall be paid by the person or persons applying therefor.

History.
Ga. L. 1880-81, p. 52, § 4; Code 1882, § 508s; Civil Code 1895, § 385; Civil Code 1910, § 471; Code 1933, § 23-304; Ga. L. 1982, p. 3, § 36.

36-3-5. Required filings with Secretary of State; records with superior court.

When all proceedings have transpired pursuant to this article, three copies of the survey and plat evidencing a change in county lines and a copy of a resolution from the governing authority of each county evidencing approval of the change shall be filed jointly by the judge of the probate court of each county with the Secretary of State. Upon receipt of the copies of the survey and plat and the resolutions provided above, the Secretary of State shall certify the survey and plat and send a certified copy thereof to the clerk of the superior court of each county affected by the change in county lines. The clerk of the superior court shall record the survey and plat in the same book in which other plats

of the county are recorded. The Secretary of State shall retain one copy of the survey and plat, such copy of the survey and plat to be filed in his office.

History.
Code 1933, § 23-305, enacted by Ga. L. 1975, p. 394, § 1.
Cross references.
Rerecording of deeds, mortgages, or other papers to land affected by change in county boundaries, § 44-2-13.

ARTICLE 2

SETTLEMENT OF BOUNDARY DISPUTES

Law reviews.
For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

36-3-20. Required procedure.

When the boundary line between two or more counties is in dispute and the grand jury of either county presents that the boundary line needs to be marked out and defined, it shall be the duty of the clerk of the superior court in the county where the presentments were made to certify the presentments to the Governor. The Governor shall appoint some suitable and competent land surveyor, who shall not reside in either county, to survey, mark out, and define the boundary line in dispute and to return the survey with plat to the Secretary of State's office to be recorded in a book to be kept for that purpose.

History.
Ga. L. 1887, p. 106, § 1; Civil Code 1895, § 386; Civil Code 1910, § 472; Code 1933, § 23-401; Ga. L. 1977, p. 248, § 1.

Law reviews.
For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

This statute and the following section do not contemplate actions between counties, but the statutes devise a process by which the line as originally fixed by the legislature in the formation of the counties shall be ascertained and made certain. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905, 1911 Ga. LEXIS 325 (1911).

Availability of mandamus. — Mandamus will issue to compel ordinary (now judge of the probate court) to comply with the Act of 1879. Dickson v. Hill, 75 Ga. 369, 1885 Ga. LEXIS 135 (1885).

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located.

Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760, 2014 Ga. LEXIS 191 (2014).

Line located contrary to prior judgment does not nullify judgment. — When the public authorities in locating line under this and the following sections located the line so that the line included land between lines contended for by parties to the litigation in which a judgment had been rendered, this did not nullify the prior judgment fixing the boundary line between the parties. Caverly v. Stovall, 143 Ga. 705, 85 S.E. 844, 1915 Ga. LEXIS 587 (1915).

RESEARCH REFERENCES

Am. Jur. 2d.
12 Am. Jur. 2d, Boundaries, § 46 et seq.
C.J.S.
20 C.J.S., Counties, § 21 et seq.
ALR.
Right of political division to challenge acts or proceedings by which its boundaries or limits are affected, 86 A.L.R. 1367.

36-3-21. Service of notice of survey upon county authorities.

Before the land surveyor proceeds to make the survey, he shall give the authorities having charge of the revenues of the counties at least ten days' notice of the time and place intended to commence the survey. The notice shall be given by mail or in person.

History.
Ga. L. 1887, p. 106, § 5; Civil Code 1895, § 390; Civil Code 1910, § 479; Code 1933, § 23-402; Ga. L. 1977, p. 248, § 2.

36-3-21.1. Counties' agreement to boundary lines; filing of resolutions.

(a) At any time after certification of the grand jury presentment to the Governor and prior to a final determination by the Secretary of State under Code Section 36-3-24, the governing authorities of the affected counties may by mutual agreement determine where the boundary line shall be located. Any such agreement shall be evidenced by the adoption of an appropriate concurrent unanimous resolution by the governing authority of each affected county; and each such resolution shall incorporate or incorporate by reference an agreed upon plat, description, or other means of definitely ascertaining the boundary line.

(b) The resolutions of the affected counties shall be filed with the Secretary of State and the Department of Community Affairs, together with the agreed upon plat, description, or other means of definitely ascertaining the county line. If the Secretary of State finds that:

(1) Such resolutions meet the requirements of this Code section;

(2) The agreed upon plat, description, or other means adequately defines the boundary line;

(3) The surveyor, if appointed, has been adequately compensated for services performed to date or adequate arrangements have been made for the payment of such compensation; and

(4) The agreement is otherwise proper to terminate the boundary dispute,

then the Secretary of State may enter a written determination that the disputed boundary line has been determined by agreement as authorized by this Code section. Such written determination, the concurrent resolutions of the affected counties, and the plat, description or other means of definitely ascertaining the boundary line shall be recorded in the same manner and with the same effect provided for in Code Section 36-3-25.

History.
Code 1981, § 36-3-21.1, enacted by Ga. L. 2002, p. 1292, § 1.

36-3-22. Copy of survey and plat furnished to county authorities.

The land surveyor appointed by the Governor to survey, mark out, and define the boundary line in dispute shall furnish the judges of the probate courts or chairmen of the boards of county commissioners of the respective counties with a copy of the survey and plat made and returned by him to the Secretary of State, at the same time the survey and plat are made and returned to the Secretary of State.

History.
Ga. L. 1899, p. 24, § 1; Civil Code 1910, § 473; Code 1933, § 23-403; Ga. L. 1977, p. 248, § 3.

JUDICIAL DECISIONS

Constitutionality. — Former Civil Code 1910, §§ 473-475 (see now O.C.G.A. §§ 36-3-22 — 36-3-24) were not violative of Ga. Const. 1877, Art. I, Sec. I, Para. XXIII (see now Ga. Const. 1983, Art. I, Sec. II, Para. III) as an attempt to confer judicial power upon the Secretary of State. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905, 1911 Ga. LEXIS 325 (1911).

36-3-23. Required filings with Secretary of State; protests.

The survey with plat, made and returned to the Secretary of State, shall be filed in his office, and entry of filing shall be made thereon; but the survey and plat shall not be recorded within the space of 30 days from the date of its reception in such office, for the purpose of allowing the authorities of either county dissatisfied therewith to file a protest or exceptions thereto within that time.

History.
Ga. L. 1899, p. 24, § 2; Civil Code 1910, § 474; Code 1933, § 23-404.

JUDICIAL DECISIONS

Constitutionality. — Former Civil Code 1910, §§ 473-475 (see now O.C.G.A. §§ 36-3-22 — 36-3-24) were not violative of Ga. Const. 1877, Art. I, Sec. I, Para. XXIII (see now Ga. Const. 1983, Art. I, Sec. II, Para. III) as an attempt to confer judicial power upon the Secretary of State. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905, 1911 Ga. LEXIS 325 (1911); 10 Ga. App. 305, 73 S.E. 352 (1912).

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760, 2014 Ga. LEXIS 191 (2014).

36-3-24. Notice and hearing of protest or exceptions by Secretary of State.

If a protest or exceptions to the survey and plat are filed in the Secretary of State's office within the 30 days, it shall be the duty of the Secretary of State to give, through the mail, ten days' written notice of the time when he will hear the protest or exceptions at his office to the county governing authorities of the respective counties. Upon the hearing, the Secretary of State shall determine from the law and evidence the true boundary line in dispute between the respective counties.

History.
Ga. L. 1899, p. 24, § 3; Civil Code 1910, § 475; Code 1933, § 23-405.

JUDICIAL DECISIONS

Constitutionality. — Former Civil Code 1910, §§ 473-475 (see now O.C.G.A. §§ 36-3-22 — 36-3-24) were not violative of Ga. Const. 1877, Art. I, Sec. I, Para XXIII (see now Ga. Const. 1983, Art. I, Sec. II, Para. III) as an attempt to confer judicial power upon the Secretary of State. Early County v. Baker County, 137 Ga. 126, 72 S.E. 905, 1911 Ga. LEXIS 325 (1911); 10 Ga. App. 305, 73 S.E. 352 (1912).

Secretary has discretion in conducting hearing. — On remand of a county boundary dispute under O.C.G.A. § 36-3-20 et seq., a trial court erred by proscribing the Secretary of State from holding a new hearing or considering additional evidence before determining the boundary between two counties; O.C.G.A. § 36-3-24 gave the Secretary broad discretion in making the Secretary's determination. Kemp v. Monroe County, 298 Ga. 67, 779 S.E.2d 330, 2015 Ga. LEXIS 796 (2015).

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while

mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760, 2014 Ga. LEXIS 191 (2014).

Secretary's authority to subpoena. — Trial court did not err by entering a declaratory judgment ordering the land surveyor to comply with the subpoena issued as the Secretary of State had the authority to require the surveyor to appear as a witness at a final hearing on a county boundary-line dispute. Scarborough v. Kemp, 348 Ga. App. 79, 819 S.E.2d 710, 2018 Ga. App. LEXIS 574 (2018), cert. denied, No. S19C0448, 2019 Ga. LEXIS 535 (Ga. Aug. 5, 2019).

36-3-25. Effect of recording survey and plat; subsequent changes of boundary line.

Upon the making of a decision by the Secretary of State pursuant to Code Section 36-3-24 or in case no protest or exceptions are filed within the 30 days, the Secretary of State shall cause the survey and plat to be recorded in a book to be kept for that purpose, whereupon the same shall be final and conclusive as to the boundary line in dispute. When the boundary line in dispute has been established as final and conclusive as provided in this Code section, the same boundary line shall not again be subject to the procedures set forth in this article, and such boundary line may subsequently be changed only in accordance with Article 1 of this chapter, provided that nothing contained in this sentence shall affect any boundary line dispute in question on July 1, 1980, until the dispute is settled.

History.

Ga. L. 1899, p. 24, § 4; Civil Code 1910, § 476; Code 1933, § 23-406; Ga. L. 1980, p. 1178, § 1; Ga. L. 1982, p. 3, § 36.

Editor's notes.

Ga. L. 1980, p. 1178, § 2, not codified by the General Assembly, provided that nothing in that Act, which added the last two sentences to this Code section, shall affect any boundary line disputes already in question, until such disputes are settled.

JUDICIAL DECISIONS

Mandamus cannot dictate where boundary line to be located. — Trial court erred by granting a county mandamus relief in a county boundary line dispute action pursuant to O.C.G.A. § 36-3-20 et seq., because while mandamus was authorized to compel the Georgia Secretary of State to do certain tasks, it was not authorized to dictate where the boundary line was to be located. Bibb County v. Monroe County, 294 Ga. 730, 755 S.E.2d 760, 2014 Ga. LEXIS 191 (2014).

Secretary has discretion in conducting hearing. — On remand of a county boundary dispute under O.C.G.A. § 36-3-20 et seq., a trial court erred by proscribing the Secretary of State from holding a new hearing or considering additional evidence before determining the boundary between two counties; O.C.G.A. § 36-3-24 gave the Secretary broad discretion in making the Secretary's determination. Kemp v. Monroe County, 298 Ga. 67, 779 S.E.2d 330, 2015 Ga. LEXIS 796 (2015).

36-3-26. Compensation of land surveyor; notification of county authorities of fee; advisory committee.

(a) The land surveyor shall receive a fee to be fixed by the Secretary of State or his designated deputy or assistant. Such fee shall be based upon reasonable compensation for the work to be performed and the rates normally charged by land surveyors in the same geographical area as the disputed line. The fee shall be negotiated prior to the commencement of the survey. Prior to the commencement of the survey, it shall be the duty of the Secretary of State to notify the governing authorities of the counties affected of the fee which has been negotiated.

(b) For the purpose of assisting the Secretary of State in connection with his responsibilities and duties to fix and negotiate an appropriate fee for the services of the land surveyor in surveying, marking out, and defining the boundary line in dispute, the Secretary of State may appoint an advisory committee to be composed of three registered land surveyors. One of the members of the advisory committee shall be a county surveyor who shall be selected by the Secretary of State from a list of at least three county surveyors submitted to the Secretary of State by the Association County Commissioners of Georgia. The members of the advisory committee shall serve at the pleasure of the Secretary of State or for such terms as the Secretary of State shall provide. The members of the advisory committee shall receive no compensation for their services as such.

(c) The advisory committee shall review the proposals of the land surveyor appointed by the Governor and shall counsel and advise the Secretary of State as to the committee's recommendation concerning an appropriate fee for such services. The recommendations of the advisory committee to the Secretary of State in relation to such fee shall not be binding upon the Secretary of State but shall be used by the Secretary of State in assisting him in determining and fixing an appropriate fee.

History.
Ga. L. 1887, p. 106, § 3; Civil Code 1895, § 388; Civil Code 1910, § 477; Code 1933, § 23-407; Ga. L. 1956, p. 192, § 1; Ga. L. 1958, p. 633, § 1; Ga. L. 1977, p. 248, § 4; Ga. L. 1980, p. 1280, § 1.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 21 et seq.

36-3-27. Responsibility for land surveyor fee; levy of tax authorized.

It shall be the duty of the governing authorities of each of the counties affected by such survey to pay that proportion of the fee established under Code Section 36-3-26 that such county bears to the total number

of counties directly affected by the survey. The payment of such fees is declared to be a public purpose. The governing authority of each county affected is authorized and directed to pay such fees and to levy such taxes as may be necessary for the payment of such fees.

History.
Ga. L. 1887, p. 106, § 4; Civil Code 1895, § 389; Civil Code 1910, § 478; Code 1933, § 23-408; Ga. L. 1977, p. 248, § 5.

JUDICIAL DECISIONS

When county not liable for surveyor's expenses. — When suit was brought by a surveyor, who was appointed by the Governor to run a disputed line between two counties under former Civil Code 1910, § 478 and former Civil Code 1910, § 473 et seq. (see now O.C.G.A. §§ 36-3-27 and 36-3-22 et seq.), to recover from one of such counties one-half of the charge, there was no error in dismissing the suit on general demurrer (now motion to dismiss) because there was no valid law authorizing a county to levy taxes to meet such a claim, and a county is not liable for suit thereon. Robert v. Wilkinson County, 137 Ga. 601, 73 S.E. 838, 1912 Ga. LEXIS 103 (1912); Smith v. Baker County, 142 Ga. 168, 82 S.E. 557, 1914 Ga. LEXIS 640 (1914).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 36-3-27 requires that each governing authority pay each pro rata share of the survey fee and forbids contrary agreements. 1981 Op. Att'y Gen. No. 81-41.

CHAPTER 4

CHANGE OR REMOVAL OF COUNTY SITE

Sec.		Sec.	
36-4-1.	Petition for removal or change of county site; order of election; notice of election; qualifications of voters; frequency of elections.	36-4-4.	Certificate of Secretary of State as evidence of election and number of votes.
36-4-2.	Conduct and return of election.	36-4-5.	Where courts to be held after removal; validity of proceedings.
36-4-3.	Ballot language; number of votes required to authorize removal.	36-4-6.	Where offices to be kept after removal.

Cross references.
Limitation of number of counties, Ga. Const. 1983, Art. IX, Sec. I, Para. II.

36-4-1. Petition for removal or change of county site; order of election; notice of election; qualifications of voters; frequency of elections.

Whenever two-fifths of the electors of any county who are qualified to vote for members of the General Assembly, as shown by the registration list last made out, shall petition the judge of the probate court for the removal or change of the county site of the county, the judge of the probate court shall at once grant an order directing an election to be held at the various election precincts in the county not less than 40 nor more than 60 days thereafter. The petition shall state where the new county site is to be located. Notice of the election shall be published weekly for four weeks previous to the day of the election in the newspaper in which the sheriff publishes his legal notices. All persons qualified to vote for members of the General Assembly shall be qualified to vote at the election. Elections under this Code section shall not occur more often than once in five years.

History.
Ga. L. 1878-79, p. 44, § 1; Code 1882, § 508x; Ga. L. 1887, p. 39, § 1; Civil Code 1895, § 391; Civil Code 1910, § 486; Ga. L. 1911, p. 54, § 1; Code 1933, § 23-501.

JUDICIAL DECISIONS

Constitutionality. — Former Code 1895, § 391 et seq. (see now O.C.G.A. § 36-4-1 et seq.) did not fall because of conflict with the Constitution as to the number of votes required to remove or change the county site. The sole purpose of these sections was to provide machinery to carry out the constitutional provision relative to a change of county sites by providing an election by striking out the requirements as to the number of votes, which was already fixed by the

Constitution; these sections remain complete in themselves and capable of being carried out in accordance with the legislative intent. Lee v. Tucker, 130 Ga. 43, 60 S.E. 164, 1908 Ga. LEXIS 223 (1908) (decided prior to revision of section by Ga. L. 1911, p. 54, § 1).

General Assembly not bound by findings of Secretary of State. — General Assembly, in determining the facts and legislating upon the removal of county sites under former Civil Code 1910, § 486 et seq. (see now O.C.G.A. § 36-4-1 et seq.), is not bound by the findings of the Secretary of State as to the result of the election. Bachlott v. Buie, 158 Ga. 705, 124 S.E. 339, 1924 Ga. LEXIS 330 (1924); Cowart v. Manry, 166 Ga. 612, 144 S.E. 21, 1928 Ga. LEXIS 360 (1928).

Failure of General Assembly to legislate. — When the removal election was held on May 5, 1927, and the General Assembly of 1927 did not pass any legislation thereon, the General Assembly of 1929 had the constitutional power and authority to pass an Act removing the county site. Cowart v. Manry, 166 Ga. 612, 144 S.E. 21, 1928 Ga. LEXIS 360 (1928).

Act for removal of county seat does not impair obligation of contract. — Act for the removal of the county seat does not impair the obligation of contract. In such matters one legislature had not the right to bind all subsequent legislatures. Harrick v. Rouse, 17 Ga. 56, 1855 Ga. LEXIS 60 (1855).

Duty of ordinary (now judge of the probate court). — Under the provisions of this section, the power to call an election to determine whether in a given county there shall be a change of the location of the county site is vested in the ordinary (now judge of the probate court) and even if the General Assembly had power in a given case to so change this general law as to vest this power in another official, the Act approved December 8, 1886, creating a Board of Commissioners of Roads and Revenues for the County of DeKalb, neither vested nor sought to vest such power in the board of commissioners created by it. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165, 1897 Ga. LEXIS 451 (1897).

If, in order to find that the petition contains the requisite two-fifths, it is necessary for the ordinary (now judge of the probate court) to act upon extraneous evidence, explaining that names on the petition and the digest list, though different, in fact refer to the same persons, and that certain names on the digest list are of deceased persons and persons removed from the county, then there is no absolute duty to call the election. After refusal by the ordinary (now judge of the probate court) mandamus will not lie to compel the ordinary (now judge of the probate court) to act. Barrett v. Ashmore, 137 Ga. 545, 73 S.E. 825, 1912 Ga. LEXIS 78 (1912).

Order shall not specify particular place of removal. — Petition for the election should be for an election for the removal of the county site, and the order calling the election should show that it is one for the removal of the actual county site, without specifying a particular place to which it shall be removed, so as to leave to the qualified voters free choice between the place where the county site is actually located and any other place in the county. Cheney v. Ragan, 151 Ga. 735, 108 S.E. 30, 1921 Ga. LEXIS 377 (1921).

Provision as to five-year period not binding on subsequent legislature. — Provision relating to the removal of a county seat not oftener than once every five years is not binding on a subsequent legislature and a subsequent legislature would be authorized under the Constitution to pass an Act removing a county site, although the election upon which the Act was based was held within less than five years from a previous election held for that purpose. Orr v. James, 159 Ga. 237, 125 S.E. 468, 1924 Ga. LEXIS 419 (1924).

Calling election prima-facie proof of proper petition. — Calling of the election by the ordinary (now judge of the probate court) determined at least prima facie that the petitioners were of the class and were of a sufficient number as required by the statute for the purpose of calling an election at which the question of the removal of the county site to a named town within the county should be voted upon. Vornberg v. Dunn, 143 Ga. 111, 84 S.E. 370, 1915 Ga. LEXIS 312 (1915).

Direction of the petition to "ordinary" (now judge of the probate court) instead of "court of ordinary" will not render the petition void. Vornberg v. Dunn, 143 Ga. 111, 84 S.E. 370, 1915 Ga. LEXIS 312 (1915).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 85 et seq.

36-4-2. Conduct and return of election.

The election shall be held and conducted and returns shall be made thereof as is provided by Chapter 2 of Title 21, the "Georgia Election Code."

History.
Ga. L. 1878-79, p. 44, § 2; Code 1882, § 508y; Civil Code 1895, § 392; Civil Code 1910, § 487; Code 1933, § 23-502.

JUDICIAL DECISIONS

Where polls opened. — To the validity of an election it is not indispensable that the polls should be opened at each of the polling places in the county. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165, 1897 Ga. LEXIS 451 (1897).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 28.

C.J.S.
20 C.J.S., Counties, § 92 et seq.

36-4-3. Ballot language; number of votes required to authorize removal.

At the election, the form of the ballot and the procedure for marking the ballot shall be as provided in Chapter 2 of Title 21, the "Georgia Election Code." The ballot for such election shall have written or printed thereon the following:

"( ) YES Shall the county site of _____ County be
( ) NO moved to _____?"

In any such referendum election, all persons desiring to vote in favor of moving the county site shall vote "Yes," and those persons desiring to vote against moving the county site shall vote "No." If two-thirds of the votes cast at the election are in favor of removal, the General Assembly next convening after the election may provide for the removal of the county site by appropriate legislation.

History.
Ga. L. 1878-79, p. 44, § 3; Code 1882, § 508z; Civil Code 1895, § 393; Civil Code 1910, § 488; Code 1933, § 23-503; Ga. L. 1987, p. 3, § 36.

History of Code section.
The language of this Code section is derived in part from the decision in Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897).

JUDICIAL DECISIONS

Voter must designate place preferred. — It is necessary not only that the voter voting for the removal of the county site should state upon the ballot "for removal," but also that the voter should designate thereon the particular place to which the voter desires the county seat removed. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165, 1897 Ga. LEXIS 451 (1897); Cheney v. Ragan, 151 Ga. 735, 108 S.E. 30, 1921 Ga. LEXIS 377 (1921).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 92 et seq.

36-4-4. Certificate of Secretary of State as evidence of election and number of votes.

The certificate of the Secretary of State showing that the election was held and that two-thirds of the qualified voters voting at the election voted in favor of removal shall be sufficient evidence of the holding of the election and of the number of votes cast.

History.
Ga. L. 1878-79, p. 44, § 4; Code 1882, § 508aa; Civil Code 1895, § 394; Civil Code 1910, § 489; Ga. L. 1911, p. 54, § 1; Code 1933, § 23-504.

History of Code section.
The language of this Code section is derived in part from the decision in Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165 (1897).

JUDICIAL DECISIONS

Legislature not confined to secretary's certificate. — Legislature is not precluded from ascertaining by other appropriate means the facts concerning the election and the number of votes cast. Cutcher v. Crawford, 105 Ga. 180, 31 S.E. 139, 1898 Ga. LEXIS 476 (1898); Lee v. Tucker, 130 Ga. 43, 60 S.E. 164, 1908 Ga. LEXIS 223 (1908); Bachlott v. Buie, 158 Ga. 705, 124 S.E. 339, 1924 Ga. LEXIS 330 (1924).

Act of General Assembly which removes a county site is not unconstitutional and void because it was passed contrary to finding of Secretary of State. Cutcher v. Crawford, 105 Ga. 180, 31 S.E. 139, 1898 Ga. LEXIS 476 (1898); Lee v. Tucker, 130 Ga. 43, 60 S.E. 164, 1908 Ga. LEXIS 223 (1908); Vornberg v. Dunn, 143 Ga. 111, 84 S.E. 370, 1915 Ga. LEXIS 312 (1915); Bachlott v. Buie, 158 Ga. 705, 124 S.E. 337 (1924).

Injunction when legislature has not considered result. — An injunction will issue restraining the ordinary (now judge of the probate court) from erecting a new courthouse at the site of the old one after an election has been had to change the site, if the legislature had not considered the result. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165, 1897 Ga. LEXIS 451 (1897).

Copy of election returns not admissible in evidence. — Certified copy from the office of the Secretary of State of the consolidated return of an election held in a given county upon the

question of removing the county site thereof is not admissible in evidence for the purpose of showing that the General Assembly, in acting upon a bill providing for such removal, did not have before the General Assembly legal evidence showing that such an election had been held and that two-thirds of the qualified voters thereat voted in favor of a removal of the county site to a particular place. Cutcher v. Crawford, 105 Ga. 180, 31 S.E. 139, 1898 Ga. LEXIS 476 (1898).

Admissions in pleadings binding. — An admission made in the pleadings that certain of the voters voting at such election voted in favor of the removal of the county site to a particular place, so long as the admission stands as part of the pleading, is binding upon the party making the admission. Wells v. Ragsdale, 102 Ga. 53, 29 S.E. 165, 1897 Ga. LEXIS 451 (1897).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 293.

36-4-5. Where courts to be held after removal; validity of proceedings.

After a county site is removed as provided by law, all the courts which are required by law to be held at the county site of the county, by proper orders made by the judges of such courts at chambers or in regular session and entered on the minutes of the courts, shall continue to be held in the old buildings at the former county site until the new buildings at the county site are ready for occupancy. All the proceedings of any court so held shall be legal.

History.
Ga. L. 1905, p. 104, § 1; Civil Code 1910, § 502; Code 1933, § 23-517.

36-4-6. Where offices to be kept after removal.

The authorities having charge of county affairs in any county for which the county site has been removed shall provide by an order entered on their minutes that the county officers of the county shall have and keep their offices in such buildings at either the old or new county site as, in the judgment of the county authorities, may be best, until the new buildings are ready for occupancy.

History.
Ga. L. 1905, p. 104, § 2; Civil Code 1910, § 503; Code 1933, § 23-518.

OPINIONS OF THE ATTORNEY GENERAL

It is not proper for county tax commissioner to store tax records in the commissioner's home. 1975 Op. Att'y Gen. No. U75-75.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 71.

CHAPTER 5

ORGANIZATION OF COUNTY GOVERNMENT
ARTICLE 1

Sec.
36-5-1. [Reserved].

Article 2

County Governing Authorities

36-5-20. Official names of county governing authorities.
36-5-21. Vacancy in office of county commissioner or other governing authority.
36-5-22. County manager authorized.
36-5-22.1. Powers and duties; delegation.
36-5-23. [Reserved] Salary of county commissioner in counties having population of not less than 56,400 or more than 60,000.
36-5-24. Compensation of members of county governing authorities.
36-5-25. Salary of county commissioner in county administered by single commissioner.
36-5-26. Authorization for service of process.
36-5-27. Compensation supplement with designation as a certified county commissioner.
36-5-28. Compensation increases to match state employees.
36-5-29. Calculation of compensation increases for certain members of county governing authorities.

Law reviews.
For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

ARTICLE 1

Editor's notes.
The former article relating to government by judge of the probate court, consisted of Code Sections 36-5-1 through 36-5-8. The former article was based on Orig. Code 1863, §§ 286, 287, 4028 through 4031, 4034; Code 1868, §§ 346, 347, 4058 through 4061, 4064; Code 1873, §§ 337, 338, 4123 through 4126, 4129; Ga. L. 1877, p. 109, § 1; Code 1882, §§ 337, 338, 741a, 4123 through 4126, 4129; Civil Code 1895, §§ 4238 through 4240, 4263 through 4266, 4268; Civil Code 1910, §§ 4796 through 4798, 4821 through 4824, 4826; Code 1933, §§ 23-701 through 23-708; Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 36, and was repealed by Ga. L. 1987, p. 1482, § 5, effective April 17, 1987.

36-5-1. [Reserved].

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2006, the designation of this Code section was reserved.

ARTICLE 2

COUNTY GOVERNING AUTHORITIES

36-5-20. Official names of county governing authorities.

The words "Roads and Revenues" are stricken from the official names of all of the governing authorities of the counties of this state, so that the official names of the governing authorities of the counties will be changed from "Board of Commissioners of Roads and Revenues of _____ County" and from the "Commissioner of Roads and Revenue of _____ County" to "Board of Commissioners of _____ County" and "Commissioner of _____ County," respectively.

History.
Ga. L. 1968, p. 1141, § 1; Ga. L. 1982, p. 3, § 36.

Cross references.
"County governing authority" defined, § 1-3-3(7).

36-5-21. Vacancy in office of county commissioner or other governing authority.

(a) When a vacancy occurs in the office of a county governing authority in any county in which the local Act creating that governing authority for the county makes no provision for succession to fill the vacancy and the unexpired term of office exceeds six months in duration, it shall be the duty of the judge of the probate court of the county to call a special election to elect a successor and fill the vacancy in not less than 30 nor more than 60 days. The election shall be held as provided by Chapter 2 of Title 21, the "Georgia Election Code," and the cost of the election shall be defrayed by the proper county authorities. If the unexpired term to be filled is less than six months in duration and the local Act creating the governing authority makes no provision to fill the vacancy, the judge of the superior court of the county shall have the power to appoint a successor to fill the unexpired term.

(b) Unless otherwise provided by local law, when the office of any county commissioner is vacated for any reason and a special election is required to be called pursuant to subsection (a) of this Code section, the remaining members of the board of commissioners shall constitute the governing authority of the county during the interim period between the creation of the vacancy and the election and qualification of a successor to fill the vacancy pursuant to subsection (a) of this Code section, except that if as a result of that vacancy or any combination of such vacancies there is no longer any commissioner remaining in office to constitute the county governing authority, the judge of the probate court of the county shall serve as the county governing authority until the election and qualification under subsection (a) of this Code section

of all successors to the vacated positions on the county governing authority.

(c) A judge of the probate court serving as the county governing authority pursuant to subsection (b) of this Code section shall receive for such service, in addition to any other compensation that judge is authorized by law to receive, an amount equal to the amount the chairman of the board of commissioners or the sole commissioner, as applicable, would have been authorized to receive for that period of service.

History.
Ga. L. 1898, p. 93, § 1; Civil Code 1910, § 627; Code 1933, § 23-801; Ga. L. 1947, p. 173, § 1; Ga. L. 1986, p. 328, § 1; Ga. L. 1987, p. 1482, § 6.

Law reviews.
For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Duty arises instantly upon occurrence of vacancy. Newton v. Stembridge, 212 Ga. 828, 96 S.E.2d 504, 1957 Ga. LEXIS 272 (1957).

OPINIONS OF THE ATTORNEY GENERAL

Filling vacancy in public office. — Vacancy in the office of tax collector is filled by temporary appointment by the ordinary (now county governing authority) until a special election to fill the vacancy is held and such special election may be held on the same day as the general election. 1945-47 Ga. Op. Att'y Gen. 83.

Special Act controls. — If a county has a special Act which varies this section, the county must follow the procedure there set forth. 1974 Op. Att'y Gen. No. U74-22.

Special elections. — O.C.G.A. § 36-5-21 is by its very term not applicable if the local Act creating the governing authority for the county provides for the manner of succession to fill a vacancy. 1990 Op. Att'y Gen. No. U90-9.

When the local law creating the board of commissioners for Houston County, as amended, provides that, with regard to vacancies occurring more than one year prior to the expiration of the term of office, the vacancy "shall be filled by a special election called by the election superintendent of Houston County in the same manner as in the case to fill vacancies in other county offices . . .," the general law relating to the filling of a vacancy on the county commission is not applicable, and the special election to fill the vacancy in the office of county commissioner should be conducted pursuant to the general special election provisions of the Georgia Election Code, O.C.G.A. §§ 21-2-540 and 21-2-541, as is the case with vacancies in other county offices when there is no specific provision which applies. 1990 Op. Att'y Gen. No. U90-9.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 161 et seq.

C.J.S.
20 C.J.S., Counties, § 155 et seq.

36-5-22. County manager authorized.

(a) The governing authority of any county of this state or the General Assembly may create in and for those counties in which it deems necessary or advisable the office of county manager and may vest in such office powers, duties, and responsibilities of an administrative nature. The qualifications, method of selection, appointment, compensation, tenure, and such other related matters pertaining to the office of county manager shall be provided for by the governing authority of the county.

(b) Nothing in this Code section shall pertain to consolidated governments which include all the area within any county.

(c) This Code section shall not apply to any county having a population of more than 500,000 according to the United States decennial census of 1990 or any future such census.

History.
Ga. L. 1974, p. 435, §§ 1, 2; Ga. L. 1987, p. 1482, § 7; Ga. L. 1992, p. 2341, § 1.

JUDICIAL DECISIONS

Constitutionality. — Ga. L. 1974, pp. 435-6 which was codified as O.C.G.A. § 36-5-22, does not conflict with Ga. Const. 1976, Art. IX, Sec. II, Para. I (see now Ga. Const. 1983, Art. IX, Sec. II, Para. I) and is constitutional. Gray v. Dixon, 249 Ga. 159, 289 S.E.2d 237, 1982 Ga. LEXIS 763 (1982).

County governing authority powers. — Any attempt by the board of commissioners to confer "executive powers" on the office of county manager would be an "action affecting the . . . form . . . of the county governing authority" in violation of subsection (c)(2) of Ga. Const. 1983, Art. IX, Sec. II, Para. I. Gray v. Dixon, 249 Ga. 159, 289 S.E.2d 237, 1982 Ga. LEXIS 763 (1982).

Ordinance creating the office of county manager which tracked the language of O.C.G.A. § 36-5-22 and vested in that office certain administrative functions, and did not attempt to confer the executive powers reserved for the chair, was consistent with the county's home rule authority and did not violate Ga. Const. 1983, Art. IX, Sec. II, Para. I. Krieger v. Walton County Bd. of Comm'rs, 271 Ga. 791, 524 S.E.2d 461, 1999 Ga. LEXIS 993 (1999).

Defendant county manager did not have final authority over decisions that resulted in termination of an employee from the county; such authority rests with the board of commissioners under Georgia's home rule provisions in Ga. Const. 1983, Art. IX, Sec. II, Para. I. Lightsey v. Miles, No. CV203-171, 2005 U.S. Dist. LEXIS 15735 (S.D. Ga. July 26, 2005).

36-5-22.1. Powers and duties; delegation.

(a) The governing authority of each county has original and exclusive jurisdiction over the following subject matters:

(1) The directing and controlling of all the property of the county, according to law, as the governing authority deems expedient;

(2) The levying of a general tax for general county purposes and a special tax for particular county purposes;

(3) The establishing, altering, or abolishing of all roads, bridges, and ferries in conformity to law;

(4) Reserved;

(5) The filling of all vacancies in county offices unless some other body or official is empowered by law to so fill such vacancy;

(6) The examining, settling, and allowing of all claims against the county;

(7) The examining and auditing of the accounts of all officers having the care, management, keeping, collection, or disbursement of money belonging to the county or appropriated for its use and benefit and the settling of the same;

(8) The making of such rules and regulations for the support of the poor of the county, for the county police and patrol, for the promotion of health, and for quarantine as are authorized by law or not inconsistent therewith; and

(9) The regulating of peddling and fixing of the cost of licenses therefor.

(b) Nothing in this Code section shall be construed to prohibit a local law from delegating to a chairman or chief executive officer of a county governing authority jurisdiction over any subject matter provided for in subsection (a) of this Code section.

History.

Code 1981, § 36-5-22.1, enacted by Ga. L. 1987, p. 1051, § 1; Ga. L. 1987, p. 1482, § 8.

Code Commission notes.

Ga. L. 1987, p. 1051, § 1 and Ga. L. 1987, p. 1482, § 8 enacted similar Code sections designated as Code Section 36-5-22.1. The Code section is set forth above as enacted by the latter Act (Ga. L. 1987, p. 1482, § 8).

Cross references.

Application for and issuance of writ of mandamus against county board of commissioners to compel building, repair of county roads, § 9-6-21.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1890, § 337, Ga. L. 1903, p. 41, former Civil Code 1910, and former O.C.G.A. §§ 36-5-1 and 36-5-2 are included in the annotations for this Code section.

Act of ordinary (now county governing authority) exercised in matters specified by statute are quasi-judicial functions; and therefore the ordinarys are not liable to suit, even for gross errors of judgment committed in making such contracts. Paulding County v. Scoggins, 97 Ga. 253, 23 S.E. 845, 1895 Ga. LEXIS 350 (1895) (decided under former law).

Mandamus will not lie to compel ordinary (now county governing authority) to have bridge built, which was recommended by grand jury. Patterson v. Taylor, 98 Ga. 646, 25 S.E.

771, 1896 Ga. LEXIS 113 (1896) (decided under former Code 1890, § 337).

Discretion of ordinary (now county governing authority) as to rebuilding bridges not subject to control unless abused. Dale v. Barnett, 105 Ga. 259, 31 S.E. 167, 1898 Ga. LEXIS 496 (1898) (decided under former law).

Mandamus will not lie to collaterally attack order to alter public road. Crum v. Hargrove, 119 Ga. 471, 46 S.E. 626, 1904 Ga. LEXIS 239 (1904) (decided under Ga. L. 1903, p. 41).

Transfer of powers. — O.C.G.A. § 36-5-22.1 did not prevent the county board from passing resolutions which effectively transferred much of the power of the county chairperson to the county board. Krieger v. Walton County Bd. of Comm'rs, 269 Ga. 678, 506 S.E.2d 366, 1998 Ga. LEXIS 773 (1998).

Ordinary (now county governing authority) keeps power in face of charter provision. — Manner of removing obstructions by proceedings before ordinary (now county governing authority) is not divested by municipal charter provisions permitting mayor and council to exercise this power. Hendricks v. Carter, 21 Ga. App. 527, 94 S.E. 807, 1918 Ga. App. LEXIS 388 (1918) (decided under former Civil Code 1910).

Ordinary (now county governing authority) cannot issue bonds to pay for work under contract. — Ordinary (now county governing authority) has power to make all contracts necessary to perform the duties cast upon the ordinary; but the ordinary cannot issue bonds to raise pay for the work done thereunder, this must be done by taxation. Dent v. Cook, 45 Ga. 323, 1872 Ga. LEXIS 240 (1872) (decided under former law).

Sheriff has no authority over commissions generated by use of county jail. — County sheriff was not entitled to keep commissions received from a company that provided telephone services to county jail inmates as revenue generated using county property or facilities—such as the jail—was itself county property and therefore subject to county authority under O.C.G.A. § 36-5-22.1. Although a sheriff could collect certain fees, such as fees for attending court, O.C.G.A. § 15-16-21 provided that such fees had to be turned over to the county's treasurer or fiscal officer. Lawson v. Lincoln County, 292 Ga. App. 527, 664 S.E.2d 900, 2008 Ga. App. LEXIS 816 (2008), cert. denied, No. S08C1929, 2008 Ga. LEXIS 899 (Ga. Oct. 27, 2008).

Authority to enact ordinance. — Miller County, Ga., Ordinance No. 10-01, § 3 does not purport to supplant O.C.G.A. § 16-10-6 because the effect of § 3 is to strengthen § 16-10-6 by a broader prohibition with additional specific requirements for any exception; the county had authority, as an incident of the county's home rule power, to enact Miller County, Ga., Ordinance No. 10-01, § 3 so long as the ordinance did not conflict with general law. Bd. of Comm'rs v. Callan, 290 Ga. 327, 720 S.E.2d 608, 2012 Ga. LEXIS 20 (2012).

Power to lease. — Ordinary (now county governing authority) had power to lease directly to an individual certain realty for use in operating a filling station, as it was then being and had been used for 13 years. Such a lease, having been so executed was not void on the ground that the lease was not authorized by law, or that the interest thereby created extended beyond the term of the official then in office, or that it amounted to a commercial transaction in which the county was not authorized by law to engage. Black v. Forsyth County, 193 Ga. 571, 19 S.E.2d 297, 1942 Ga. LEXIS 440 (1942) (decided under former law).

Employment of counsel. — County governing authority has the implicit power to employ counsel for county officers. Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488, 1991 Ga. LEXIS 338 (1991).

County governing authority's employment of counsel to represent a superior court clerk did not violate Ga. Const. 1983, Art. 9, Sec. 2, Paras. 1(c)(1) or (7), which preclude the authority from exercising any power in a manner affecting "any elective county office" or "any court or the personnel thereof." Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488, 1991 Ga. LEXIS 338 (1991).

OPINIONS OF THE ATTORNEY GENERAL

County commissioners may grant to private corporation a permit to construct sewer across a street dedicated to the county. 1970 Op. Att'y Gen. No. U70-36.

County commissioners have the authority to make a refund to the taxpayer so as to correct the error made to the extent of the interest of the county herein; however, should the county commissioners decline to make a refund in this case, the commissioners could successfully defend any effort to force the commissioners to do so under former Code 1933, § 20-1007 (see now O.C.G.A. § 13-1-13). 1957 Ga. Op. Att'y Gen. 43.

RESEARCH REFERENCES

Am. Jur. 2d.

20 Am. Jur. 2d, Courts, § 15.

C.J.S.

20 C.J.S., Counties, § 18. 40 C.J.S., Highways, § 339 et seq.

ALR.

Right of one detained pursuant to quarantine to habeas corpus, 2 A.L.R. 1542.

Right and duty of highway contractor as to barricading or obstructing street, 7 A.L.R. 1203; 104 A.L.R. 955.

Removal or demolition of civil war and confederate monuments and statues, 80 A.L.R.7th 7.

36-5-23. [Reserved] Salary of county commissioner in counties having population of not less than 56,400 or more than 60,000.

History.

Ga. L. 1982, p. 533, §§ 1, 2; Ga. L. 1993, p. 91, § 36; repealed by Ga. L. 2002, p. 1038, § 1, effective July 1, 2002.

Editor's notes.

Ga. L. 2002, p. 1038, § 1 repealed and reserved this Code section, effective July 1, 2002.

36-5-24. Compensation of members of county governing authorities.

(a) As used in this Code section, the term:

(1) "County governing authority" means a governing authority as defined in paragraph (7) of Code Section 1-3-3 and an elected county chief executive officer.

(2) "Expenses in the nature of compensation" means any expense allowance or any form of payment or reimbursement of expenses other than reimbursement for expenses actually and necessarily incurred by members of a county governing authority.

(b) Unless otherwise provided by local law, the governing authority of each county is authorized to fix the salary, compensation, expenses, and expenses in the nature of compensation of the members of the governing authority subject to the following conditions:

(1) Any increase in salary, compensation, expenses, or expenses in

the nature of compensation for members of a county governing authority shall not be effective until the first day of January of the year following the next general election held after the date on which the action to increase the compensation was taken;

(2) A county governing authority shall take no action to increase salary, compensation, expenses, or expenses in the nature of compensation until notice of intent to take such action and the fiscal impact of such action has been published in a newspaper designated as the legal organ of the county at least once a week for three consecutive weeks immediately preceding the meeting at which the action is taken; and

(3) Such action shall not be taken during the period of time beginning with the date that candidates for election as members of the county governing authority may first qualify as such candidates and ending with the first day of January following the date of qualification.

(c) Salary, compensation, expenses, and expenses in the nature of compensation paid to members of a county governing authority in accordance with applicable local or general salary laws in effect on January 1, 2001, and as subsequently amended, shall continue in full force and effect as compensation for such county officials unless such compensation is increased pursuant to subsection (b) of this Code section; and this Code section shall not affect the power of the General Assembly at any time by local or general law to increase or decrease any or all of such compensation or by local law to withdraw the authority otherwise granted to a county governing authority under this Code section.

History.

Code 1981, § 36-5-24, enacted by Ga. L. 2001, p. 789, § 1; Ga. L. 2013, p. 141, § 36/HB 79.

Editor's notes.

The former Code section, relating to salary of county commissioner in counties having a population of not less than 12,300 or more than 12,400, was based on Code 1981, § 36-5-23, enacted by Ga. L. 1982, p. 588, §§ 1, 2; Code 1981, § 36-5-24, as redesignated by Ga. L. 1983, p. 3, § 27; Ga. L. 1993, p. 91, § 36, and was repealed and reserved by Ga. L. 1994, p. 237, § 2, effective July 1, 1994.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Citizen challenging legality of salary increase ordinances. — County citizen lacked standing to seek a declaratory judgment with respect to the claims challenging the legality of the salary ordinance as the citizen did not seek to enforce a public duty conferred by statute but rather sought to block the enforcement of an ordinance passed pursuant to O.C.G.A. § 36-5-24; thus, O.C.G.A. § 9-6-24 did not confer a citizen standing to challenge the validity of acts authorized by the statute or to attack the constitutionality of the statute. Williams v. DeKalb County, 308 Ga. 265, 840 S.E.2d 423, 2020 Ga. LEXIS 180 (2020).

Suit challenging ordinances increasing pay. — Plaintiff, as an individual, had standing to request that a civil penalty be imposed against the commissioners under the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., in a suit challenging the county governing authorities increasing their pay via ordinances because the provision plainly contemplated that a private person (or firm, corporation, or other entity) can bring an action to enforce the Act to protect the public from closed-door politics. Williams v. DeKalb County, 308 Ga. 265, 840 S.E.2d 423, 2020 Ga. LEXIS 180 (2020).

Case was remanded because, based on the holding that the taxpayer had standing, the trial court had to consider the taxpayer's claim that the statute, which delegates the power to county governing authorities to increase their members' pay, was unconstitutional. Bryan Cave Leighton Paisner, LLP v. Gebo Law, LLC, 371 Ga. App. 341, 899 S.E.2d 244, 2024 Ga. App. LEXIS 153.

36-5-25. Salary of county commissioner in county administered by single commissioner.

(a) In every county of this state in which the county government is administered by a single county commissioner, such county commissioner shall be entitled to receive a minimum annual salary equal in amount to the minimum annual salary provided for the sheriff of any such county pursuant to the provisions of subsection (a) of Code Section 15-16-20; provided, however, that a local law may provide for a greater annual salary than such minimum salary or may provide an expense allowance in addition to such minimum salary or in addition to such greater salary; provided, further, that any such county commissioner may by resolution elect to receive a salary of lesser amount which is provided by a local law.

(b) The provisions of subsection (a) of this Code section shall not affect any automobile allowance provided for any such county commissioner pursuant to local law.

History.
Code 1981, § 36-5-25, enacted by Ga. L. 1986, p. 347, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 2002, p. 1038, § 2.

36-5-26. Authorization for service of process.

A county governing authority shall have the power to authorize any of the officers, agents, and employees of the county to serve, in any manner prescribed by applicable law, any process, summons, notice, or order on all persons, as defined in Code Section 1-3-3 therein named, when:

(1) The paper to be served arises out of or relates to an activity or condition conducted or maintained by such person within the territorial jurisdiction of the county in violation of an applicable law or ordinance covering the following: public housing, building, electrical, plumbing, heating, ventilating, air-conditioning, air and water pollution control, solid waste management, and other technical or envi-

ronmental codes; county business, occupation, and professional license tax ordinances; county privilege license or permit ordinances; or ordinances providing for the protection of facilities for the treatment or wholesale or retail distribution of water from tampering or theft which may arise either from a single isolated act or omission or from an activity or condition;

(2) The paper to be served originates in or is issued under the authority of the department or branch of county government employing such officer, agent, or employee; and

(3) Each and every day the condition is maintained or the activity is conducted is made a separate county offense by applicable law or ordinance.

Where any such paper names one or more persons who reside outside the territorial jurisdiction of the county, the several sheriffs, marshals, and constables of the several counties of this state are authorized and directed to serve any such paper and make appropriate return of such service by them, as other process is served and returned, on such named persons residing in their respective jurisdictions, upon receipt of a written request to make such service, for the fees allowed for service of process issued by the superior courts of this state.

History.
Code 1981, § 36-5-26, enacted by Ga. L. 1992, p. 2122, § 1.

36-5-27. Compensation supplement with designation as a certified county commissioner.

In addition to any other compensation to which a member of a county governing authority is entitled under general or local law, any such official who has been awarded a certificate from the University of Georgia, evidencing his or her successful completion of the voluntary course of training administered by the Carl Vinson Institute of Government resulting in designation as a certified county commissioner shall be entitled to a compensation supplement of $100.00 per month. With regard to members of the governing authority of a consolidated government, designation either as a certified county commissioner or a certified municipal official by the Carl Vinson Institute of Government shall be acceptable.

History.
Code 1981, § 36-5-27, enacted by Ga. L. 2001, p. 902, § 18.

36-5-28. Compensation increases to match state employees.

Whenever the state employees subject to compensation plans autho-

rized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the compensation to which a member of a governing authority is entitled under general or local law shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amount to which a member of a county governing authority is entitled under general or local law shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amount to which a member of a county governing authority is entitled under general or local law shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that, if the cost-of-living increases received by state employees become effective on January 1, such periodic changes in the amount to which a member of a county governing authority is entitled under general or local law shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

History.

Code 1981, § 36-5-28, enacted by Ga. L. 2001, p. 902, § 18; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-55/HB 642; Ga. L. 2025, p. 1029, § 36(2)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in the fourth sentence.

Cross references.

Salaries and fees of public officers and employees, § 45-7-1 et seq.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

36-5-29. Calculation of compensation increases for certain members of county governing authorities.

(a) Compensation to which a member of a county governing authority is entitled under general or local law, including amounts provided

for in Code Sections 36-5-27 and 36-5-28 shall be increased by multiplying said amounts by the percentage which equals 2.5 percent times the number of completed, four-year terms of office served by such member of a county governing authority where such terms have been completed after December 31, 2004, effective the first day of January following the completion of each such period of service.

(b) For a member of a county governing authority elected to two-year terms of office or six-year terms of office, the percentage increase provided for in subsection (a) of this Code section shall be 1.25 percent times the number of completed two-year terms or 3.75 percent times the number of completed six-year terms as applicable.

History.
Code 1981, § 36-5-29, enacted by Ga. L. 2006, p. 568, § 11/SB 450.

CHAPTER 6

COUNTY TREASURER

Sec.	
36-6-1.	Qualifications for office; election; commission; term; abolishment and fixing compensation of office by General Assembly.
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36-6-3.	Form of oath.
36-6-4.	When bond to be given; form and amount.
36-6-5.	Filing and recordation of oath and bond.
36-6-6.	Recordation of bond to bind third parties; effect of recordation after 30 days.
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36-6-14.	Duties generally.
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36-6-21.	Final settlement of accounts.
36-6-22.	Requirement of accountings by treasurer.
36-6-23.	Proceedings upon failure of treasurer to render accounting.
36-6-24.	Removal of treasurer.
36-6-25.	Filling of vacancies.
36-6-26.	Bonds of persons appointed to fill vacancies.
36-6-27.	Execution against county treasurer for failure to pay over money.
36-6-28.	Purchase of county orders at less than full value or refusal to pay order.

Cross references.
Accounting for public funds generally, § 45-8-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

It would not be proper for anyone to assume duties of treasurer nor would it be proper for the treasurer to attempt to delegate the treasurer's responsibilities and duties to some other officer or other person. 1965-66 Op. Att'y Gen. No. 65-94.

36-6-1. Qualifications for office; election; commission; term; abolishment and fixing compensation of office by General Assembly.

(a) No other conditions of eligibility are required for the office of county treasurer than those which apply to all other county officers, provided that no other county officer can also be county treasurer.

(b) County treasurers shall be elected and commissioned in the same manner and at the same time as clerks of the superior courts and shall hold their offices for terms of four years. The General Assembly, by local law, may abolish the office of county treasurer in any county and may fix the compensation of the county treasurer.

History.
Orig. Code 1863, § 520; Code 1868, § 584; Code 1873, § 546; Code 1882, § 546; Civil Code 1895, § 452; Civil Code 1910, § 568; Code 1933, § 23-1002; Ga. L. 1983, p. 1212, § 1.

Cross references.
Eligibility for county office, Ga. Const. 1983, Art. IX, Sec. I, Para. III.

Eligibility for public office generally, § 45-2-1 et seq.

Law reviews.
For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

36-6-2. Requirement of bond and oath.

No appointment or election to the office of county treasurer is effective until bond and security is given and the oath of office is taken.

History.
Orig. Code 1863, § 517; Code 1868, § 581; Code 1873, § 543; Code 1882, § 543; Civil Code 1895, § 449; Civil Code 1910, § 565; Code 1933, § 23-1003.

JUDICIAL DECISIONS

When duties of office begin. — Since the treasurer reelected for the new term beginning January 1, did not qualify by giving the bond and security and taking the oath of office until March 13, the treasurer necessarily did not begin to perform the duties of that office under the law for the new term until March 13. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Effect of recital in bond contradicting beginning of duties of office. — Although the bond given as security recited that the bond was to cover the term of four years beginning January 1, such recital merely describes the term for which the treasurer was elected. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Treasurer holds office until successor qualified. — County treasurer qualified and holding office for the term beginning January 1, continued to hold office four years later until the treasurer's successor, although the same individual, had qualified. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 123 et seq.

36-6-3. Form of oath.

In addition to the oath required of all public officers, before entering on the duties of their office, county treasurers must take the following oath:

"I, _____, do swear that I will faithfully collect, disburse, and account for all moneys or other effects of the county, and otherwise faithfully discharge all the duties required of me by law as county treasurer. So help me God."

History.
Orig. Code 1863, § 522; Code 1868, § 586; Code 1873, § 548; Code 1882, § 548; Civil Code 1895, § 454; Civil Code 1910, § 570; Code 1933, § 23-1004; Ga. L. 1987, p. 3, § 36.

Cross references.
Oaths required of public officers generally, § 45-3-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 124.

C.J.S.
67 C.J.S., Officers and Public Employees, § 69 et seq.

36-6-4. When bond to be given; form and amount.

Within 30 days after his election or appointment, the county treasurer shall give a bond payable to the county governing authority with securities approved by such authority, in a sum which in its judgment will be ample to protect the county from any loss.

History.
Orig. Code 1863, § 523; Code 1868, § 587; Code 1873, § 549; Code 1882, § 549; Ga. L. 1889, p. 51, § 1; Civil Code 1895, § 455; Civil Code 1910, § 571; Ga. L. 1918, p. 109, § 1; Code 1933, § 23-1005.

JUDICIAL DECISIONS

Effect of approval of insufficient bond. — Approval of a bond of a county treasurer for a penalty much less than that required by this section does not relieve the county treasurer of the necessity of giving a bond in the amount of the statutory penalty, when cited to do so by the proper officer. Tarver v. Wooten, 147 Ga. 19, 92 S.E. 532, 1917 Ga. LEXIS 21 (1917).

Effect of invalid Act purporting to abolish office and fix bond. — Act purporting to abolish the office of treasurer of a county and to fix the amount of the bond of the clerk, which was later held invalid, is no authority for

excusing that treasurer from giving a bond in the penal sum prescribed for bonds of county treasurers by this section.

Tarver v. Wooten, 147 Ga. 19, 92 S.E. 532, 1917 Ga. LEXIS 21 (1917).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 130 et seq., 345 et seq., 358, 488, 489.

C.J.S.
20 C.J.S., Counties, § 153.

36-6-5. Filing and recordation of oath and bond.

(a) The oath of office of the county treasurer must be entered on the minutes of the county governing authority and filed in his office. His official bond must be filed and recorded in such office.

(b) When one or more sureties on the bond of the county treasurer own real estate in any county or counties other than the county in which the treasurer holds office, such bond, within 30 days after the execution thereof, shall be recorded in the county or counties wherein the real estate is situated, by the county governing authority, or such bond shall be recorded within 30 days after its execution by the authority in the book of record of bonds of county officers. After the treasurer's bond is accepted and recorded in the county in which the treasurer holds office, the county governing authority of such county shall forward the same to the county governing authority in each county in which any one or more sureties on the bond own any real estate; such county governing authority to whom the bond is sent shall record the same in accordance with this subsection.

History.
Laws 1838, Cobb's 1851 Digest, p. 215.; Code 1863, § 521; Code 1868, § 585; Code 1873, § 547; Code 1882, § 547; Ga. L. 1890-91, p. 104, §§ 1, 2; Civil Code 1895, §§ 453, 974, 975; Civil Code 1910, §§ 569, 1241, 1242; Code 1933, §§ 23-1006, 23-1007, 23-1008.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 134.

C.J.S.
20 C.J.S., Counties, § 153. 67 C.J.S., Officers and Public Employees, § 69 et seq.

36-6-6. Recordation of bond to bind third parties; effect of recordation after 30 days.

As against the interests of third parties acting in good faith and without notice who may have acquired a transfer or lien binding the real estate of any surety on the bond of any county treasurer situated in any county other than that in which the treasurer holds office, no such real estate

of the surety shall be bound from the date of the bond unless the bond is recorded in the county. When the bond is recorded after 30 days, the real estate of the surety situated in any county other than that in which the treasurer holds office shall be bound only from the date on which the bond is recorded.

History. Ga. L. 1890-91, p. 104, § 3; Civil Code 1895, § 976; Civil Code 1910, § 1243; Code 1933, § 23-1009.

36-6-7. Effect of Code Sections 36-6-5 and 36-6-6 on lien of bond.

Nothing in Code Sections 36-6-5 and 36-6-6 shall be construed to affect the validity or force of the lien of any such bond from the date thereof as between the parties thereto.

History. Ga. L. 1890-91, p. 104, § 4; Civil Code 1895, § 977; Civil Code 1910, § 1244; Code 1933, § 23-1010.

36-6-8. Time at which lien of bond arises.

When any official bond is executed by any county treasurer or any person acting as such, the property of the treasurer or person acting as such, as well as the security or securities on the bond, shall be bound from the time of the execution thereof for the payment of any and all liability arising from the breach of the bond.

History. Ga. L. 1876, p. 15, § 1; Code 1882, § 549a; Civil Code 1895, § 456; Civil Code 1910, § 572; Code 1933, § 23-1012.

JUDICIAL DECISIONS

Statement of policy. — This section is an expression of public policy by the lawmaking branch of the state, providing protection to public funds. It takes precedence over the generally recognized public policy in favor of free alienation of private property. Chero-Cola Co. v. May, 169 Ga. 273, 149 S.E. 895, 1929 Ga. LEXIS 333 (1929).

Scope of lien. — Execution of an official bond creates a lien upon the property of the principal, and the property of the principal's sureties, for the payment of all liability that arises from breach of the bond. U.S. Fid. & Guar. Co. v. Richmond County, 174 Ga. 599, 163 S.E. 482, 1932 Ga. LEXIS 99 (1932).

No lien on property held in trust. — When property is held in trust the property is not subject to an execution issued against trustees as principal and surety on a county treasurer's bond, notwithstanding at the time the bond was executed such trustees were the apparent owners of the land. Hurst v. Commissioners of DeKalb County, 110 Ga. 33, 35 S.E. 294, 1900 Ga. LEXIS 318 (1900).

Priority of lien. — Conceding that this section creates a lien, the statute does not fix the priority of such a lien. Gormley v. Troup County, 178 Ga. 446, 173 S.E. 672, 1934 Ga. LEXIS 70 (1934).

Timing. — When effort is made to arrest execution on property because the property is encumbered by a security deed, but it is not alleged that such deed is anterior in date to the bond of the treasurer, such effort will be unavailing. Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287, 1915 Ga. LEXIS 197 (1915).

Rights of sureties. — In view of a recognition by the personal sureties on a bond of the sureties' continued liability to

the secured party under the bond, and of the necessary implication of a final judgment rendered, a court did not err in failing to make an express ruling upon the question of whether or not a purported cancellation entered on the original execution based on that bond was void. United States Fid. & Guar. Co. v. Clarke, 187 Ga. 774, 2 S.E.2d 608, 1939 Ga. LEXIS 464 (1939).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 135.

C.J.S.
67 C.J.S., Officers and Public Employees, § 478.

36-6-9. Governor's directions relating to bond; payment of costs of transmitting and recording bond.

It shall be the duty of the Governor to give written or printed directions to the county governing authority upon the requirements of Code Sections 36-6-5 through 36-6-7, as other instructions and directions are now given in reference to the bonds of county treasurers. The costs of transmitting and recording the bonds shall be paid by the county treasurer.

History.
Ga. L. 1890-91, p. 104, § 5; Civil Code 1895, § 978; Civil Code 1910, § 1245; Code 1933, § 23-1011; Ga. L. 1982, p. 3, § 36.

36-6-10. Location of office.

The county treasurer must keep his office at the county site or at some place within one mile of the courthouse.

History.
Orig. Code 1863, § 526; Code 1868, § 590; Code 1873, § 552; Code 1882, § 552; Civil Code 1895, § 459; Civil Code 1910, § 575; Code 1933, § 23-1014.

36-6-11. Books and stationery furnished by county.

All books and stationery required by the county treasurer must be furnished at the expense of the county.

History.
Orig. Code 1863, § 528; Code 1868, § 592; Code 1873, § 554; Code 1882, § 554; Civil Code 1895, § 461; Civil Code 1910, § 577; Code 1933, § 23-1020.

36-6-12. Compensation and fees.

County treasurers are entitled to receive the following fees:

(1) For receiving and paying out county funds:

(A) Two and one-half percent for receiving all sums up to $10,000.00.

(B) Two and one-half percent for paying out all sums up to $10,000.00.

(C) One and one-fourth percent for receiving the excess of any sum over $10,000.00.

(D) One and one-fourth percent for paying out the excess of any sum over $10,000.00.

(2) For making his returns to the grand jury, $1.00.

(3) For making his returns to the judge of the probate court, $1.00.

However, in no case shall the compensation of a county treasurer exceed the sum of $3,000.00 per annum, unless within the sole discretion of the proper governing authority of the county the compensation is increased to a sum not to exceed $3,600.00 per annum.

History.

Orig. Code 1863, § 3627; Code 1868, § 3652; Code 1873, § 3703; Ga. L. 1874, p. 20, § 1; Code 1882, § 3703; Ga. L. 1890-91, p. 76, § 1; Civil Code 1895, § 472; Civil Code 1910, § 588; Code 1933, § 23-1013; Ga. L. 1953, Nov.-Dec. Sess., p. 176, § 1.

Cross references.

Compensation of county officers generally, Ga. Const. 1983, Art. IX, Sec. I, Para. III.

Authority of General Assembly to fix compensation of county treasurers, § 36-6-1.

JUDICIAL DECISIONS

How commissions to be computed. — Commissions allowed to county treasurers under former Civil Code 1895, § 472 (see now O.C.G.A. § 36-6-12) are to be computed upon their annual receipts and disbursements and not semiannual returns as provided by Ga. L. 1876, p. 13, §§ 1-3 (see now O.C.G.A. § 36-1-7). Burks v. Commissioners of Dougherty County, 99 Ga. 181, 25 S.E. 270, 1896 Ga. LEXIS 279 (1896).

Law providing compensation for county treasurers is found in statute, and by reference to that it will be observed that the county treasurer receives compensation only for paying out "county funds" and for certain other services. McFarlin v. Board of Drainage Comm'rs, 153 Ga. 766, 113 S.E. 447, 1922 Ga. LEXIS 169 (1922).

Moneys received from sale of bonds lawfully issued by county for erection of a courthouse are "county funds" within the meaning of this section. Chattooga County v. Megginson, 139 Ga. 509, 77 S.E. 579, 1913 Ga. LEXIS 492 (1913).

Moneys received from temporary loan or loans to supply casual deficiencies of revenue, lawfully made, are "county funds" within the meaning of this section. Williams v. Sumter County, 21 Ga. App. 716, 94 S.E. 913, 1918 Ga. App. LEXIS 490 (1918).

No right to commission for disbursing money illegally borrowed. — When a county treasurer receives from the county authorities, by virtue of the treasurer's office, money which has been illegally borrowed by the authorities, and disburses the money for current expenses of the county, and the illegal loans are repaid from money coming from taxes or other legitimate sources, the treasurer is not entitled to commissions for handling the illegally borrowed money, to be paid out of county funds proper. Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287, 1915 Ga. LEXIS 197 (1915); Williams v. Sumter County, 21 Ga. App. 716, 94 S.E. 913, 1918 Ga. App. LEXIS 490 (1918).

Paying accrued interest. — Treasurer, for making a disbursement of

county funds in paying accrued interest on bonds, is entitled to commissions. Chattooga County v. Megginson, 139 Ga. 509, 77 S.E. 579, 1913 Ga. LEXIS 492 (1913).

Effect of local Act. — Under Ga. Const. 1877, Art. I, Sec. IV, Para. I (no comparable provision in Ga. Const. 1983), the legislature may fix the compensation of county treasurers, and if such a local Act is passed, it is paramount to this section that the treasurer is paid according to the terms of the Act instead of the terms of this section. Phillips v. Hanks, 154 Ga. 244, 113 S.E. 806, 1922 Ga. LEXIS 341 (1922).

For constitutionality of local Act fixing compensation of county treasurer, see Moore v. Houston County, 124 Ga. 898, 53 S.E. 506, 1906 Ga. LEXIS 654 (1906).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, §§ 169, 187, 195.

36-6-13. Receipt of commission or fees in connection with certain road contracts; collection and disbursement of road contract funds.

No county treasurer or other county official shall receive any commission on funds received or disbursed in connection with county contracts with the Department of Transportation for the construction or repair of roads; and this Code section and Code Sections 36-6-12 and 36-6-15 shall not apply to funds received or disbursed on such contracts. The funds received from county contracts with the Department of Transportation for the construction and repair of roads shall be collected by the county treasurer, in those counties having a county treasurer, and shall be disbursed by him without any commission or fee; in those counties having no county treasurer, the funds from these contracts shall be collected and disbursed by the usual officers without any commission or fee.

History.
Ga. L. 1939, p. 277, §§ 1, 2.

Cross references.
Authority of county to contract for public road purposes generally, § 32-4-60 et seq.

36-6-14. Duties generally.

It is the duty of the county treasurer:

(1) To collect diligently from all officers and others all moneys due the county;

(2) To examine the minutes and execution dockets of the different courts of the county, to demand and receive all moneys appearing to be due thereon, and to institute proceedings against defaulters;

(3) To pay without delay, when there are sufficient funds, all orders or other debts due, according to their dates; when there are not

sufficient funds, payment shall be made as prescribed in Code Section 36-11-4;

(4) To take a receipt on each order when paid and carefully file it away;

(5) To keep a well-bound book in which shall be entered all receipts, stating when received, from whom, and on what account, and all amounts paid out, stating when paid, to whom, and on what account;

(6) To keep a well-bound book in which shall be entered a full description of all county orders or other forms of indebtedness, as they are presented;

(7) To record a copy of the orders of the county governing authority levying county taxes;

(8) To exhibit to the first grand jury at the first session of the superior court of each year a full statement of the condition of the county treasury up to that time;

(9) On the second Monday in January of each year, to file with the county governing authority a full statement of his account, accompanied by his vouchers for the preceding year, together with his estimate of the indebtedness of the county for the ensuing year and the means of providing therefor;

(10) To place his books and vouchers before the grand jury or the county governing authority for examination when called upon to do so;

(11) To appear before the county governing authority or the grand jury to render an account of his actings and doings as county treasurer; and

(12) To publish at the door of the courthouse and in a public newspaper, if there is one published in the county, a copy of his annual statement to the county governing authority.

History.
Ga. L. 1859, p. 25, § 1; Code 1863, § 527; Code 1858, § 591; Code 1873, § 553; Code 1882, § 553; Civil Code 1895, § 460; Civil Code 1910, § 576; Code 1933, § 23-1015; Ga. L. 1982, p. 3, § 36.

JUDICIAL DECISIONS

Publication not connected with probate court proceedings. — Publication of the statement required to be made under this section was neither directly nor remotely connected with the business or any proceeding of the court of ordinary (now judge of the probate court). Howard v. Early County, 104 Ga. 669, 30 S.E. 880, 1898 Ga. LEXIS 395 (1898).

Power of ordinary (now judge of the probate court) to cite treasurer to appear. — Under former Code 1873,

§§ 553, 563, 337 (see O.C.G.A. §§ 36-6-14, 36-6-27, and 36-5-1(7) (since repealed)) the ordinary (now judge of the probate court) had jurisdiction to cite the county treasurer to appear before the ordinary for a settlement of the treasurer's accounts as well as to order that moneys in the treasurer's hands be paid out by the treasurer to the proper persons; and upon the treasurer's failure to pay, to issue an execution for such default. Smith v. Outlaw, 64 Ga. 677, 1880 Ga. LEXIS 389 (1880).

Upon refusal to pay, mandamus will lie against treasurer of county to compel payment of any part of salary when by law the salary is payable and after the salary has been demanded, although at the time of making demand no formal warrant had issued therefor. Clark v. Eve, 134 Ga. 788, 68 S.E. 598, 1910 Ga. LEXIS 352 (1910).

Use of record in evidence. — When a county treasurer failed to comply with the requirements of former Code 1882, §§ 508 and 553 (see now O.C.G.A. §§ 36-6-14 and 36-11-5), and when an execution was issued by the ordinary (now judge of the probate court) against the treasurer as a defaulter, the treasurer could not take advantage of the treasurer's own negligence so as to substitute evidence of a lower character for the record which it was incumbent upon the treasurer to make out and deposit. Price v. Douglas County, 77 Ga. 163, 3 S.E. 240, 1887 Ga. LEXIS 89 (1887).

When bank acts as county treasurer. — Bank acting as county depository becomes a quasi-public officer. It is therefore the duty of such bank, acting as county treasurer, to receive the surplus of the fine and forfeiture fund, and hold the funds for distribution as required by law. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33, 1953 Ga. App. LEXIS 1091 (1953).

Fund raised by private donation not county fund. — Fund raised by private donation, for courthouse, handled by ordinary (now judge of the probate court) and not paid into treasurer, was not a county fund in the sense used in former Civil Code 1895, §§ 458 and 460 (see now O.C.G.A. §§ 36-6-14 and 36-6-15), and not demandable by the treasurer. Worth County v. Sykes, 2 Ga. App. 175, 58 S.E. 380, 1907 Ga. App. LEXIS 309 (1907).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, §§ 187, 195.

36-6-15. Collection and disbursal of funds generally.

All county funds are to be paid to and disbursed by the county treasurer except such as may be specially excepted by law, which shall be collected and disbursed as specially directed.

History.
Laws 1825, Cobb's 1851 Digest, p. 211.; Code 1863, § 525; Code 1868, § 589; Code 1873, § 551; Code 1882, § 551; Civil Code 1895, § 458; Civil Code 1910, § 574; Code 1933, § 23-1016.

JUDICIAL DECISIONS

When bank is county treasurer. — Bank acting as county depository becomes a quasi-public officer. It is therefore the duty of such bank, acting as county treasurer, to receive the surplus of the fine and forfeiture fund, and hold the funds for distribution as required by law. Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33, 1953 Ga. App. LEXIS 1091 (1953).

Liability for failure to disburse money illegally borrowed. — Where the authorities in charge of the finances borrowed money for county purposes

without authority of law, and the money thus unlawfully borrowed was received by the county treasurer as county funds, the county treasurer is liable for failure to disburse the money. Mason v. Commissioners of Rds. & Revenues, 104 Ga. 35, 30 S.E. 513, 1898 Ga. LEXIS 278 (1898).

Money borrowed to meet expenses not county funds within meaning of section. Hall v. County of Greene, 119 Ga. 253, 46 S.E. 69, 1903 Ga. LEXIS 776 (1903).

Fund raised by private donation not county fund. — Fund raised by private donation, for courthouse, handled by ordinary (now judge of the probate court) and not paid into treasurer, was not a county fund in sense used in former Civil Code 1895, §§ 458 and 460 (see now O.C.G.A. §§ 36-6-14 and 36-6-15), and not demandable by the treasurer. Worth County v. Sykes, 2 Ga. App. 175, 58 S.E. 380, 1907 Ga. App. LEXIS 309 (1907).

Proceeds of county bonds. — Ordinary (now judge of the probate court) who receives the proceeds of county bonds may be compelled by mandamus to turn the funds over to the county treasurer. Aaron v. German, 114 Ga. 587, 40 S.E. 713, 1902 Ga. LEXIS 731 (1902).

How affected by contract. — In view of former Civil Code 1895, §§ 458 and 460 (see now O.C.G.A. §§ 36-6-14 and 36-6-15), mandamus was not granted a county treasurer against county commissioners to compel delivery to the treasurer of balance of purchase price of bonds sold by them to a bank, under contract that proceeds should be left on deposit. Smith v. Hodgson, 129 Ga. 494, 59 S.E. 272, 1907 Ga. LEXIS 492 (1907).

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Assumption of duties by another. — It would not be proper for anyone to assume the duties of the treasurer nor would it be proper for the treasurer to attempt to delegate the treasurer's responsibilities and duties to some other officer or other person. 1965-66 Op. Att'y Gen. No. 65-94.

Purchase of right of way. — Laws of this state do not authorize the setting aside of moneys in a "special fund" to purchase a right of way for county roads. 1969 Op. Att'y Gen. No. 69-231.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, §§ 188, 302, 303.

36-6-16. Deposits of county funds in designated depositories.

The treasurers of the several counties are authorized to deposit the county funds which may come into their hands as county treasurers in any bank or banking institution which has been designated by law as a depository for the funds of the state.

History.
Ga. L. 1917, p. 199, § 1; Code 1933, § 23-1017.

Law reviews.
For article considering the public official's potential liability for funds, losses and torts, and suggesting insurance coverage, see 11 Mercer L. Rev. 288 (1960).

JUDICIAL DECISIONS

Requirements of section not absolute. — None of these provisions, Ga. L. 1917, p. 199, §§ 1, 2, and Ga. L. 1924, p. 86, §§ 1, 2 (see now O.C.G.A. §§ 36-1-8, 36-6-16 and 36-6-17), make the statutory requirements absolute. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

It must be observed that neither Ga. L. 1917, p. 199, § 1 (see now O.C.G.A. § 36-6-16) nor Ga. L. 1924, p. 86, §§ 1, 2 (see now O.C.G.A. § 36-1-8) make the statutory requirements absolute; county treasurers may follow the provisions of either of these statutes, and thereby become absolutely safe from loss, as well as making safe the public funds with which they are entrusted; however, it appears the treasurer may keep the funds in the treasurer's possession so long as the treasurer is prepared to pay the funds out when lawfully authorized and required so to do. Allen v. Henderson, 48 Ga. App. 74, 172 S.E. 94, 1933 Ga. App. LEXIS 457 (1933).

Right to receive deposit not conditional upon giving bond. — Former Code 1933, § 23-1018 (see now O.C.G.A. § 36-6-17) did not purport to condition the right to receive the deposit upon the giving of a bond but fixed a duty on the depository which has undertaken so to act to give a bond to the treasurer sufficient to protect the treasurer officially from any loss. Hancock County v. Hancock Nat'l Bank, 67 F.2d 421, 1933 U.S. App. LEXIS 4489 (5th Cir. 1933).

Fact of deposit is not default. — County treasurers in Georgia very generally deposit the treasurers' public funds in a bank as a convenient and safe method of handling. Such deposits have never been considered as amounting to a default. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Treasurer liable if unable to produce funds. — Notwithstanding such deposits, the treasurer and the treasurer's bondsmen are liable, if the funds are not forthcoming when officially required. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Funds, § 7 et seq.

C.J.S.

20 C.J.S., Counties, §§ 188, 195. 26B C.J.S., Depositaries, § 38 et seq.

36-6-16.1. Deposit of funds held for benefit of third persons by officer of county or court in treasury.

(a) It shall be lawful in all counties of this state having a population of 600,000 or more according to the United States decennial census of 1990 or any future such census for any county officer and any officer of any court, including the superior court in such counties, having in his possession and custody any funds, including trust funds, held for the benefit of any third person or litigant or for any purpose or subject to the order of any court or other tribunal to deposit such funds for safekeeping in the treasury of the county and to accept therefor the receipt of the treasurer or other fiscal officer of such county.

(b) The original custodian of such fund before making any deposit may require the treasurer or other fiscal officer to execute in his favor a special bond in an amount not less than the aggregate of all funds so

deposited and held by the treasurer or other fiscal officer, which bond with security approved by the superior court of such county shall be conditioned to repay or disburse all of such funds under proper legal authority. In lieu of other security on such bond, the treasurer or other fiscal officer may deposit in a safe place a bond of the United States Treasury in an amount not less than the aggregate of all deposits secured by such bond.

(c) The treasurer of any county or other fiscal officer charged with the custody of county funds may decline to accept funds from any officer or officer of the court for deposit and safekeeping when in the judgment of such treasurer or other fiscal officer the conditions imposed are burdensome or would cause hardship or financial loss.

(d) Any officer or officer of the court who deposits funds in his custody in the treasury of the county of such officer or officer of the court shall be relieved of personal responsibility for the safekeeping of such funds as may be entrusted to the treasury of the county under this Code section.

(e) This Code section shall not be interpreted to prevent or delay the direct payment into the county treasury of all funds belonging to such county and collected by or held by an officer or officer of the court, but all of same shall be deposited immediately in the county treasury without the requirement of any special bond.

History.
Ga. L. 1963, p. 2180, §§ 1-5; Code 1981, § 36-6-16.1, enacted by Ga. L. 1982, p. 2107, § 32; Ga. L. 1992, p. 2350, § 1.

36-6-17. Furnishing of bonds by depositories selected by treasurer.

Any depository of state funds selected by the county treasurer to be a depository of the county funds shall, in addition to the bond given to the state as security for the money of the state deposited in such bank, give to the county treasurer a bond in an amount sufficient to protect him from any loss, which bond shall be payable to him and shall be conditioned to account fully to him for all county moneys that may be deposited by him as county treasurer under the terms of this article.

History.
Ga. L. 1917, p. 199, § 2; Code 1933, § 23-1018.

JUDICIAL DECISIONS

Requirements of section not absolute. — None of these provisions, Ga. L. 1917, p. 199, §§ 1, 2 and Ga. L. 1924, p. 86, §§ 1, 2 (see now O.C.G.A. §§ 36-1-8, 36-6-16, and 36-6-17), make the statutory requirements absolute. Century Indem.

Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Right to receive deposit not conditional upon giving bond. — Former Code 1933, § 23-1018 (see now O.C.G.A. § 36-6-17) did not purport to condition the right to receive the deposit upon the giving of a bond but fixed a duty on the depository which has undertaken so to act to give a bond to the treasurer sufficient to protect the treasurer officially from any loss. Hancock County v. Hancock Nat'l Bank, 67 F.2d 421, 1933 U.S. App. LEXIS 4489 (5th Cir. 1933).

Treasurer does not make deposit at the treasurer's own risk and does not take bond for the treasurer's personal benefit, but the treasurer acts throughout for the county and in the treasurer's official capacity, and the bond is to be payable to the treasurer as treasurer and is to prevent loss to the treasury. Hancock County v. Hancock Nat'l Bank, 67 F.2d 421, 1933 U.S. App. LEXIS 4489 (5th Cir. 1933).

Treasurer liable if unable to produce funds. — Notwithstanding such deposits, the treasurer and the treasurer's bondsmen are liable if the funds are not forthcoming when officially required. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Fact of deposit not default. — County treasurers in Georgia very generally deposit the treasurers' public funds in a bank as a convenient and safe method of handling. Such deposits have never been considered as amounting to a default. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Security company has duty to investigate. — When a security company agrees to execute a surety bond of a public officer, the company has the opportunity and should avail itself of every means of ascertaining exactly what position that officer occupies with respect to public funds for which the company assumes liability. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Funds, § 15 et seq.

C.J.S.
26B C.J.S., Depositaries, § 65.

36-6-18. Arrangements for payment of interest on deposits; disposition of interest payments.

The county treasurers are authorized to arrange with the bank to pay interest on the money deposited with the bank, but they are not required to do so. Any money received by them as interest must be paid by them into the treasury of the county.

History.
Ga. L. 1917, p. 199, § 3; Code 1933, § 23-1019.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Funds, § 11.

C.J.S.
26B C.J.S., Depositaries, § 98.

36-6-19. Disposition of books of treasurer when full.

When the books of the county treasurer are full, they must be deposited,

together with the vouchers and other files relating thereto, in the office of the county governing authority and shall be part of its records.

History. Orig. Code 1863, § 529; Code 1868, § 593; Code 1873, § 555; Code 1882, § 555; Civil Code 1895, § 462; Civil Code 1910, § 578; Code 1933, § 23-1021.

36-6-20. Delivery of money, books, papers, and property to successor.

Upon the resignation, expiration of the term, or removal from office of the county treasurer, he, or, if he is dead, his personal representative, must state his accounts and deliver all the money, books, papers, and property of the county to his successor, as do other officers. His successor must report the same immediately to the county governing authority.

History. Orig. Code 1863, § 541; Code 1868, § 605; Code 1873, § 564; Code 1882, § 564; Civil Code 1895, § 470; Civil Code 1910, § 586; Code 1933, § 23-1022.

JUDICIAL DECISIONS

Provisions of former Civil Code 1910, §§ 586 and 587 (see now O.C.G.A. §§ 36-6-20 and 36-6-21) were not applicable to annual accounting and settlement made by the tax collector with the county commissioners. Read v. Glynn County, 145 Ga. 881, 90 S.E. 60, 1916 Ga. LEXIS 528 (1916).

36-6-21. Final settlement of accounts.

When the county treasurer or his personal representative has made a fair and full statement of all his accounts and liabilities as such, pursuant to Code Section 36-6-20, an exoneration of himself and his sureties, together with the details of such settlement, must be entered on the minutes of the county governing authority. It shall be final, except for fraud.

History. Orig. Code 1863, § 542; Code 1868, § 606; Code 1873, § 565; Code 1882, § 565; Civil Code 1895, § 471; Civil Code 1910, § 587; Code 1933, § 23-1023.

JUDICIAL DECISIONS

Provisions of former Civil Code 1910, §§ 586 and 587 (see now O.C.G.A. §§ 36-6-20 and 36-6-21) were not applicable to annual accounting and settlement made by the tax collector with the county commissioners. Read v. Glynn County, 145 Ga. 881, 90 S.E. 60, 1916 Ga. LEXIS 528 (1916).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 195.

36-6-22. Requirement of accountings by treasurer.

It shall be the duty of the judge of the probate court or county governing authority to compel the treasurers of the county to come before the court or governing authority at such times as may be designated by the judge or governing authority, not less than twice in each year, to render an account of his official actings and doings respecting the county tax and funds and to make a full and complete exhibit of his books, vouchers, accounts, and all things pertaining to his office.

History.
Ga. L. 1882-83, p. 82, § 1; Civil Code 1895, § 418; Civil Code 1910, § 527; Code 1933, § 23-1024; Ga. L. 1982, p. 3, § 36.

JUDICIAL DECISIONS

Power of commissioners to require appearance. — Under former Civil Code 1910, §§ 527 and 528 (see now O.C.G.A. §§ 36-6-22 and 36-6-23), the board of commissioners of roads and revenues has authority to require the tax collector to appear before the board at stated times to render an account of the collector's official actings. Edmondson v. Glenn, 153 Ga. 401, 112 S.E. 366, 1922 Ga. LEXIS 89 (1922).

In a proceeding under former Civil Code 1910, § 527 (see now O.C.G.A. § 36-6-22) or former Civil Code 1910, § 528 (see now O.C.G.A. § 48-5-140), the ordinary (now judge of the probate court) acted in a judicial or quasi-judicial capacity. Riner v. Flanders, 173 Ga. 43, 159 S.E. 693, 1931 Ga. LEXIS 256 (1931).

36-6-23. Proceedings upon failure of treasurer to render accounting.

The failure or refusal of any county treasurer to render the account and make the showing provided for by Code Section 36-6-22, after being notified to do so by the county governing authority, shall constitute malpractice in office. A conviction therefor shall subject the offender to removal from office. During the continuance of such failure or refusal after the notice aforesaid, the county governing authority shall suspend the treasurer from duty and shall appoint some fit and proper person to take charge of the county funds and perform the duties of his office until the question of his removal can be passed upon and decided by the proper tribunal. Proper bonds shall be taken from the person so appointed, as provided by law. The power given by this Code section and Code Section 36-6-22 to inquire into the affairs of the treasurer of the county and to suspend him from office in certain cases shall in no way affect the liability of the treasurer or that of the sureties on his bond.

History.
Ga. L. 1882-83, p. 82, § 2; Civil Code 1895, § 419; Civil Code 1910, § 528; Code 1933, § 23-1025.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 192.

36-6-24. Removal of treasurer.

County treasurers may be removed from office in the same manner as clerks of the superior courts may be removed.

History.
Laws 1821, Cobb's 1851 Digest, p. 211.; Laws 1838, Cobb's 1851 Digest, p. 215.; Code 1863, § 518; Code 1868, § 582; Code 1873, § 544; Code 1882, § 544; Civil Code 1895, § 450; Civil Code 1910, § 566; Code 1933, § 23-1026.
Cross references.
Removal of clerks of superior courts, § 15-6-82.

OPINIONS OF THE ATTORNEY GENERAL

Finding of incapacity and removal. — Judge of the superior court can remove the current county treasurer from office after a jury finding of incapacity, pursuant to O.C.G.A. §§ 15-6-82 and 36-6-24. 1985 Op. Att'y Gen. No. U85-30.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 165 et seq.
C.J.S.
20 C.J.S., Counties, § 159 et seq. 67 C.J.S., Officers and Public Employees, § 226 et seq.

36-6-25. Filling of vacancies.

Vacancies in the office of county treasurer shall be filled as are vacancies in other county offices.

History.
Orig. Code 1863, § 519; Code 1868, § 583; Code 1873, § 545; Code 1882, § 545; Civil Code 1895, § 451; Civil Code 1910, § 567; Code 1933, § 23-1027.

OPINIONS OF THE ATTORNEY GENERAL

How construed. — Language "vacancies are filled as vacancies in other county offices" should be construed to mean how a majority of vacancies in county offices are filled and, of course, this leads to the provisions provided for the filling of vacancies in the office of clerk of the superior court. 1957 Ga. Op. Att'y Gen. 58.

Hold-over prevents a vacancy. 1957 Ga. Op. Att'y Gen. 58.

Procedure in event of incapacity of county treasurer. — There appears to be no Code provision authorizing the appointment of an "acting" county treasurer to serve in place of the elected treasurer until an incapacity of the current official ends. 1985 Op. Att'y Gen. No. U85-30.

Judge of the probate court can appoint a qualified person to carry out the duties of county treasurer if an incapacity has been established. If the vacancy was to last more than six months (and prior to the time for the regular election of the county treasurer), the probate court then would have to call for a special election to fill the unexpired term of the former county treasurer, pursuant to former O.C.G.A. §§ 15-6-54(b) and 15-6-56. 1985 Op. Att'y Gen. No. U85-30.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 88, 105 et seq.
C.J.S.
20 C.J.S., Counties, § 155. 67 C.J.S., Officers and Public Employees, § 160 et seq.

36-6-26. Bonds of persons appointed to fill vacancies.

The amount of the bonds of appointees to fill vacancies shall be in the discretion of the county governing authority, taking into consideration the amount that may come into their hands, and shall be for double such amount.

History.
Orig. Code 1863, § 524; Code 1868, § 588; Code 1873, § 550; Code 1882, § 550; Civil Code 1895, § 457; Civil Code 1910, § 573; Code 1933, § 23-1028.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 153. 67 C.J.S., Officers and Public Employees, §§ 72, 73.

36-6-27. Execution against county treasurer for failure to pay over money.

When the county treasurer at any time fails to pay any order which is entitled to payment, any other legal demand upon him, or any balance that is in his hands to his successor or to the person entitled to receive it, the county governing authority may issue execution against him and his sureties for the amount due, as against a defaulting tax collector.

History.
Laws 1825, Cobb's 1851 Digest, p. 212.; Code 1863, § 540; Code 1868, § 604; Code 1873, § 563; Code 1882, § 563; Civil Code 1895, § 469; Civil Code 1910, § 585; Code 1933, § 23-1611.

JUDICIAL DECISIONS

Inclusion of attorney's fees unconstitutional. — Former Code 1933, § 23-1611 (see now O.C.G.A. § 36-6-27), insofar as the statute authorized a board of commissioners to include in an execution attorney's fees under former Code 1933, § 91A-3183 (see now O.C.G.A. § 48-5-201), was unconstitutional and

void because it was violative of U.S. Const., amend. 14, and Ga. Const. 1877, Art. I, Sec. I, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I), in that no provision was made giving the county treasurer and the sureties on the treasurer's bond an opportunity to be heard as to the amount or reasonableness of such fees, and the law does not otherwise provide for any method of attack thereon. Former Code 1933, § 23-1611 was further unconstitutional and void because in violation of Ga. Const. 1877, Art. I, Sec. I, Para. I and Art. I, Sec. I, Para. XXIII (see now Ga. Const. 1983, Art. I, Sec. II, Paras. I and III), the determination of what attorney's fees incurred were reasonable and the assessment of such fees were judicial functions and could not be delegated to an administrative official. Massachusetts Bonding & Ins. Co. v. Floyd County, 178 Ga. 595, 173 S.E. 720, 1934 Ga. LEXIS 111 (1934).

Relation to other sections. — Provisions of former Civil Code 1910, § 1187 (see now O.C.G.A. § 48-5-201), relating to issuance of executions against defaulting county tax collectors and their bondsmen, were by former Civil Code 1910, § 585 (see now O.C.G.A. § 36-6-27) made applicable to the issuance of executions against defaulting county treasurers and their bondsmen. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Liability of official charged with custody of public funds greater than that of mere bailee. Lamb v. Dart, 108 Ga. 602, 34 S.E. 160, 1899 Ga. LEXIS 308 (1899).

Power of ordinary (now judge of the probate court) to cite treasurer to appear for settlement of accounts. — Under former Code 1873, §§ 337, 553 and 563 (see now O.C.G.A. §§ 36-6-14, 36-6-27 and 36-5-1 (since repealed)), the ordinary (now judge of the probate court) had jurisdiction to cite the county treasurer to appear before the ordinary for a settlement of the treasurer's accounts, as well as to order moneys in the treasurer's hands to be paid out by the treasurer to the proper persons, and upon the treasurer's failure to issue execution for such default. Smith v. Outlaw, 64 Ga. 677, 1880 Ga. LEXIS 389 (1880).

Power to issue execution against defaulting county treasurer was vested in the ordinary (now judge of the probate court), or in county commissioners if the fiscal affairs of the county were administered by the commissioners. Arthur v. Commissioners of Gordon County, 67 Ga. 220, 1881 Ga. LEXIS 158 (1881); Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287, 1915 Ga. LEXIS 197 (1915).

Execution authorized against absconding treasurer. — Ordinary (now judge of the probate court) is authorized to issue execution against an absconding county treasurer for money in the treasurer's hands. Jones v. Collier, 65 Ga. 553, 1880 Ga. LEXIS 255 (1880).

Execution to be issued in name of county. — Execution provided by this section against a defaulting county treasurer should be issued in the name of the county; but if issued in the name of the ordinary (now judge of the probate court) for the use of the county, such irregularity is an amendable defect, and does not render the process void. Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287, 1915 Ga. LEXIS 197 (1915).

Notice in writing not required. — It is not necessary that notice in writing be given before the issuing of the execution provided in this section. Price v. Douglas County, 77 Ga. 163, 3 S.E. 240, 1887 Ga. LEXIS 89 (1887); Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287, 1915 Ga. LEXIS 197 (1915).

Execution is issued summarily, and defendant then has the right to test questions involved by trial by jury. A defendant who has had a full and complete trial after the issuance of execution has no cause to complain that the defendant did not have it before. Arthur v. Commissioners of Gordon County, 67 Ga. 220, 1881 Ga. LEXIS 158 (1881).

Liability of treasurer on bank's insolvency. — When a county treasurer, in making an accounting with the treasurer's successor, delivers a check representing public funds which the treasurer has in a bank, and the same is accepted in lieu of cash, and upon the acceptance and presentation of such check

by the payee, credit therefor is transferred by the bank to the new treasurer, and the fact that the bank may be insolvent at the time of such transaction does not necessarily show a default by the officer making such accounting. In equity the transaction should be treated as a transfer of money to the extent of the amount which the bank could and would have paid in cash, if cash had been demanded. Board of Comm'rs v. Massachusetts Bonding & Ins. Co., 175 Ga. 584, 165 S.E. 828, 1932 Ga. LEXIS 294 (1932).

Arrest of execution. — Execution by a county against the treasurer and the treasurer's surety must be construed to have been issued under this section; and having been so issued, the execution cannot be arrested by affidavit of illegality. Board of Comm'rs v. Massachusetts Bonding & Ins. Co., 175 Ga. 584, 165 S.E. 828, 1932 Ga. LEXIS 294 (1932).

Remedy by affidavit of illegality not applicable to treasurers. — By Ga. L. 1915, §§ 1-3 (see now O.C.G.A. § 48-5-203), the law in relation to issuance of executions against county tax collectors was so amended as to afford a remedy by affidavit of illegality, but that Act did not extend so far as to afford such remedy to county treasurers and the treasurers' bondsmen. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Interest. — In proceeding under this section, the county, having collected and used money which actually belonged to the plaintiff, is chargeable with interest the same as any other person would have been. United States Fid. & Guar. Co. v. Clarke, 190 Ga. 46, 8 S.E.2d 52, 1940 Ga. LEXIS 405 (1940).

Interest charged against both principal and surety. — Former Civil Code 1910, §§ 585 and 1187 (see now O.C.G.A. §§ 36-6-27 and 48-5-201) drew no distinction between the principal and surety in regard to payment of interest, but the interest specified in the statute was to be charged against both the principal and surety. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

36-6-28. Purchase of county orders at less than full value or refusal to pay order.

Any county treasurer who buys up any county orders or claims for less than their full par value, either by himself or by agents, directly or indirectly, pays for them in property at an estimated value above its true value, refuses to pay an order when he has funds to pay the same, or illegally postpones the payment of an order shall be guilty of a misdemeanor and shall be removed from office on complaint and proof being made to the county governing authority.

History.

Orig. Code 1863, §§ 535, 536; Code 1868, §§ 599, 600; Code 1873, §§ 561, 562; Code 1882, §§ 561, 562; Civil Code 1895, § 468; Penal Code 1895, § 276; Civil Code 1910, § 584; Penal Code 1910, § 280; Code 1933, §§ 23-1609, 23-9902.

JUDICIAL DECISIONS

Defect in title no defense. — Fact that the person from whom the treasurer bought the orders did not have good title is not a defense. Wilder v. State, 47 Ga. 522, 1873 Ga. LEXIS 154 (1873).

Treasurer may purchase warrants. — County orders or warrants may be sold, and the county treasurer personally is permitted to purchase a warrant, provided the treasurer pays full value

therefor. Southern Ry. v. Fulton County, 170 Ga. 248, 152 S.E. 567, 1930 Ga. LEXIS 432 (1930).

Accessory parties. — As this section provides for a misdemeanor, and there are no accessories in misdemeanors, all who knowingly participate in the criminal act, and all who procure, counsel, command, aid, or abet the commission of a misdemeanor are regarded by the law as the principal offenders, and may be indicted as such. Blalock v. State, 40 Ga. App. 242, 149 S.E. 297, 1929 Ga. App. LEXIS 109 (1929).

Indictment. — To authorize a conviction under this section, it is necessary for the indictment to allege that the accused is a county treasurer or acts in an official capacity equal to a county treasurer if a county has no such office. Blalock v. State, 40 Ga. App. 242, 149 S.E. 297, 1929 Ga. App. LEXIS 109 (1929).

RESEARCH REFERENCES

C.J.S.

20 C.J.S., Counties, § 117.

CHAPTER 7

COUNTY SURVEYOR

Sec.		Sec.	
36-7-1.	Requirement of county surveyor for each county; appointment of assistants or deputies.	36-7-7.	Location of office.
36-7-2.	Election; commission; removal; term; qualifications for office.	36-7-8.	Duties generally.
36-7-2.1.	Abolishing elected office and authorizing appointment; qualifications of appointed surveyor.	36-7-9.	Establishment of fees.
36-7-3.	Procedure when election fails to fill office; procedure in event of vacancy.	36-7-10.	Payment of fees generally.
36-7-4.	Commissioning.	36-7-11.	Issuance of execution for fees.
36-7-5.	Requirement of bond and oath.	36-7-12.	Surveys or plats deemed presumptive evidence of facts.
36-7-6.	Oath of assistant; entry of appointment of assistant on minutes of probate court.	36-7-13.	Persons who may perform duties of office when there is no county surveyor; oath; liability.
		36-7-14.	Appointment of disinterested surveyor; oath.
		36-7-15.	Removal of surveyor.
		36-7-16.	Penalty for making false survey.

36-7-1. Requirement of county surveyor for each county; appointment of assistants or deputies.

There must be one county surveyor for each county. The surveyor is empowered to appoint one or more assistants or deputies, for whose conduct he is responsible.

History.

Laws 1783, Cobb's 1851 Digest, p. 665.; Laws 1784, Cobb's 1851 Digest, p. 670.; Code 1863, § 548; Code 1868, § 612; Code 1873, § 571; Code 1882, § 571; Civil Code 1895, § 478; Civil Code 1910, § 596; Code 1933, § 23-1105.

36-7-2. Election; commission; removal; term; qualifications for office.

(a) County surveyors shall be elected, commissioned, qualified, and removed as are clerks of the superior courts and shall hold their offices for four years.

(b)(1) Every person holding the post of county surveyor must be a qualified surveyor, licensed by the State Board of Registration for Professional Engineers and Land Surveyors, and such person must have successfully passed the examination given by the board as a prerequisite to the granting of a license as a land surveyor; provided, however, that any person holding the position of county surveyor on March 7, 1966, whether elected or appointed, shall not be required to

meet the qualifications enumerated in this subsection so long as such person remains in the position of county surveyor, whether reappointed or reelected to this position.

(2) Paragraph (1) of this subsection shall not apply to:

(A) Any county having a population of less than 17,000 inhabitants according to the United States decennial census of 1960 or any future such census; or

(B) Any person who was holding the position of county surveyor in such a county on January 1, 1977, and who has acted continuously as county surveyor since that date, for as long as such person remains in the position of county surveyor, notwithstanding the fact that the population of the county has grown to exceed 17,000.

(c) Notwithstanding the provisions of subsection (b) of this Code section or paragraph (3) of subsection (b) of Code Section 43-15-29, a county surveyor who is not licensed by the State Board of Registration for Professional Engineers and Land Surveyors shall only practice land surveying for the county and shall not engage in the private practice of professional land surveying; provided, however, that this subsection shall not apply to any county surveyor duly elected and holding office on June 30, 1986, so long as said person continues to hold the office of county surveyor; provided, however, that any county surveyor who has a minimum of four years of surveying experience shall be eligible to take the land surveyor examination and eligible for certification as a land surveyor.

History.

Laws 1799, Cobb's 1851 Digest, p. 198.; Code 1863, § 543; Code 1868, § 607; Code 1873, § 566; Code 1882, § 566; Civil Code 1895, § 473; Civil Code 1910, § 591; Code 1933, § 23-1101; Ga. L. 1966, p. 225, §§ 1, 4, 5; Ga. L. 1986, p. 888, § 1; Ga. L. 1988, p. 555, § 1.

Cross references.

Election, qualifications, duties, powers, and compensation of county officers, Ga. Const. 1983, Art. IX, Sec. I, Para. III.

Removal of clerks of superior courts, § 15-6-82.

OPINIONS OF THE ATTORNEY GENERAL

Surveyor not subject to city business license. — County surveyor who makes surveys, other than those made by an order of the ordinary (now judge of the probate court) or court, is not subject to a city business license. 1958-59 Ga. Op. Att'y Gen. 371.

Applicability to one serving at time of enactment. — Any person who held the position of county surveyor on March 7, 1966 (the date this section was approved) could serve as county surveyor regardless of whether the person was licensed as a surveyor by the State Board of Registration for Professional Engineers and Land Surveyors so long as the person's service in that office was continuous. 1968 Op. Att'y Gen. No. 68-509.

Construed with § 36-7-9 and O.C.G.A. § 43-15-7. — County surveyor who is not registered by the State Board of Registration for Professional Engineers and Land Surveyors may not, under any

authority, engage in the private practice of land surveying outside of the county in which the surveyor was elected; nor may the surveyor engage in the private practice of land surveying in the county of election unless the surveyor was duly elected and holding office on June 30, 1986, and has continued, uninterrupted, to hold such office. 1990 Op. Att'y Gen. No. 90-13.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 156 et seq. 67 C.J.S., Officers and Public Employees, § 45.

36-7-2.1. Abolishing elected office and authorizing appointment; qualifications of appointed surveyor.

(a) The General Assembly may by local law abolish the office of elected county surveyor in any county of this state and authorize the governing authority of the county to appoint the county surveyor for such term of office as the General Assembly shall provide by said local law.

(b) A local law abolishing the office of elected county surveyor pursuant to the authority of this Code section shall comply with the provisions of Code Section 1-3-11 requiring referendum approval on abolishing certain offices, except that if the office of the elected county surveyor is vacant at the time of its abolishment or if the person holding the office was appointed to fill a vacancy pursuant to the provisions of Code Section 36-7-3, such office may be abolished at any time without the necessity of a referendum.

(c) A county surveyor appointed by a county governing authority pursuant to the authority of a local Act enacted pursuant to the provisions of this Code section shall possess the qualifications to hold office as a county surveyor specified by paragraph (1) of subsection (b) of Code Section 36-7-2 and shall carry out the duties of a county surveyor as provided in this chapter and other laws of this state.

History.
Code 1981, § 36-7-2.1, enacted by Ga. L. 1989, p. 919, § 1; Ga. L. 1993, p. 91, § 36.

36-7-3. Procedure when election fails to fill office; procedure in event of vacancy.

(a) Whenever an election fails to fill the office of county surveyor, the judge of the probate court shall appoint a person to serve as the county surveyor until a successor is duly elected in a special election which shall be held at the time of the next general election to serve out the remainder of the unexpired term of office.

(b) In the event that a vacancy occurs in the office of county surveyor,

the judge of the probate court shall appoint a person to serve for the unexpired term of office and until his successor is duly elected and has qualified.

History.
Orig. Code 1863, § 544; Code 1868, § 608; Code 1873, § 567; Code 1882, § 567; Civil Code 1895, § 474; Civil Code 1910, § 592; Code 1933, § 23-1102; Ga. L. 1969, p. 350, § 1; Ga. L. 1988, p. 586, § 3.

Editor's notes.
Ga. L. 1988, p. 586, § 7, not codified by the General Assembly, provided that the 1988 amendment of this Code section applied to any vacancy occurring on or after March 30, 1988.

OPINIONS OF THE ATTORNEY GENERAL

Authority of judge of the probate court. — Former Code 1933, §§ 21-101 and 21-102 (see now O.C.G.A. §§ 45-16-1 and 45-16-2), when read in light of former Code 1933, § 23-1102 (see now O.C.G.A. § 36-7-3), designated the judge of the probate court as the proper authority to fill vacancies occurring in the county office of coroner absent special laws directing that this function be fulfilled by some other authority. 1978 Op. Att'y Gen. No. 78-58.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 155 et seq. 67 C.J.S., Officers and Public Employees, §§ 46, 160 et seq.

36-7-4. Commissioning.

A county surveyor who derives his authority from appointment needs no commission beyond the order of the judge of the probate court entered on his minutes, of which appointment the Governor must be informed without delay.

History.
Orig. Code 1863, § 545; Code 1868, § 609; Code 1873, § 568; Code 1882, § 568; Civil Code 1895, § 475; Civil Code 1910, § 593; Code 1933, § 23-1103.

36-7-5. Requirement of bond and oath.

In addition to the oath required of all public officers, the county surveyor must take the following oath before entering on the duties of his office:

> "I, _____, swear that I will, to the best of my skill and knowledge, discharge the duties of surveyor of _____ County and that I will not admeasure, survey, or lay out any land, in my capacity as such, or knowingly permit or cause it to be done, without a warrant first obtained for that purpose. So help me God."

At the same time, he shall give bond and security in the sum of $1,000.00.

History.
Laws 1847, Cobb's 1851 Digest, p. 217.; Code 1863, § 546; Code 1868, § 610; Code 1873, § 569; Code 1882, § 569; Civil Code 1895, § 476; Civil Code 1910, § 594; Code 1933, § 23-1104.

Cross references.
Oaths required of public officers, § 45-3-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 124, 130 et seq., 345 et seq., 354, 358, 488, 489.

C.J.S.
20 C.J.S., Counties, § 153. 67 C.J.S., Officers and Public Employees, § 69 et seq.

36-7-6. Oath of assistant; entry of appointment of assistant on minutes of probate court.

When an assistant is appointed by the county surveyor, he must take the same oath the county surveyor takes. The fact of his appointment must, at the same time, be entered on the minutes of the judge of the probate court.

History.
Orig. Code 1863, § 549; Code 1868, § 613; Code 1873, § 572; Code 1882, § 572; Civil Code 1895, § 479; Civil Code 1910, § 597; Code 1933, § 23-1106.

36-7-7. Location of office.

The county surveyor may keep his office at his place of abode, if within the limits of the county. The county shall not be required to furnish the county surveyor with an office or facilities.

History.
Orig. Code 1863, § 550; Code 1868, § 614; Code 1873, § 573; Code 1882, § 573; Civil Code 1895, § 480; Civil Code 1910, § 598; Code 1933, § 23-1107; Ga. L. 1966, p. 225, § 2.

36-7-8. Duties generally.

It shall be the duty of the county surveyor:

(1) To observe punctually and carry into effect all such orders as he may receive from any officer who may lawfully command him;

(2) To partition lands, to make resurveys, to give plats of all surveys, and to administer all oaths required by law in such cases;

(3) To survey county lines and district lines and to make other surveys in which his county may be interested whenever required to do so by the county governing authority;

(4) To execute all surveys required by the rule or order of any court of competent jurisdiction; and

(5) To keep a well-bound book in which shall be entered plats of all

surveys made by him with a minute of the names of the chainbearers, when executed, by whose order, and to whom the plat was delivered, if any. Such book shall belong to his office and shall be turned over to his successor; when full, it shall be deposited in the office of the county governing authority.

History.
Laws 1783, Cobb's 1851 Digest, p. 668.; Laws 1785, Cobb's 1851 Digest, p. 672.; Laws 1838, Cobb's 1851 Digest, p. 215.; Code 1863, § 551; Code 1868, § 615; Code 1873, § 574; Code 1882, § 574; Civil Code 1895, § 481; Civil Code 1910, § 599; Code 1933, § 23-1108; Ga. L. 1987, p. 3, § 36.

Cross references.
Duties of county surveyor relating to surveys for homestead purposes, §§ 44-13-5, 44-13-6, 44-13-11, 44-13-12, 44-13-102, 44-13-103.

RESEARCH REFERENCES

Am. Jur. 2d.
12 Am. Jur. 2d, Boundaries, § 46 et seq.
ALR.
Partition: division of building, 28 A.L.R. 727.

36-7-9. Establishment of fees.

(a) The county surveyor shall be allowed to establish a reasonable fee for each of the following acts:

(1) Surveying a town lot and returning a certificate thereof;

(2) Surveying a tract of land;

(3) Making a plat and recording, advertising, and transmitting the same to the Secretary of State's office;

(4) Making a resurvey of land by order of court;

(5) For every other survey, making and certifying a plat thereof and transmitting the same;

(6) Running lines between counties or districts or making new lines, per day, the county surveyor furnishing the chainbearer and provisions;

(7) Making a plat of homestead, affidavit, and return;

(8) Making each additional plat where there is more than one lot; and

(9) Making any other survey he may be called upon or required to perform.

The fee established by the county surveyor shall be reasonably equiva-

lent to the same fee which would be charged if the survey had been conducted by a private surveyor.

(b) The county surveyor shall be allowed to contract for his services in the same manner as private surveyors, whenever he is called upon or required to make a survey for a private or a corporate benefit or by order of the county governing authority or by order of the court.

History.
Laws 1792, Cobb's 1851 Digest, p. 350.; Code 1863, § 3626; Code 1868, § 3651; Ga. L. 1870, p. 68, § 1; Code 1873, § 3702; Code 1882, § 3702; Civil Code 1895, § 490; Civil Code 1910, § 608; Code 1933, § 23-1109; Ga. L. 1966, p. 225, §§ 3, 5; Ga. L. 1968, p. 1413, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Construction. — County surveyor who is not registered by the State Board of Registration for Professional Engineers and Land Surveyors may not, under any authority, engage in the private practice of land surveying outside of the county in which the surveyor was elected; nor may the surveyor engage in the private practice of land surveying in the surveyor's county of election unless the surveyor was duly elected and holding office on June 30, 1986, and has continued, uninterrupted, to hold such office. 1990 Op. Att'y Gen. No. 90-13.

No conflict with other sections. — There does not appear to be any conflict between former Code 1933, §§ 23-1109 and 85-1610 (see now O.C.G.A. §§ 36-7-9 and 44-4-10), but even if there were one, former Code 1933, § 23-1109 being based upon a more recent statute, would apparently govern. 1971 Op. Att'y Gen. No. U71-45.

36-7-10. Payment of fees generally.

The fees for surveys made by the county surveyor for private or corporate benefit shall be paid by the person or corporation ordering the survey. The fees for surveys made by order of the county governing authority shall be paid out of county funds. The fees for surveys made by order of court, unless otherwise agreed upon, are to be taxed in the bill of costs and shall have the effect of a judgment lien upon the land surveyed, if not paid by the party bound for costs.

History.
Orig. Code 1863, § 552; Code 1868, § 616; Code 1873, § 575; Code 1882, § 575; Civil Code 1895, § 482; Civil Code 1910, § 600; Code 1933, § 23-1110.

JUDICIAL DECISIONS

Cost of survey. — When the plaintiffs sought an injunction restraining the defendant from closing a roadway running across the defendant's property to the plaintiff's property, the court did not err in taxing against the plaintiffs as a part of the costs, $128.00 incurred in making a survey ordered by the court. In an equity case, the court has the right to place the costs upon either of the parties, and this section definitely makes the cost of survey a part of the court costs. Nelson v. Girard, 215 Ga. 518, 111 S.E.2d 60, 1959 Ga. LEXIS 528 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Surveyor not subject to city business license. — County surveyor who makes surveys, other than those made by an order of the ordinary (now judge of the probate court) or court, is not subject to a city business license. 1958-59 Ga. Op. Att'y Gen. 371.

RESEARCH REFERENCES

Am. Jur. 2d.
20 Am. Jur. 2d, Costs, §§ 69, 76.

36-7-11. Issuance of execution for fees.

A county surveyor who makes a survey for a person who neglects to pay him may make oath before the judge of the probate court of his county of the performance of such service and its value. The judge of the probate court shall thereupon issue a fi. fa. in his name for the use of the surveyor, against the person defaulting. Such person may defend himself therefor in the same manner as persons against whom executions issue for detaining county funds.

History.
Orig. Code 1863, § 554; Code 1868, § 618; Code 1873, § 577; Code 1882, § 577; Civil Code 1895, § 483; Civil Code 1910, § 608; Code 1933, § 23-1111.

Cross references.
Filing of affidavit of illegality by person against whom execution has been issued for holding county money, § 48-5-239.

JUDICIAL DECISIONS

Section provides remedy for collection of fee. — Former Code 1933, § 23-1111 (see now O.C.G.A. § 36-7-11), taken in connection with former Code 1933, § 91A-1219 (see now O.C.G.A. § 48-5-239), provided a remedy for a county surveyor to collect the surveyor's fees for official services rendered, and also a way for the defendant to test the correctness of the claim. Webb v. Stephens, 57 Ga. App. 395, 195 S.E. 577, 1938 Ga. App. LEXIS 609 (1938).

OPINIONS OF THE ATTORNEY GENERAL

Judge must issue execution. — This section is clear and unambiguous and makes it the duty of the ordinary (now judge of the probate court) to issue a fi. fa. when the surveyor has complied with the provisions of this section. 1960-61 Ga. Op. Att'y Gen. 87.

36-7-12. Surveys or plats deemed presumptive evidence of facts.

Surveys or plats of lands within his county, made by the county surveyor under order of court and on notice to all the parties, signed by him officially, and stating the contents, courses, and distances of any land surveyed by him are presumptive evidence of the facts if all the requisites of the law touching such surveys and the reports thereof are complied with.

History.
Orig. Code 1863, § 555; Code 1868, § 619; Code 1873, § 578; Code 1882, § 578; Civil Code 1895, § 484; Civil Code 1910, § 602; Code 1933, § 23-1112.

JUDICIAL DECISIONS

Admissibility of official survey. — Surveys or plats made pursuant to the requirements of this section are presumptive evidence of the facts set out therein. McClung v. Schulte, 214 Ga. 426, 105 S.E.2d 225, 1958 Ga. LEXIS 447 (1958).

Survey made by others than county surveyor is not admissible in evidence, unless proved by parties who made the survey; the affidavit of such persons on the survey is not sufficient proof, and such affidavit, the persons making the survey not being sworn as witnesses in the pending trial, cannot be received as evidence of anything on that trial. Maples v. Hoggard, 58 Ga. 315, 1877 Ga. LEXIS 92 (1877).

Admissibility of unofficial survey. — Plat that did not show that the plat was purported to have been made by authority since the plat was shown to have been made before the city charter was ever issued did not meet the requirements of law of either former Code 1933, § 23-1112 or former Code 1933, § 38-312 (see now O.C.G.A. § 36-7-12 or former O.C.G.A. § 24-3-11 [see now O.C.G.A. § 24-8-803]), and could not be used in evidence without other testimony or evidence. Central of Ga. Ry. v. City of Metter, 222 Ga. 74, 148 S.E.2d 661, 1966 Ga. LEXIS 401 (1966).

In an ejectment action, a plat introduced by the party bringing the action is not presumptive evidence of the facts set out in the plat, when there is no evidence that the plat is an official survey under this section. Costello v. Styles, 227 Ga. 650, 182 S.E.2d 427, 1971 Ga. LEXIS 805 (1971).

Genuine issues of material fact existed regarding the location of the boundary line between the adjoining property owners and whether the defendant's fence extended onto the plaintiff's property because there was no presumption of correctness associated with the plaintiff's unofficial survey, which was admissible only for whatever weight the trier of fact ultimately attached to it; and the defendant countered the plaintiff's unofficial survey with deposition testimony and an affidavit stating that the defendant's fence was not located on the plaintiff's property, photographs, and at least one survey potentially indicating differences from the May 2019 survey relied on by the plaintiff. O'Neill v. Hairston, 364 Ga. App. 876, 876 S.E.2d 730, 2022 Ga. App. LEXIS 363 (2022).

Unofficial surveys are admissible when proved to be correct. McClung v. Schulte, 214 Ga. 426, 105 S.E.2d 225, 1958 Ga. LEXIS 447 (1958).

Unofficial survey is admissible in evidence when proved to have been corrected by the parties who made the survey. Lewis v. Carr, 177 Ga. 761, 171 S.E. 298, 1933 Ga. LEXIS 417 (1933).

Plat or survey is not admissible as substantive, presumptive evidence of facts set forth therein, unless it conforms to provisions of this section, but upon being verified by oral testimony as correct, the plat or survey may be admitted for the purpose of illustrating other competent testimony. Woodard v. Bowen, 213 Ga. 185, 97 S.E.2d 573, 1957 Ga. LEXIS 337 (1957).

County tax plats admissible. — In an action to quiet title to real property, county tax plats used as evidence of the ownership of the depicted property were admissible. Resseau v. Bland, 268 Ga. 634, 491 S.E.2d 809.

Survey not made under order of court so as to make plat admissible under this section is admissible as an official document for whatever it may have been worth as a pictorial representation of conditions found on the ground by the surveyor. Gilman Paper Co. v. James, 235 Ga. 348, 219 S.E.2d 447, 1975 Ga. LEXIS 876 (1975).

Unofficial survey does not meet the statutory requirements of this section. However, an unofficial but properly verified survey is admissible for whatever weight the jury attaches to the survey.

Johnson v. Jones, 242 Ga. 319, 249 S.E.2d 30, 1978 Ga. LEXIS 1189 (1978).

Effect of oral testimony. — Unless a survey of plat is of official origin and meets the requirements of this section, it carries no presumptive value as evidence of the facts, although, if verified by oral testimony, it is admissible as a part of and as illustrative of such oral testimony for whatever that testimony may be worth. R.G. Foster & Co. v. Fountain, 216 Ga. 113, 114 S.E.2d 863, 1960 Ga. LEXIS 404 (1960).

Plat prepared by the county surveyor, which the surveyor identified as one prepared at the request of parties to the litigation, but not one which is shown to conform to the requirements of this section is admissible in evidence as a part of and illustrative of the oral testimony of the surveyor. Fendley v. Weaver, 121 Ga. App. 526, 174 S.E.2d 369, 1970 Ga. App. LEXIS 1269 (1970).

Witness as to correctness of survey. — In principle it would seem to be immaterial whether the witness who proposes to testify to the correctness of an unofficial survey be the surveyor, or one who was present at the time the survey was made, if the witness offers to testify to the correctness of the survey. Lewis v. Carr, 177 Ga. 761, 171 S.E. 298, 1933 Ga. LEXIS 417 (1933).

RESEARCH REFERENCES

Am. Jur. 2d.
12 Am. Jur. 2d, Boundaries, § 96 et seq.

36-7-13. Persons who may perform duties of office when there is no county surveyor; oath; liability.

(a) When there is no county surveyor, any person who is a citizen of this state and who holds a current and valid certificate of registration as a land surveyor issued by the State Board of Registration for Professional Engineers and Land Surveyors may perform the duties of county surveyor, when specifically required or appointed to do so, if first sworn to do the same faithfully and impartially, to the best of his skill and knowledge.

(b) Persons performing such service are on the same footing as county surveyors as to the special service rendered and are personally liable as such surveyors are officially liable.

History.
Orig. Code 1863, §§ 556, 557; Code 1868, §§ 620, 621; Code 1873, §§ 579, 580; Code 1882, §§ 579, 580; Civil Code 1895, §§ 485, 486; Civil Code 1910, §§ 603, 604; Code 1933, §§ 23-1113, 23-1114; Ga. L. 1973, p. 636, § 1.

Cross references.
Professional Engineers and Land Surveyors Act of 2021, § 43-15-1 et seq.

JUDICIAL DECISIONS

Section mandatory upon processioners. — Upon application to processioners to mark anew a dividing line, the surveyor, where there is no county surveyor, must be chosen and qualified as provided by statute. Watkins v. Sailers, 65 Ga. App. 77, 15 S.E.2d 306, 1941 Ga. App. LEXIS 262 (1941).

Oath mandatory. — When a private surveyor is selected and performs the duties required of a county surveyor without first having taken the oath

required under this section, the return of the processioners is void. Watkins v. Sailers, 65 Ga. App. 77, 15 S.E.2d 306, 1941 Ga. App. LEXIS 262 (1941).

36-7-14. Appointment of disinterested surveyor; oath.

When any county surveyor is interested in any survey to be made, the judge of the superior court or the judge of the probate court of the county in which the land is located, upon the application of any party in interest, shall appoint a competent, disinterested surveyor or, in his discretion, may appoint the surveyor of any adjoining county to make the survey. If the surveyor appointed is not a county surveyor, before entering on the survey, he shall subscribe before some judicial officer of the county the oath required of county surveyors. The rights, powers, and duties of the surveyor so appointed shall be the same as those of the county surveyor. The return of the surveyor shall have the same force and effect as do other surveys.

History.
Ga. L. 1882-83, p. 104, §§ 1, 2; Civil Code 1895, §§ 487, 488; Civil Code 1910, §§ 605, 606; Code 1933, §§ 23-1115, 23-1116.

36-7-15. Removal of surveyor.

The county surveyor, whether elected or appointed, may be removed by the judge of the probate court for want of capacity, in the same fashion as clerks of the superior courts are removed in the superior court. This cause of removal shall be in addition to the causes which apply to all public officers.

History.
Orig. Code 1863, § 547; Code 1868, § 611; Code 1873, § 570; Code 1882, § 570; Civil Code 1895, § 477; Civil Code 1910, § 595; Code 1933, § 23-1117.

Cross references.
Removal of clerks of superior courts, § 15-6-82.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 170, 171, 177 et seq.

C.J.S.
20 C.J.S., Counties, § 159 et seq.

36-7-16. Penalty for making false survey.

Any county surveyor or other person acting as such who knowingly surveys nonvacant land as vacant land or makes any other false survey shall be guilty of a misdemeanor.

History.
Orig. Code 1863, § 558; Code 1868, § 622; Code 1873, § 581; Code 1882, § 581; Civil Code 1895, § 489; Penal Code 1895, § 278; Civil Code 1910, § 607; Penal Code 1910, § 282; Code 1933, § 23-9903.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 192.

CHAPTER 8

COUNTY POLICE

Sec.		Sec.	
36-8-1.	Election or appointment of county police; qualifications.	36-8-5.	Powers generally.
36-8-2.	Terms of office; removal; authority to abolish county police force.	36-8-6.	[Reserved] Abolishment of county police departments.
36-8-3.	Bonds and actions thereon.	36-8-7.	Rules and regulations for conduct, management, and control.
36-8-4.	Establishment of salaries; payment; tax levy.	36-8-8.	Limitation on decreasing funding; exceptions.

Cross references.

Police power of counties, generally, Ga. Const. 1983, Art. IX, Sec. II, Para. III(a)(1).

Law reviews.

For article, "HB 286: Restricting Local and Municipal Governments' Ability to Reduce Police Department Funding," see 38 Ga. St. U.L. Rev. 201 (2021).

JUDICIAL DECISIONS

No change in general law. — Nothing in this chapter (especially Ga. L. 1914, p. 142, § 6 (see now O.C.G.A. § 36-8-3)) which authorizes the appointment of county police officers, insofar as the statute may undertake to fix the liability of the sureties upon a county officer's bond, changes the general law as contained in former Civil Code 1910, § 291 (see now O.C.G.A. § 45-4-24). Hodge v. United States Fid. & Guar. Co., 42 Ga. App. 84, 155 S.E. 95, 1930 Ga. App. LEXIS 242 (1930).

36-8-1. Election or appointment of county police; qualifications.

(a) The county governing authority shall have authority to elect or appoint such number of county police as in its discretion it deems proper, provided that the county governing authority complies with the provisions of this Code section. Any person elected or appointed to the county police shall possess the qualifications prescribed in Code Section 35-8-8.

(b)(1) Each county governing authority may authorize, through proper resolution or ordinance, the creation of a county police force. No resolution or ordinance adopted pursuant to this paragraph shall become effective until the governing authority of the county has submitted to the qualified electors of the county the question of whether the resolution or ordinance shall be approved or rejected. The county governing authority shall establish the date of the election in compliance with Code Section 21-2-540, which shall be not less than 30 days after the call of the election, and shall notify the county election superintendent of its decision as to the date. The

election superintendent shall issue the call for the election and shall specify that the election shall be held on the date determined by the county governing authority. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of the county. The ballot shall have written or printed thereon the following:

"( ) YES Shall the resolution or ordinance adopted by the governing authority of (Name of County) to
( ) NO create a county police force be approved?"

(2) Those persons desiring to vote in favor of the creation of a county police force shall vote "Yes," and those persons opposed to the creation of a county police force shall vote "No." If more than one-half of the votes cast on the question are in favor of the creation of a county police force, then the county governing authority shall be authorized to create a county police force pursuant to the provisions of this chapter; otherwise, a county police force shall not be created. If the resolution or ordinance is rejected by the qualified electors, the question of the creation of a county police force may not again be submitted to the voters of the county within 48 months immediately following the month in which such election was held. The county election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections, except as otherwise provided in paragraph (1) of this subsection. He shall canvass the returns and declare and certify the result of the election to the Secretary of State. The expense of any such election shall be borne by the county wherein the election was held.

(c) The provisions of subsection (b) of this Code section shall not apply to any county which has created a county police force prior to January 1, 1992, which county police force remains in existence and operational.

(d) Any county police force created by a county governing authority between January 1, 1992, and February 25, 1992, shall be abolished no later than December 31, 1992, unless, prior to said latter date, a resolution or ordinance authorizing the creation of a county police force is adopted by the county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of this Code section.

History.
Ga. L. 1909, p. 156, § 1; Civil Code 1910, § 849; Ga. L. 1914, p. 142, § 1; Code 1933, § 23-1401; Ga. L. 1992, p. 324, § 1; Ga. L. 2020, p. 493, § 36/SB 429.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "February 25, 1992," was substituted for "the effective date of this Code section" in subsection (d).

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Applicability. — This chapter applies to all counties of the state. Eison v. Shirley, 165 Ga. 374, 141 S.E. 295, 1927 Ga. LEXIS 402 (1927).

Effect on powers of sheriff. — Even when a county police force is established, the power and authority of the sheriff to enforce the law and preserve the peace are not legally diminished. Wolfe v. Huff, 232 Ga. 44, 205 S.E.2d 254, 1974 Ga. LEXIS 853 (1974).

Power to direct owner from burning building. — Under the police power, a deputy sheriff is authorized to go upon private property and direct the owner to move back from a burning building, when the deputy has been made aware of the possibility of an explosion, and in the deputy's opinion the safety of a 21/2-year-old child was unnecessarily endangered because of the proximity to the burning structure. Veit v. State, 182 Ga. App. 753, 357 S.E.2d 113, 1987 Ga. App. LEXIS 2656 (1987).

County marshals acting as police force. — O.C.G.A. § 36-8-1(b)(1) referendum requirement was inapplicable to a county which created a county police force before January 1, 1992, which remained in existence and operational; however, in the context of a suit seeking injunctive and declaratory relief regarding whether the Fayette County, Georgia, Marshal's Department was a valid police force, fact issues remained, and summary judgment was improper, when affidavits claimed that county marshals did not operate as a county police force during the relevant time period. Johnson v. Fayette County, 280 Ga. 493, 635 S.E.2d 35, 2006 Ga. LEXIS 260 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Power not delegable to grand jury. — County commissioners may use a grand jury to advise the commissioners on selection of police, but the commissioners may not delegate their authority to appoint police to a grand jury. 1960-61 Ga. Op. Att'y Gen. 79.

Qualifications of sheriff as police officer. — When a county police department is established and the law enforcement functions of the sheriff are transferred to such department, the sheriff or the sheriff's deputies may not become members of the police department so as to exercise the police power. 1970 Op. Att'y Gen. No. U70-28.

Creation of marshal's office did not establish police force. — County marshal's office is not equivalent to a county police force and, therefore, when a county did not establish a police force when the county created a marshal's office, the governing authority must comply with the requirements of subsection (b) of O.C.G.A. § 36-8-1 before creating a county police force. 1995 Op. Att'y Gen. No. U95-14.

RESEARCH REFERENCES

Am. Jur. 2d.

70 Am. Jur. 2d, Sheriffs, Police and Constables, § 14.

C.J.S.

20 C.J.S., Counties, § 156 et seq.

ALR.

Validity, construction, and application of enactments relating to requirement of residency within or near specified governmental unit as condition of continued employment for policemen or firemen, 4 A.L.R.4th 380.

36-8-2. Terms of office; removal; authority to abolish county police force.

The terms for which county police shall be elected or appointed shall be left to the discretion of the county governing authority. Such county police or any member thereof may be removed from office at any time, at the will of the county governing authority, with or without cause. A resolution or ordinance authorizing the creation of a county police force adopted by a county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of Code Section 36-8-1 shall not affect the power of the county governing authority to abolish a county police force at any time.

History.
Ga. L. 1909, p. 156, § 7; Civil Code 1910, § 855; Ga. L. 1914, p. 142, § 7; Code 1933, § 23-1407; Ga. L. 1992, p. 324, § 2.

JUDICIAL DECISIONS

Validity of special law. — Even though a general law provides the manner for discharging county police by the county commissioners, a special law relating to this subject in a county is valid. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

OPINIONS OF THE ATTORNEY GENERAL

Qualifications of sheriff as police officer. — When a county police department is established and the law enforcement functions of the sheriff are transferred to such department, the sheriff or the sheriff's deputies may not become members of the police department so as to exercise the police power. 1970 Op. Att'y Gen. No. U70-28.

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 18 et seq.
C.J.S.
20 C.J.S., Counties, § 154 et seq.
ALR.
Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion, removal or suspension from duty, 9 A.L.R.4th 614.

36-8-3. Bonds and actions thereon.

Upon the election of county police, each of them shall enter into a good and solvent bond, in a sum of not less than $1,000.00, to be fixed by the county governing authority, conditioned for the faithful performance of all their duties. Anyone injured or damaged by any one of such county police may bring an action upon his bond in his name or in the name of the county governing authority for his benefit or use.

History.
Ga. L. 1909, p. 156, § 6; Civil Code 1910, § 854; Ga. L. 1914, p. 142, § 6; Code 1933, § 23-1406.

Law reviews.
For article on bond liability and righting the wrongs of Georgia local government officers, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

No change in general law. — Nothing in this chapter (especially Ga. L. 1914, p. 142, § 6 (see now O.C.G.A. § 36-8-3)), which authorizes the appointment of county police officers, insofar as the statute may undertake to fix the liability of the sureties upon a county officer's bond, changes the general law as contained in former Civil Code 1910, § 291 (see now O.C.G.A. § 45-4-24). Hodge v. United States Fid. & Guar. Co., 42 Ga. App. 84, 155 S.E. 95, 1930 Ga. App. LEXIS 242 (1930).

Bond refers only to official duties. — Bond required of a county police officer, wherein it is conditioned for the faithful performance by the officer of the officer's duties, has reference only to those duties which are incident to the office of county police officer, and not to those general duties incumbent upon every person as a member of society. Hodge v. United States Fid. & Guar. Co., 42 Ga. App. 84, 155 S.E. 95, 1930 Ga. App. LEXIS 242 (1930).

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 16

C.J.S.
20 C.J.S., Counties, § 153.

ALR.
Right of individual to maintain action on bond of peace officer, 19 A.L.R. 73.

Liability on bond of sheriff or other peace officer for unlawful search, 62 A.L.R. 855.

36-8-4. Establishment of salaries; payment; tax levy.

The county governing authority shall fix the salaries of the county police, which salaries, together with the expense of maintaining the police, shall be paid out of the county treasury. The county governing authority is authorized to levy such tax as may be necessary to pay such salaries and expenses over and above the sums for which it is otherwise authorized to levy a tax.

History.
Ga. L. 1909, p. 156, § 2; Civil Code 1910, § 850; Ga. L. 1914, p. 142, § 2; Code 1933, § 23-1402.

Cross references.
Authority of counties to exercise power of taxation, Ga. Const. 1983, Art. IX, Sec. IV, Paras. I-III.

JUDICIAL DECISIONS

Commission from still destruction unauthorized. — The ordinary (now judge of the probate court) is without authority to appoint a police officer under an agreement by which the police officer is to be paid for work done in enforcing the prohibition law by destroying stills, and for which the police officer is to be paid so much for each still destroyed, to be paid out of the funds derived by fines and forfeitures from the enforcement of the prohibition law. If such work or service is rendered under a contract which the ordinary (now judge of the probate court) is not authorized to make, no implied obligation arises on the part of the county to pay for such services, even though the county receives the benefit. Eison v. Shirley, 165 Ga. 374, 141 S.E. 295, 1927 Ga. LEXIS 402 (1927).

Receipt of salary no bar to action for share of fees. — Fact that officer making seizure of an automobile engaged in the illegal transportation of intoxicating liquors received a salary does not preclude the officer from receiving the officer's part of fees provided by statute for officers responsible for confiscation of such automobiles. Cloud v. DeKalb County, 70 Ga. App. 777, 29 S.E.2d 441, 1944 Ga. App. LEXIS 101 (1944).

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 42 et seq.

36-8-5. Powers generally.

Under the direction and control of the county governing authority, the county police shall have:

(1) The same power to make arrests and to execute and return criminal warrants and processes in the county of their election or appointment only, as sheriffs have; and

(2) All the powers of sheriffs as peace officers in the county of their election or appointment.

History.
Ga. L. 1909, p. 156, § 3; Civil Code 1910, § 851; Ga. L. 1914, p. 142, § 3; Code 1933, § 23-1403; Ga. L. 1961, p. 217, § 1.

JUDICIAL DECISIONS

Grant of power to Jekyll Island-State Park Authority not exclusive. — This section does not give Jekyll Island-State Park Authority exclusive police power, including law enforcement on Jekyll Island nor does the statute prohibit Glynn County police from exercising the powers granted the county officers by this section. Ferguson v. Leggett, 226 Ga. 333, 174 S.E.2d 913, 1970 Ga. LEXIS 531 (1970).

Duties and powers of deputy sheriff. — Office of sheriff carries with the office the duty to preserve the peace and protect the lives, persons, property, health, and morals of the people, and a deputy sheriff is an agent of the sheriff and in effecting the proper discharge of

the deputy's duties is empowered with the same duties and powers. Veit v. State, 182 Ga. App. 753, 357 S.E.2d 113, 1987 Ga. App. LEXIS 2656 (1987).

Warrantless arrest outside territorial limits. — Deputy sheriff had authority to make a warrantless arrest beyond the territorial limits of the deputy's own county. Watkins v. State, 207 Ga. App. 766, 430 S.E.2d 105, 1993 Ga. App. LEXIS 357 (1993), overruled, West v. Waters, 272 Ga. 591, 533 S.E.2d 88, 2000 Ga. LEXIS 545 (2000).

Effect on powers of sheriff. — Even when a county police force is established, the power and authority of the sheriff to enforce the law and preserve the peace is not legally diminished. Wolfe v. Huff, 232 Ga. 44, 205 S.E.2d 254, 1974 Ga. LEXIS 853 (1974).

Fact that officers are outside jurisdiction does not make officers private citizens. — Fact that state officers making a warrantless search were, at the time of the search, outside of the officers' state-granted jurisdiction does not make such officers, thereby, merely private citizens so as to enable the federal government to freely use anything that was discovered by the state officers as evidence in a federal prosecution which would otherwise have been inadmissible. United States v. Hogue, 283 F. Supp. 846, 1968 U.S. Dist. LEXIS 7853 (N.D. Ga. 1968).

OPINIONS OF THE ATTORNEY GENERAL

Powers of arrest. — Arresting powers of county police are confined to the county of appointment or election. 1960-61 Ga. Op. Att'y Gen. 62.

Power to arrest on state property. — Within the limits of their respective territorial or statutory jurisdiction, local law enforcement authorities may arrest offenders upon state property for violations of state laws, including property under the jurisdiction of the Georgia Building Authority Police. 1992 Op. Att'y Gen. No. 92-6.

Power to return prisoner from outside county. — County police under former Code 1933, § 23-1403 (see now O.C.G.A. § 36-8-5) were authorized to go from the county of appointment to another county within the limits of the state to receive a prisoner who was under arrest and detention and return such prisoner to the county of appointment, according to former Code 1933, § 27-209 (see now O.C.G.A. § 17-4-25). 1958-59 Ga. Op. Att'y Gen. 73.

Misdemeanor cases. — County police officer has the same authority as the sheriff in those cases once the defendant is arrested under a warrant charging a misdemeanor, so long as the prisoner is in the police officer's custody; if the county police officer turns the prisoner over to the sheriff without bail, it would thereafter be the responsibility of the sheriff to accept bail. 1962 Ga. Op. Att'y Gen. 63.

RESEARCH REFERENCES

Am. Jur. 2d.

70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 32 et seq.

C.J.S.

20 C.J.S., Counties, § 189.

ALR.

Degree of force that may be employed in arresting one charged with a misdemeanor, 42 A.L.R. 1200.

36-8-6. [Reserved] Abolishment of county police departments.

History.

Code 1981, § 36-8-6, enacted by Ga. L. 2020, p. 912, § 1/SB 38; repealed by operation of law, effective January 1, 2022.

Editor's notes.

A previous version of Code Section 36-8-6 pertained to inspection of and reports on roads and bridges. The former

Code section was based on Ga. L. 1909, p. 156, § 4; Civil Code 1910, § 852; Ga. L. 1914, p. 142, § 4; Code 1933, § 23-1404, and was repealed by Ga. L. 2005, p. 529, § 1/HB 557, effective May 1, 2005, and was reserved by Ga. L. 2012, p. 775, § 36/HB 942, effective July 1, 2012.

Ga. L. 2022, p. 352, § 36/HB 1428, part of an Act to revise, modernize, and correct the Code, reserved the designation of this Code section, effective May 2, 2022.

36-8-7. Rules and regulations for conduct, management, and control.

Upon the election or appointment of county police, the county governing authority shall make rules and regulations for the conduct, management, and control of such county police and shall, from time to time, enlarge, modify, or change such rules and regulations as its discretion may dictate.

History.

Ga. L. 1909, p. 156, § 5; Civil Code 1910, § 853; Ga. L. 1914, p. 142, § 5; Code 1933, § 23-1405.

RESEARCH REFERENCES

ALR.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

36-8-8. Limitation on decreasing funding; exceptions.

(a)(1) Except as provided for in paragraph (2) of this subsection, the governing authority of a county that has elected to establish a county police force pursuant to this chapter shall not decrease the annual budgetary appropriation for such police force by more than 5 percent of the previous fiscal year's appropriation for such police force.

(2)(A) Paragraph (1) of this subsection shall not apply if actual or anticipated revenues of the county for the applicable fiscal year decrease by more than 5 percent. In such event, the governing authority shall be authorized to decrease the budgetary appropriation for such police force, but in no event shall the budget of the police force be decreased by a greater percentage than the overall percentage decrease in actual or anticipated revenues of the county.

(B) Paragraph (1) of this subsection shall not apply if during the previous fiscal year the county made a one-time capital public safety facility, equipment, or software purchase or incurred a one-time legal obligation that increased the annual budgetary appropriation of such police force by more than 4 percent above the annual budgetary appropriation for such police force for the fiscal year immediately preceding the previous fiscal year and the current fiscal year.

(b)(1) Except as provided for in paragraph (2) of this subsection, the governing authority of a county that has elected to establish a county police force pursuant to this chapter shall ensure that the annual budgetary appropriations for such police force during a rolling five-year period shall not decrease by more than 5 percent during such time period.

(2) Paragraph (1) of this subsection shall not apply if actual or anticipated revenues of the county for the applicable time period decrease by more than 5 percent. In such event, the governing authority shall be authorized to decrease the budgetary appropriation for such police force, but in no event shall the budget of the police force be decreased by a greater percentage than the overall percentage decrease in actual or anticipated revenues of the county.

(c) Subsections (a) and (b) of this Code section shall not apply if:

(1) The governing authority ensures that an equal or greater level of law enforcement services will be provided to the county by either the sheriff or another local government pursuant to an intergovernmental agreement;

(2) During the applicable time period, the county is ordered by a court of competent jurisdiction to begin providing a public service at a level such county was not providing prior to the issuance of such court order necessitating county-wide budgetary adjustments; or

(3) Whenever a governing authority shall propose to adopt a police department budget which would exceed any limits in subsections (a) and (b) of this Code section, it shall adopt that budget rate at an advertised public meeting and at a time and place which is convenient to the taxpayers of the taxing jurisdiction. The governing authority shall also place an advertisement in a newspaper of general circulation serving the residents of the unit of local government and post such advertisement on the website of the governing authority, which describes the proposed percentage reduction in police services from the previous year's appropriation for police services. At least one week prior to the meeting of the governing authority at which adoption of the budget rate will be considered, the governing authority shall conduct a public hearing, at which time any persons wishing to be heard on the budget reduction may appear.

(d) This Code section shall not apply to any county police force employing less than 25 full-time or part-time certified law enforcement officers.

History.
Code 1981, § 36-8-8, enacted by Ga. L. 2021, p. 620, § 1/HB 286.

Law reviews.
For article, "HB 286: Restricting Local and Municipal Governments' Ability to

Reduce Police Department Funding," see 38 Ga. St. U.L. Rev. 201 (2021).

CHAPTER 9

COUNTY PROPERTY GENERALLY

Sec.		Sec.	
36-9-1.	Vesting in county of title under conveyances for use of county.	36-9-5.	Erection, repair, and furnishing of county buildings; storage of county documents.
36-9-2.	Control and disposal of county property generally.	36-9-6.	Courthouse rooms to be used by county officers.
36-9-2.1.	Demolition of certain county courthouses.	36-9-7.	Furnishing of supplies for county offices.
36-9-3.	Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.	36-9-8.	Protection of county property by sheriff.
		36-9-9.	Construction of county jails.
		36-9-10.	[Reserved] Inspection of county buildings, property, and records by grand jury.
36-9-4.	Maintenance of insurance on books of laws and court reports.	36-9-11.	Destruction or damaging of any county building or its appurtenances or furniture.

Cross references.
Exercise of power of eminent domain by counties for purposes of construction and operation of watershed projects, flood-control projects, and other projects, § 22-3-100 et seq.

36-9-1. Vesting in county of title under conveyances for use of county.

All deeds, conveyances, grants, or other instruments which have been or may be made to any officer or person for the use and benefit of any county shall vest in the county the title as fully as if made to the county by name.

History.
Orig. Code 1863, § 466; Code 1868, § 528; Code 1873, § 494; Code 1882, § 494; Civil Code 1895, § 347; Civil Code 1910, § 395; Code 1933, § 91-601.

JUDICIAL DECISIONS

Titling of automobiles. — Trial court properly granted summary judgment to the board of county commissioners after a wrongful death action was filed against the county arising out of a collision involving the ambulance the employee was driving on an emergency call and the decedent's vehicle; even if the ambulance was titled in the name of the board of county commissioners, the law regarded the ambulance as being titled in the name of the county and the county, not the board of county commissioners, was the proper defendant when liability was based on respondeat superior. Smith v. Bulloch County Bd. of Comm'rs, 261 Ga. App. 667, 583 S.E.2d 475, 2003 Ga. App. LEXIS 649 (2003), cert. denied, No. S03C1518, 2003 Ga. LEXIS 866 (Ga. Oct. 6, 2003).

OPINIONS OF THE ATTORNEY GENERAL

Property of county boards of education. — Former Code 1933, §§ 91-601 and 91-102 et seq. (see now O.C.G.A. §§ 36-9-1 and 50-16-1 et seq.) were not applicable to property belonging to county boards of education. 1958-59 Ga. Op. Att'y Gen. 107.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 459.

C.J.S.
20 C.J.S., Counties, § 206.

36-9-2. Control and disposal of county property generally.

The county governing authority shall have the control of all property belonging to the county and may, by order entered on its minutes, direct the disposal of any real property which may lawfully be disposed of and make and execute good and sufficient title thereof on behalf of the county.

History.
Orig. Code 1863, § 467; Code 1868, § 529; Code 1873, § 495; Code 1882, § 495; Civil Code 1895, § 348; Civil Code 1910, § 396; Code 1933, § 91-602; Ga. L. 1935, p. 110, § 1.

JUDICIAL DECISIONS

No disposal without legislative authority. — As a general proposition of law a county cannot, without legislative authority, dispose of real estate owned by the county. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666, 1947 Ga. LEXIS 589 (1947).

Power not necessarily exclusive. — This section does not vest in the ordinary (now judge of the probate court) exclusive power of sale of the county's property when the General Assembly confers such powers upon county commissioners of a particular county. Dyer v. Martin, 132 Ga. 445, 64 S.E. 475, 1909 Ga. LEXIS 321 (1909) (decided prior to revision of section by Ga. L. 1935, p. 110, § 1.).

Authority for sale. — Proper resolution, duly recorded, is the authority by which the county's title for land may be divested by deed. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666, 1947 Ga. LEXIS 589 (1947).

In the absence of a recorded order authorizing the conveyance in question, or subsequent ratification of the deed, the purported conveyance by the county did not pass the county's title for the land therein described. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666, 1947 Ga. LEXIS 589 (1947).

Failure to comply with O.C.G.A. § 36-9-2 not a bar to bona fide purchaser's title. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the county development authority, a subsequent purchaser was a bona fide purchaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347, 2014 Ga. LEXIS 101 (2014).

When order not on minutes. — When county commissioners authorize a conveyance of land brought in by the county at a tax sale, but fail to put the

order of authorization on the minutes, as required by this section, it is competent for the commissioners at a subsequent meeting of the board to ratify the deed to the purchaser from the county, and to cause the authorization to be put on the minutes. Braswell v. Palmer, 191 Ga. 262, 11 S.E.2d 889, 1940 Ga. LEXIS 629 (1940).

Tax sale not authorized. — Fact that a purported sale of county-owned property was by tax sale did not operate to negate or otherwise nullify the requirements of O.C.G.A. § 36-9-2. West v. Fulton County, 267 Ga. 456, 479 S.E.2d 722, 1997 Ga. LEXIS 16 (1997).

County commissioner is a public officer occupying a fiduciary relationship requiring the commissioner to exercise the utmost good faith, fidelity, and integrity in dealing with county property as a trustee and servant of the people, which the commissioner may not sell without legislative sanction unless the property's use shall have been abandoned by or become unserviceable to the county. If county property be sold by the commissioner, the commissioner shall obtain the most advantageous price. Timbs v. Straub, 216 Ga. 451, 117 S.E.2d 462, 1960 Ga. LEXIS 501 (1960).

County property which has become unserviceable may be sold by order of the county commissioners at private sale. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Property becomes unserviceable, within the meaning of this section, when the property cannot be beneficially or advantageously used under all circumstances for county purposes. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Denial or change of use of property. — County board of commissioners has right to deny use of any public property if the property is used in a wasteful or ineffective manner. Wheeler v. DeKalb County, 249 Ga. 678, 292 S.E.2d 855, 1982 Ga. LEXIS 902 (1982).

When public property is a building constructed from funds of a designated bond issue for a particular use, the board of commissioners may change the intended use of the building when circumstances which gave rise to the bond issue change so that the building constructed from those funds is no longer needed for that purpose, and the property's continued use for that purpose would be a waste of county resources. Wheeler v. DeKalb County, 249 Ga. 678, 292 S.E.2d 855, 1982 Ga. LEXIS 902 (1982).

Sheriff had power to modify county-owned property within exclusive use. — County sheriff had the independent authority to repaint and remark county-owned sheriff's vehicles assigned to the sheriff's exclusive use, but lacked the authority to modify portions of a county-owned building in which the sheriff's office and jail were housed, as the facility was shared with the superior, state, and magistrate courts of Clayton County, as well as the clerks of those courts, the solicitor general, and the district attorney, and hence, not under the sheriff's exclusive use. As a result, subject to compliance with O.C.G.A. § 40-8-91, summary judgment in favor of the county as to the extent of the sheriff's authority was reversed as to the former, but affirmed as to the latter. Hill v. Clayton County Bd. of Comm'rs, 283 Ga. App. 15, 640 S.E.2d 638, 2006 Ga. App. LEXIS 1489 (2006), cert. denied, No. S07C0620, 2007 Ga. LEXIS 266 (Ga. Mar. 26, 2007), cert. denied, No. S07C0622, 2007 Ga. LEXIS 269 (Ga. Mar. 26, 2007), overruled, Mayor & Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189, 2012 Ga. LEXIS 488 (2012).

Sale of undivided interest. — This section does not warrant the sale of an undivided one-fifth of a courthouse and lot in actual daily use for county purposes. Hunnicutt v. City of Atlanta, 104 Ga. 1, 30 S.E. 500, 1898 Ga. LEXIS 269 (1898) (decided prior to revision of section by Ga. L. 1935, p. 110, § 1.).

Lease for ninety-nine years. — Commissioners cannot lease county property in such manner as to put the property out of the power of the county authorities for 99 years to devote the property to the exclusive use of the county. Equity will enjoin use under such a lease. Town of Decatur v. DeKalb County, 130 Ga. 483, 61 S.E. 23, 1908 Ga. LEXIS 321 (1908) (decided prior to revision of section by Ga. L. 1935, p. 110, § 1).

Applicability to lease. — When a lease of county property ran on a month-to-month basis, giving the lessee only a usufruct with no estate passing out of the county, this section was inapplicable since there was no conveyance of county property. Overlin v. Boyd, 598 F.2d 423, 1979 U.S. App. LEXIS 13384 (5th Cir. 1979).

Nature of duty. — When a local law gives a board of commissioners exclusive jurisdiction in governing and controlling county property, the commissioners have the duty to maintain control over county property, but this duty coexists with the duty to exercise that control in the manner the commissioners deem most beneficial to the county. Smith v. Board of Comm'rs of Rds. & Revenues, 244 Ga. 133, 259 S.E.2d 74, 1979 Ga. LEXIS 1149 (1979).

Usufruct of airport. — Contract by a county granting a usufruct of an airport to a private corporation for a period of years is not a disposition of county property requiring the antecedent resolution of county authorities. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234, 1960 Ga. App. LEXIS 762 (1960).

Power of commissioners. — Those county officers who by virtue of their office have charge of the county affairs may, by proper order to be entered on their minutes, direct the disposal of and execute good and sufficient title to lands belonging to the county which are not necessary for public use. Head v. Lee, 203 Ga. 191, 45 S.E.2d 666, 1947 Ga. LEXIS 589 (1947).

Ordinary (now judge of the probate court) had power to lease directly to an individual certain realty for use in operating a filling station as it was then being and had been used for 13 years. Such a lease, having been so executed by the ordinary (now county governing authority) was not void on the ground that the lease was not authorized by law, or that the interest thereby created extended beyond the term of the ordinary (now judge of the probate court) then in office, or that the lease amounted to a commercial transaction in which the county was not authorized by law to engage. Black v. Forsyth County, 193 Ga. 571, 19 S.E.2d 297, 1942 Ga. LEXIS 440 (1942).

Signature on deed. — If the county commissioners authorize the sale of county land, the deed may lawfully be signed by the chair in the name of the board. Braswell v. Palmer, 191 Ga. 262, 11 S.E.2d 889, 1940 Ga. LEXIS 629 (1940).

Statute of limitation. — As the object of O.C.G.A. § 36-9-2 is to give information to the public, the statute of limitation in O.C.G.A. § 9-3-22 was inapplicable because the action arose from a claim that a public officer had failed to perform the officer's official duty. Dade County v. Miami Land Co., 253 Ga. 776, 325 S.E.2d 750, 1985 Ga. LEXIS 590 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Ability of county commissioners to lease county property. — See 1977 Op. Att'y Gen. No. U77-3.

Permit to build sewer across street. — County commissioners may grant to a private corporation a permit to construct a sewer across a street dedicated to the county. 1970 Op. Att'y Gen. No. U70-36.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 472 et seq.

C.J.S.

20 C.J.S., Counties, § 210 et seq.

ALR.

Removal or demolition of civil war and confederate monuments and statues, 80 A.L.R.7th 7.

36-9-2.1. Demolition of certain county courthouses.

(a) Notwithstanding the provisions of Code Section 36-9-2, a county governing authority shall not have the authority to demolish or to provide for the demolition of a county courthouse which was constructed prior to January 1, 1905, and which is listed in the National Register of Historic Places unless the question of whether or not to demolish the courthouse is submitted to the qualified voters of the county for approval or rejection in a referendum called for such purpose.

(b) The ballot in the referendum required by subsection (a) of this Code section shall have written or printed thereon the words:

"( ) YES Shall the demolition of the (Name of County)
( ) NO courthouse, as proposed by the governing authority of (Name of County), be approved?"

(c) A referendum held pursuant to this Code section shall be conducted only in conjunction with a general primary or general election and shall be conducted in accordance with the provisions of Chapter 2 of Title 21, the "Georgia Election Code."

History.
Code 1981, § 36-9-2.1, enacted by Ga. L. 1990, p. 133, § 1.

36-9-3. Sale or disposition of county real property generally; right of certain counties to make private sale; right of county to negotiate and consummate private sales of recreational set-asides.

(a)(1) Except as otherwise provided in this Code section, the governing authority of any county disposing of any real property of such county shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such county shall have the right to reject any and all bids or cancel any proposed sale. The governing authority of the county shall cause notice to be published once in the official legal organ of the county or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a legal description of the property to be sold. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale.

Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened.

(2)(A) Counties may retain the services of a Georgia licensed real estate broker to assist in the disposition of surplus real property; said brokerage services shall be procured by request for proposals in response to an issued solicitation. The proposal shall include the minimum stated broker qualifications and experience.

(B) In the event a county does retain the services of a qualified and experienced Georgia licensed real estate broker to assist in the disposition of surplus real property, the broker so retained shall:

(i) Represent the county and comply with the requirements of this Code section, including, but not limited to, issuing a call or request for sealed bids from the public and causing notice to be published once in the official legal organ of the county not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a legal description of the real property to be sold. The notice shall also contain a request for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids;

(ii) Actively market the disposition of the real property;

(iii) Comply with all federal, state, and local laws;

(iv) Create a website which posts the request for sealed bids; questions submitted by interested parties; responses to submitted questions as prepared by the county; dates the real property will be made available for public inspection; public information regarding the property; and other related communication and marketing information;

(v) Immediately forward the sealed bids to the governing authority of the county, which shall open such bids at the specified date, time, and place;

(vi) Only serve in the capacity of a broker engaged by a seller as provided for in Code Section 10-6A-5. A real estate broker representing a county shall be prohibited from working with or aiding a prospective buyer in connection with the disposition of real property for which the real estate broker was contracted; and

(vii) Agree to accept the agreed upon sales commission based on the highest responsive bid received as so adjudicated by the governing authority of the county, in its sole discretion.

(C) In the event the county decides to reject all bids and not award the sale to any of the bidders, the broker shall agree to accept the minimum payment in lieu of the commission as so agreed upon by the parties in an engagement contract.

(3) This subsection shall not apply to:

(A) Redemption of property held by any county under a tax deed; the granting of easements and rights of way; the sale, conveyance, or transfer of road rights of way; the sale, transfer, or conveyance to any other body politic; and any sale, transfer, or conveyance to a nonprofit corporation in order to effectuate a lease-purchase transaction pursuant to Code Section 36-60-13;

(B) Any option to sell or dispose of any real property belonging to any county of this state if that option was granted by said county prior to March 17, 1959;

(C) The sale of any real property belonging to any county in this state where the proper governing authority of the county advertised the property for ten consecutive days in the newspaper in which the sheriff's advertisements for the county are published, and where the sale was awarded thereafter to the highest and best bidder, in accordance with the terms of the advertisement, and an option given in accordance with the sale for the purchaser who had deposited a part of the purchase price to pay the balance within 365 days from the date of the execution of the option, where the sale was awarded and the option granted prior to May 1, 1961; or

(D) The exchange of real property belonging to any county in this state for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the county; provided, however, that, within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the county once a week for four weeks. The value of both the property belonging to the county and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said county.

(b) In any county of the state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, where the governing authority thereof has established or constituted an advisory commission, board, or authority to study and

make recommendations for the future development, use, and sale of county owned property, the governing authority of such county shall have the right, with the advice and approval of such commission, board, or authority, to negotiate and consummate a private sale of any county owned property, notwithstanding the provisions of subsection (a) of this Code section. Where there is no commission, board, or authority established in such county for the particular class or type of property, the governing authority of such county shall nevertheless have the right to negotiate a private sale of any county owned property with the advice and approval of the grand jury.

(c)(1) Any county governing authority and the governing authority of any consolidated government may sell, grant, lease, rent, convey, or transfer any real property owned by the county or consolidated government, including real property dedicated or used as a park or recreation area, to the local board of education or other public educational institution for use as a site for a public school or other educational purpose. Any county governing authority and the governing authority of any consolidated government may sell, grant, convey, or transfer to the local board of education or other public educational institution licenses, easements, or lesser interests in such real property owned by the county or the consolidated government, including real property dedicated or used as a park or recreation area for such purposes. A county governing authority and the governing authority of any consolidated government are authorized to exchange real property, including real property dedicated or used as a park or recreation area, with the local board of education or other public educational institution for other real property for such purposes. Such a sale, grant, lease, rental, conveyance, or transfer may be made by negotiation between the governing authority and local board of education or other public educational institution without advertisement, bidding, auction, notice, publication, or referendum. This subsection shall not be construed to abrogate or impair any reverter provision or other condition of a sale, grant, conveyance, or transfer of real property to a county governing authority or governing authority of a consolidated government.

(2) Prior to executing any sale, grant, lease, rental, conveyance, or transfer pursuant to the provisions of paragraph (1) of this subsection, the governing authority proposing such action shall hold a public hearing in the immediate vicinity of the affected property. Such hearing shall be advertised by posting conspicuous notice at the place of the hearing and at the affected property. The governing authority shall have at least one representative at the public hearing to receive the comments and concerns expressed and to report such comments and concerns to the governing authority.

(3) After the public hearing provided in paragraph (2) of this

subsection but before the action proposed under paragraph (1) of this subsection, the governing authority proposing the action shall hold at least one meeting to discuss the transaction in light of the comments and concerns expressed at the public hearing.

(d) Notwithstanding subsection (a) of this Code section, where the governing authority has, prior to March 1, 1987, approved and recommended the sale or disposal of county owned real property containing an area of less than 20,000 square feet, the governing authority shall have the right to negotiate and consummate a private sale of such property, provided such sale is for at least the fair market value of the property. Notice of the intention of the county governing authority to make a private sale shall be published once a week for four weeks in the official organ of the county.

(e) Notwithstanding subsection (a) of this Code section, where the governing authority has prescribed a system of recreational set-asides where developers are required to set aside a certain amount of property in each new subdivision for recreational purposes and where those recreational set-asides have been conveyed to the county governing authority at no cost to the county, the county governing authority shall have the right to negotiate and consummate a private sale of such property to a homeowners' association representing the majority of property owners in the subdivision where the recreational set-aside property is located, provided that the use of the property shall be for recreational purposes for a period of not less than five years from the date of the sale. Notice of intention of the county governing authority to make a private sale shall be published once a week for four weeks in the official organ of the county.

(f) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any county determines that the establishment of a facility of the state or one of its authorities or other instrumentalities would be of benefit to the county, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such county may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(g)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any

other law to the contrary, whenever any county has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such county thereafter determines that all of the property is no longer needed because of a decision by the county to not construct the lake, that county is authorized to dispose of such property or interest therein as provided in this subsection.

(3)(A) In disposing of property, as authorized under this subsection, the county shall notify the owner of such property at the time of its acquisition or, if the tract from which the county acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the county acquired its property. Any notice required pursuant to this subparagraph shall be in writing and delivered to the appropriate owner or by publication if such owner's address is unknown. Such owner shall have the right to acquire such property, as provided in this subsection.

(B) If the original owner of the property at the time of the county's acquisition of such property is deceased, the original owner's spouse, child, or grandchild shall have the first opportunity to purchase the property which the county is disposing of pursuant to this subsection; provided, however, that the owner's child shall have such right only if the owner's spouse is deceased or has waived his or her right to purchase the property, and the owner's grandchild shall have such right only if both the owner's spouse and child either are deceased or have waived their right to buy the property. If the original owner's spouse is deceased and the original owner had more than one child or grandchild and such children or grandchildren have a right to purchase the property pursuant to this paragraph, then such children or grandchildren shall be entitled to purchase the property as tenants in common. The county shall place a notice of a sale proposed pursuant to this subparagraph once in the county legal organ. If after 45 days from the date of such publication the original owner's spouse, child, or grandchild has not come forward, or if the tract from which the county acquired its property has been subsequently sold, the county shall notify the owner of abutting land holding title through the owner from whom the county acquired its property as provided in subparagraph (A) of this paragraph. Publication pursuant to this subparagraph, if necessary, shall be in a newspaper of general circulation in the county where the property is located.

(4) When an entire parcel acquired by the county or any interest therein is being disposed of, it may be acquired under the right

created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the county decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the county shall proceed to sell such property as provided in subsection (a) of this Code section. The county shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(h) Notwithstanding any provision of this Code section or of any other law, ordinance, or resolution to the contrary, a county governing authority is authorized to sell and convey parcels of small or narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances or land use plans, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(i)(1) As used in this subsection, the terms "conservation easement" and "holder" shall have the meanings as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law, ordinance, or resolution to the contrary, whenever the governing authority of any county determines that the establishment of a conservation easement would be of benefit to the county and to its citizens by way of retaining or protecting natural, scenic, or open-space values of real property; assuring the availability of the property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of the property, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement shall not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or

interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain.

History.

Code 1933, § 91-804.1, enacted by Ga. L. 1959, p. 325, § 1; Ga. L. 1960, p. 1124, § 1; Ga. L. 1961, p. 195, § 1; Ga. L. 1962, p. 65, § 1; Ga. L. 1965, p. 239, § 1; Ga. L. 1971, p. 678, § 1; Ga. L. 1972, p. 560, § 1; Ga. L. 1981, p. 539, § 1; Ga. L. 1982, p. 2107, § 33; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 1100, § 1; Ga. L. 1988, p. 676, § 1; Ga. L. 1990, p. 877, § 1; Ga. L. 1992, p. 1348, § 1; Ga. L. 1992, p. 1352, §§ 1, 2; Ga. L. 1994, p. 237, § 2; Ga. L. 1998, p. 1036, § 1; Ga. L. 2010, p. 746, § 1/HB 703; Ga. L. 2010, p. 1078, § 1/SB 390; Ga. L. 2018, p. 255, § 1/SB 397; Ga. L. 2025, p. 1029, § 36(3)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted a colon following "posts" in division (a)(2)(B)(iv); substituted "however, that," for "however, that" in subparagraph (a)(3)(D); and substituted "however, that" for "however," in subparagraph (g)(3)(B).

Cross references.

Disposition of property no longer needed for public road purposes, see § 32-7-1 et seq.

Code Commission notes.

Ga. L. 1992, p. 1348, § 1, and Ga. L. 1992, p. 1352, § 2, both added a new subsection (g). Pursuant to Code Section 28-9-5, in 1992, the subsection as added by Ga. L. 1992, p. 1352, § 2 was redesignated as subsection (h).

JUDICIAL DECISIONS

Application. — Trial court properly granted summary judgment to a county and purchaser because the prior owner of the property condemned by the county never had a binding contract with the county to re-purchase a remnant, unused portion and there was no conflict between O.C.G.A. §§ 32-7-3, 32-7-4, and 36-9-3(h) and the county's code amendment. Hubert Props., LLP v. Cobb County, 318 Ga. App. 321, 733 S.E.2d 373, 2012 Ga. App. LEXIS 847 (2012), cert. denied, No. S13C0423, 2013 Ga. LEXIS 176 (Ga. Feb. 18, 2013).

Heirs unable to repurchase because bona fide purchaser had purchased. — Although a county failed to comply with O.C.G.A. § 36-9-2 by recording a transfer in the minutes when the county conveyed the county's interest in property, which the county had formerly acquired by eminent domain, to the county development authority, a subsequent purchaser was a bona fide purchaser without notice of this irregularity under O.C.G.A. § 23-1-20, so that the county's title was superior to that of the condemnee's heirs, who sought to repurchase the property under O.C.G.A. § 36-9-3(g)(3)(B). Darling Int'l, Inc. v. Carter, 294 Ga. 455, 754 S.E.2d 347, 2014 Ga. LEXIS 101 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Effect of local constitutional amendment. — A local amendment which allows resale of county real estate upon such terms and conditions as the governing authority of that county shall deem proper supersedes this section. 1976 Op. Att'y Gen. No. U76-52.

County need not follow procedures set forth in this section before conveying unserviceable county property to body corporate and politic. 1980 Op. Att'y Gen. No. U80-43.

Lease of property for school purposes. — Counties and school districts have authority under subsection (c) of O.C.G.A. § 36-9-3 and O.C.G.A.

§ 20-2-520 to enter into intergovernmental contracts in which the county leases real property to the school board for use as a site for a public school or other educational purpose. 1998 Op. Att'y Gen. No. 98-13.

Applicability to board of education. — This section has no application to sales of property, the title to which is vested in a county board of education. 1958-59 Ga. Op. Att'y Gen. 107.

Sale of property by county boards of education. — County board of education may convey property no longer needed for school purposes by a private sale. 1982 Op. Att'y Gen. No. 82-31.

Since O.C.G.A. § 20-2-520 vests title to school property in the county boards of education, as opposed to the counties themselves, public sale requirements of O.C.G.A. § 36-9-3, which apply only to county property, do not govern disposition of such property. 1982 Op. Att'y Gen. No. 82-31.

RESEARCH REFERENCES

ALR.

Power of governing body of county to dispose of county real estate in absence of specific statutory authority, 21 A.L.R.2d 722.

36-9-4. Maintenance of insurance on books of laws and court reports.

The officer having charge of the financial affairs of each county shall keep insured, at a fair valuation against loss by fire, all volumes of the public laws and decisions of the Supreme Court and the Court of Appeals which have been furnished to the judge of the probate court and the clerk of the superior court of his county. Such policies of insurance shall be in the name of the county. The premiums therefor shall be paid out of the funds of the county. In the event of any loss or damage by fire, the county governing authority shall proceed to collect the amount of loss on the policy; when so collected, the proceeds thereof shall be used in supplying new books of the kind lost or injured, insofar as the proceeds may be sufficient to do so.

History.

Ga. L. 1882-83, p. 132, §§ 1, 2; Civil Code 1895, §§ 349, 350; Civil Code 1910, §§ 397, 398; Code 1933, §§ 91-603, 91-604.

Cross references.

Property insurance, § 33-32-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 471.

36-9-5. Erection, repair, and furnishing of county buildings; storage of county documents.

(a) It is the duty of the county governing authorities to erect or repair, when necessary, their respective courthouses and jails and all

other necessary county buildings and to furnish each with all the furniture necessary for the different rooms, offices, or cells.

(b) The county buildings shall be erected and kept in order and repaired at the expense of the county under the direction of the county governing authority which is authorized to make all necessary contracts for that purpose.

(c)(1) As used in this subsection, the term "county document" means:

(A) Records documenting property rights, deeds, and wills; and

(B) Tax records documenting ownership of property and the latest valuations of property.

(2) A county officer, the county board of tax assessors, or any other officer of the county having the responsibility or custody of any county documents set forth in paragraph (1) of this subsection shall, at night or when the county office is closed, keep such county documents:

(A) In a fireproof safe or vault;

(B) In fireproof cabinets;

(C) On microfilm, pursuant to the standards set forth in Article 6 of Chapter 18 of Title 50, only if a security copy has been sent to the Georgia State Archives;

(D) At a location not more than 100 miles from the county in a data storage and retrieval facility approved by the county governing authority within the State of Georgia which is in a building or facility which is in compliance with the fire safety standards applicable to archives and record centers as established by the National Fire Protection Association in Standard No. 232, as such standard was adopted on August 11, 1995. If documents are stored outside the county where the documents were created, the government entity shall bear all costs of transporting such documents back to the county of origin for purposes of responding to requests under Article 4 of Chapter 18 of Title 50, relating to inspections of public records. Such documents shall be made available to the requester; or

(E) On any other electronic imaging medium that facilitates retrieval of such documents via electronic means, provided that such medium enables conversion of such documents to future electronic imaging technologies and provided that such custodian creates a daily computer-based backup of all archival documents stored on such medium.

(3) It is the duty of the county governing authorities to furnish the necessary fireproof equipment, microfilming equipment and supplies, or some other safe facility for such county documents.

(4) On and after January 1, 1985, county documents shall be stored only in accordance with the provisions of this subsection. The local fire marshal in each county shall monitor the various county offices in the county to assure compliance with the provisions of this subsection.

History.

Laws 1796, Cobb's 1851 Digest, p. 182.; Code 1863, §§ 468, 469; Code 1868, §§ 530, 531; Code 1873, §§ 496, 497; Code 1882, §§ 496, 497; Civil Code 1895, §§ 351, 352; Civil Code 1910, §§ 399, 400; Code 1933, §§ 91-701, 91-702; Ga. L. 1983, p. 653, § 2; Ga. L. 1997, p. 925, § 3; Ga. L. 2012, p. 173, § 1-32/HB 665.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Authority exclusively granted to county. — Authority granted under O.C.G.A. § 36-9-5(a) is given exclusively to the county and is not shared with the city. Therefore, the county does not need the city's approval before condemning property within the city limits when, as here, the condemnation is reasonably necessary to provide a public service. Brunswick Landing, LLC v. Glynn County, 301 Ga. App. 288, 687 S.E.2d 271, 2009 Ga. App. LEXIS 1374 (2009), cert. denied, No. S10C0558, 2010 Ga. LEXIS 246 (Ga. Mar. 15, 2010).

Power of commissioners. — County commissioners with power to levy and tax also have the power to act. Dunn v. O'Neill, 144 Ga. 823, 88 S.E. 190, 1916 Ga. LEXIS 130 (1916).

Authority to levy tax. — Ordinary (now judge of the probate court) had the power to levy an extra tax to carry into effect the provisions of this section, without the recommendation of the grand jury, but the order levying such extra tax should clearly and distinctly state the object and purpose for which the tax is levied. Barlow v. Ordinary of Sumter County, 47 Ga. 639, 1873 Ga. LEXIS 188 (1873).

Discretion of county officers. — Necessities of the various counties in regard to these matters are to be determined by the peculiar conditions surrounding each county; and, therefore, the sound judgment of the county authorities in each case must be relied upon to provide the public with proper buildings on the one hand, and to protect the taxpayer from useless and unnecessary burdens in regard to such matters on the other. Commissioners of Habersham County v. Porter Mfg. Co., 103 Ga. 613, 30 S.E. 547, 1898 Ga. LEXIS 213 (1898).

Authority to build courthouse. — Local Act giving board of commissioners jurisdiction over county matters authorizes the board of commissioners to contract for building of county courthouse. Matthews v. Hussey, 148 Ga. 526, 97 S.E. 437, 1918 Ga. LEXIS 424 (1918).

Officers having jurisdiction of county affairs are not deprived of all discretion as to the manner of providing a courthouse or the character of the building or the building's equipment. On that subject the county authorities have broad discretion, which should not be disturbed by the courts except cautiously, nor unless it is clear and manifest that the county authorities are abusing the discretion vested in the authorities by law. Manry v. Gleaton, 164 Ga. 402, 138 S.E. 777, 1927 Ga. LEXIS 203 (1927); Cowart v. Manry, 166 Ga. 612, 144 S.E. 21, 1928 Ga. LEXIS 360 (1928).

Power to donate to chamber of commerce. — When the applicable revenue statutes were construed together with Ga. Const. 1877, Art. VII, Sec. XVI, Paras. I and II and Art. VII, Sec. VI, Para. II and Art. IX, Sec. V, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. VI and Art. IX, Sec. IV), it was held that the statutes did not confer power or authority

on a county board of commissioners to donate county funds derived from taxation or from other sources to a chamber of commerce, freight bureau, or convention and tourist bureau even if such donations were intended to accomplish a lawful purpose. Atlanta Chamber of Commerce v. McRae, 174 Ga. 590, 163 S.E. 701, 1932 Ga. LEXIS 97 (1932).

Sheriff had power to modify county-owned property within exclusive use. — County sheriff had the independent authority to repaint and remark county-owned sheriff's vehicles assigned to the sheriff's exclusive use, but lacked the authority to modify portions of a county-owned building in which the sheriff's office and jail were housed, as the facility was shared with the superior, state, and magistrate courts of Clayton County, as well as the clerks of those courts, the solicitor general, and the district attorney, and hence, not under the sheriff's exclusive use. As a result, subject to compliance with O.C.G.A. § 40-8-91, summary judgment in favor of the county as to the extent of the sheriff's authority was reversed as to the former, but affirmed as to the latter. Hill v. Clayton County Bd. of Comm'rs, 283 Ga. App. 15, 640 S.E.2d 638, 2006 Ga. App. LEXIS 1489 (2006), cert. denied, No. S07C0620, 2007 Ga. LEXIS 266 (Ga. Mar. 26, 2007), cert. denied, No. S07C0622, 2007 Ga. LEXIS 269 (Ga. Mar. 26, 2007), overruled, Mayor & Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189, 2012 Ga. LEXIS 488 (2012).

County was authorized to exercise the county's right of eminent domain in connection with the expansion of a detention center because the county had jurisdiction over the maintenance of jails in the county under O.C.G.A. § 36-9-5(a), the operation of a jail constituted a public purpose pursuant to Ga. Const. 1983, Art. IX, Sec. II, Para. V, and the property owner did not identify any general law limiting the right of the county to exercise the county's power of eminent domain. Brunswick Landing, LLC v. Glynn County, 301 Ga. App. 288, 687 S.E.2d 271, 2009 Ga. App. LEXIS 1374 (2009), cert. denied, No. S10C0558, 2010 Ga. LEXIS 246 (Ga. Mar. 15, 2010).

OPINIONS OF THE ATTORNEY GENERAL

Judges' and clerks' offices at courthouse. — Judges of the probate courts and clerks of the superior courts, being constitutional county officers, have a right to maintain their offices in the county courthouse, unless special circumstances make it impractical for judges and clerks to be located there. 1978 Op. Att'y Gen. No. 78-15.

Office of county school superintendent is not required to be located in county courthouse. 1965-66 Op. Att'y Gen. No. 66-31.

Storage of records at home. — It is not proper for a county tax commissioner to store tax records in the commissioner's home. 1975 Op. Att'y Gen. No. U75-75.

Unauthorized poll. — In the absence of any statutory authority, the board of commissioners would not be authorized to expend county funds to conduct an election in the nature of a "straw vote" or public opinion poll to determine whether to construct a new county building. 1968 Op. Att'y Gen. No. 68-70.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 466 et seq.

C.J.S.

20 C.J.S., Counties, § 208.

ALR.

Applicability of municipal building regulation to state or county buildings, 31 A.L.R. 450.

36-9-6. Courthouse rooms to be used by county officers.

The county governing authority shall designate the rooms in the courthouse to be occupied by each of the county officers and enter the same on its minutes, which it may change from time to time as convenience may require.

History.
Orig. Code 1863, § 470; Code 1868, § 532; Code 1873, § 498; Code 1882, § 498; Civil Code 1895, § 353; Civil Code 1910, § 401; Code 1933, § 91-703.

JUDICIAL DECISIONS

Public access. — Courthouse is a public building, and as a matter of course the public does not require any permission to enter therein at suitable times and under reasonable regulations. All persons must be allowed equal privileges, both as to access to documents and as to reasonable space within which to transact business incident to the examination of the public records. Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620, 1931 Ga. LEXIS 348 (1931).

The expression "county officers," as used in this section, refers to those officers who are such in the strict sense of the term - that is, those who are constitutional county officers; and the officers are such, under the provisions of the Constitution, as shall be elected under Ga. Const. 1877, Art. XI, Sec. II, Para. I (see now Ga. Const. 1983, Art. IX, Sec. I, Para. III). It does not apply to a city court solicitor. Graham v. Merritt, 165 Ga. 489, 141 S.E. 298, 1928 Ga. LEXIS 16 (1928).

Justice of the peace (now magistrate) elected by the people is not a "county officer" within the meaning of this section, and therefore is not, as a matter of law or right, entitled to have a room in the courthouse for use as an office or place of holding court. McDonald v. Marshall, 185 Ga. 438, 195 S.E. 571, 1938 Ga. LEXIS 466 (1938).

OPINIONS OF THE ATTORNEY GENERAL

Judges' and clerks' offices at courthouse. — Judges of the probate courts and clerks of the superior courts, being constitutional county officers, have a right to maintain their offices in the county courthouse, unless special circumstances make it impractical for the judges and clerks to be located there. 1978 Op. Att'y Gen. No. 78-15.

36-9-7. Furnishing of supplies for county offices.

It shall be the duty of the county governing authority to furnish fuel, lights, furniture, stationery, records, and office supplies in general for the different county offices of the county, at the expense of the county, provided that this Code section shall apply only to the offices of the officers in the courthouse in the county.

History.
Ga. L. 1901, p. 62, § 1; Civil Code 1910, § 402; Code 1933, § 91-704.

JUDICIAL DECISIONS

County officer having office in courthouse is entitled to have all office supplies and equipment reasonably necessary to maintain an office in a modern up-to-date manner. Floyd County v. Graham, 24 Ga. App. 294, 100 S.E. 728, 1919 Ga. App. LEXIS 581 (1919).

Telephone included. — Phrase "office supplies in general" is broad enough to include telephone. Floyd County v. Graham, 24 Ga. App. 294, 100 S.E. 728, 1919 Ga. App. LEXIS 581 (1919).

OPINIONS OF THE ATTORNEY GENERAL

County officers generally. — County officer having an office in the courthouse is entitled to have all office supplies and equipment reasonably necessary to maintain an office in a modern up-to-date manner, corresponding with officers of similar character responsible for a like amount of work. 1958-59 Ga. Op. Att'y Gen. 39.

County governing authority is required to furnish county officials with supplies for their offices. 1960-61 Ga. Op. Att'y Gen. 68.

Board of education. — It is the responsibility of the county to furnish the offices of the county board of education so long as those officers remain in the courthouse. 1963-65 Ga. Op. Att'y Gen. 492.

School superintendent. — When a county has provided the county's school superintendent with an office in the county courthouse, the county is required to furnish and equip such office. 1963-65 Ga. Op. Att'y Gen. 669.

Jail. — County is responsible for keeping and cleaning the jail and for paying for the labor and materials used in such maintenance. 1967 Op. Att'y Gen. No. 67-261.

Costs of forms provided. — County commissioners must bear the cost of printed forms used in recording mortgages. 1948-49 Ga. Op. Att'y Gen. 39.

Remedy of mandamus. — Proper procedure for a refusal to comply with this section would be by writ of mandamus. 1958-59 Ga. Op. Att'y Gen. 39.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 247.

36-9-8. Protection of county property by sheriff.

The public grounds and other county property are placed in the keeping of the sheriff of the county, subject to the order of the county governing authority; and it is his or her duty to preserve them from injury or waste and to prevent intrusions upon them.

History.
Orig. Code 1863, § 471; Code 1868, § 533; Code 1873, § 499; Code 1882, § 499; Civil Code 1895, § 354; Civil Code 1910, § 403; Code 1933, § 91-705; Ga. L. 2006, p. 560, § 2/SB 462.

36-9-9. Construction of county jails.

The county jails hereafter constructed shall be of sufficient size and strength to contain and keep securely the prisoners who may be confined therein and shall contain at least two apartments, one for

males and one for females, which are properly ventilated so as to secure the health of those confined therein.

History.
Orig. Code 1863, § 473; Code 1868, § 535; Code 1873, § 501; Code 1882, § 501; Civil Code 1895, § 355; Civil Code 1910, § 404; Code 1933, § 91-706.

Cross references.
Jails generally, § 42-4-1 et seq.
State and county correctional institutions generally, § 42-5-1 et seq.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, §§ 255, 260.

36-9-10. [Reserved] Inspection of county buildings, property, and records by grand jury.

History.
Ga. L. 1985, p. 1053, § 2; repealed by Ga. L. 1994, p. 607, § 12, effective July 1, 1994.

Editor's notes.
Ga. L. 1994, p. 607, § 12 repealed and reserved this Code section, effective July 1, 1994.

36-9-11. Destruction or damaging of any county building or its appurtenances or furniture.

Any person who designedly destroys, injures, or defaces any public building or its appurtenances or furniture or uses the same for an indecent purpose shall be liable for the damages and shall be guilty of a misdemeanor.

History.
Orig. Code 1863, § 472; Code 1868, § 534; Code 1873, § 500; Code 1882, § 500; Civil Code 1895, § 358; Penal Code 1895, § 725; Civil Code 1910, § 407; Penal Code 1910, § 777; Code 1933, §§ 91-707, 91-9903.

Cross references.
Criminal penalty for destroying, damaging, or otherwise affecting government property, § 16-7-24.

JUDICIAL DECISIONS

Applicability to town jail. — This section applies to all holdings owned by a state or the state's subdivisions, including a town jail. Shepherd v. State, 16 Ga. App. 248, 85 S.E. 83, 1915 Ga. App. LEXIS 563 (1915).

Urinating on courthouse door-facing a misdemeanor. — Entering a courthouse and urinating against the door-facing therein is a misdemeanor, whether as a result thereof the building is injured or defaced or not. Smith v. State, 110 Ga. 292, 35 S.E. 166, 1900 Ga. LEXIS 359 (1900).

RESEARCH REFERENCES

Am. Jur. 2d.

52 Am. Jur. 2d, Malicious Mischief and Related Offenses, §§ 1 et seq., 24.

C.J.S.

54 C.J.S., Malicious or Criminal Mischief or Damage to Property, § 1 et seq.

CHAPTER 10

PUBLIC WORKS CONTRACTS

Sec.
36-10-1. Contracts to be in writing and entered on minutes.
36-10-2. [Reserved] Letting of contracts for public works.
36-10-2.1. Letting by counties with population of 800,000 or more.
36-10-2.2. Letting by certain counties with population of more than 150,000.
36-10-3 through 36-10-5. [Repealed].

Cross references.

Power of counties to contract for public road purposes, § 32-4-60 et seq.

Law reviews.

For note, "The Legal Nature of Public Purpose Authorities: Governmental, Private, or Neither," see 8 Ga. L. Rev. 680 (1974).

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

RESEARCH REFERENCES

ALR.

Applicability of state statutes or municipal regulations to contracts for performance of work on land owned or leased by the federal government, 91 A.L.R. 779; 115 A.L.R. 371; 127 A.L.R. 827.

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision, 56 A.L.R.4th 1042.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 A.L.R.4th 93.

What are "prevailing wages," or the like, for purposes of state statute requiring payment of prevailing wages on public works projects, 7 A.L.R.5th 400.

Employers subject to state statutes requiring payment of prevailing wages on public works projects, 7 A.L.R.5th 444.

What projects involve work subject to state statutes requiring payment of prevailing wages on public works projects, 10 A.L.R.5th 337.

Employees' private right of action to enforce state statute requiring payment of prevailing wages on public works projects, 10 A.L.R.5th 360.

36-10-1. Contracts to be in writing and entered on minutes.

All contracts entered into by the county governing authority with other persons in behalf of the county shall be in writing and entered on its minutes.

History.

Orig. Code 1863, § 465; Code 1868, § 527; Code 1873, § 493; Code 1882, § 493; Civil Code 1895, § 343; Civil Code 1910, § 386; Code 1933, § 23-1701.

Law reviews.

For article surveying important general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965).

For article surveying 1979 developments in Georgia contract law, see 31 Mercer L. Rev. 27 (1979).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For article surveying Georgia cases in the area of county contracts from June 1979 through May 1980, see 32 Mercer L. Rev. 283 (1980).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

JUDICIAL DECISIONS

Analysis

General Consideration
Enforceability of Contracts
Entry upon Minutes
Types of Contracts
Procedure

General Consideration

Policy. — This section is designed to keep the public's business open to inspection. Thus, no one can seriously contend that a party has entered into a legal contract with county officers and is entitled to the benefits of a contract, unless there has been a full compliance with the requirements of this section. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775, 1939 Ga. LEXIS 696 (1939).

Purpose. — Purpose and effect of this section was to furnish a defense for the county against the claim of any contractor with the county who might enter into a contract with the county without compliance with the condition imposed by this section. Ward v. State Hwy. Bd., 172 Ga. 414, 157 S.E. 328, 1931 Ga. LEXIS 108 (1931).

Not applicable to municipality. — Requirement of O.C.G.A. § 36-10-1 is not applicable to a municipality. City of Powder Springs v. WMM Properties, Inc., 253 Ga. 753, 325 S.E.2d 155, 1985 Ga. LEXIS 574 (1985).

For construction of section as against Act creating county public school system. — See County Bd. of Educ. v. Young, 187 Ga. 644, 1 S.E.2d 739, 1939 Ga. LEXIS 447 (1939).

Oral contracts on behalf of a county have repeatedly been held to be void. City of Warrenton v. Johnson, 235 Ga. 665, 221 S.E.2d 429, 1975 Ga. LEXIS 962 (1975).

An oral agreement is unenforceable, even though the agreement is embodied or recited in a resolution adopted by the county commissioners and entered on the minutes. Murray County v. Pickering, 42 Ga. App. 739, 157 S.E. 343, 1931 Ga. App. LEXIS 124 (1931).

Subsequent oral modification. — Subsequent modification to a contract with a county may not be oral even though the contract leaves the general purpose and effect of the subject matter of the contract intact. Lester Witte & Co. v. Rabun County, 245 Ga. 382, 265 S.E.2d 4, 1980 Ga. LEXIS 805 (1980).

Requirement of entry on minutes not satisfied. — Entry on the minutes of a county board of commissioners concerning preparation of supplemental indexes to the public records of the county does not meet the requirement of this section. Fulton County v. Holland, 71 Ga. App. 455, 31 S.E.2d 202, 1944 Ga. App. LEXIS 132 (1944).

Attempted delegation of contracting power illegal. — Authorization for a county employee to purchase a dumptruck was an attempted delegation of the authority of the commission which was illegal since only the board would have the authority to

General Consideration (Cont'd)

make such purchase contract. Floyd v. Thomas, 211 Ga. 656, 87 S.E.2d 846, 1955 Ga. LEXIS 417 (1955).

Grounds for injunction. — When the petition alleges that the board of commissioners illegally entered into a contract for the purchase of certain automotive equipment by authorizing a county employee to purchase a certain type dumptruck without stating from whom it was to be purchased and at what price, and prays that the defendants be restrained and enjoined from paying for the equipment purchased, it shows a good cause of action for the relief sought, and the court did not err in overruling the general demurrer (now motion to dismiss) thereto. Floyd v. Thomas, 211 Ga. 656, 87 S.E.2d 846, 1955 Ga. LEXIS 417 (1955).

Use of word "chairman" and signatures of board members. — When contract was signed for and on behalf of county by the board's chairman, in accordance with the board's directive, it was not necessary, as urged, for the word "chairman" to follow the signature, or for all of the members of the board to sign the contract. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Presumption of warrants' validity. — Contrary not being shown, it will be presumed that county warrants when issued are based upon a valid contract duly recorded as provided in this section. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880, 1937 Ga. LEXIS 661 (1937).

Enforceability of Contracts

Mandate of this law is absolute and applicable to each and every contract made and executed on behalf of a county; and to be valid and enforceable every contract must conform to these essential requirements. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775, 1939 Ga. LEXIS 696 (1939).

Nonconforming contracts unenforceable. — If a contract with a county is not in writing, the contract is not enforceable. Killian v. Cherokee County, 169 Ga. 313, 150 S.E. 158, 1929 Ga. LEXIS 348 (1929).

If contracts are not in writing and not entered on the minutes, the contracts are not enforceable. Griffin v. Maddox, 181 Ga. 492, 182 S.E. 847, 1935 Ga. LEXIS 137 (1935); Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952); Ferguson v. Randolph County, 211 Ga. 103, 84 S.E.2d 70, 1954 Ga. LEXIS 508 (1954); Lasky v. Fulton County, 145 Ga. App. 120, 243 S.E.2d 330, 1978 Ga. App. LEXIS 1884 (1978).

Any negotiations or oral agreements, or even written agreements that have not been entered on the minutes, fall short of being valid contracts conferring any right upon a party, and will not constitute a basis for an action against a county. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775, 1939 Ga. LEXIS 696 (1939).

While a person has a legal right to have a written contract made with the county entered on the official minutes, if the contracts are not in writing and not entered on the proper minutes, the contracts are not enforceable. Hatcher v. Hancock County Comm'rs of Rds. & Revenues, 239 Ga. 229, 236 S.E.2d 577, 1977 Ga. LEXIS 871 (1977).

Contract with a county is not enforceable unless in writing and entered on the proper minutes. Though unenforceable, the oral lease agreement was not illegal. Overlin v. Boyd, 598 F.2d 423, 1979 U.S. App. LEXIS 13384 (5th Cir. 1979).

Contracts entered into by a county were required to be written, and thus, quantum meruit was unavailable against a county; a trial court properly entered summary judgment for a board of education, a school system, a principal, and a superintendent in a former employee's quantum meruit claim against the employees for employment compensation. Harden v. Clarke County Bd. of Educ., 279 Ga. App. 513, 631 S.E.2d 741, 2006 Ga. App. LEXIS 627 (2006).

Negotiations are not contract. — Mere negotiations which contemplate a written contract, followed by a vote of the governing body to accept a bid, will not constitute a contract and may later be reconsidered. Malcom v. Webb, 211 Ga. 449, 86 S.E.2d 489, 1955 Ga. LEXIS 351 (1955).

Any negotiations or oral agreements, or even written agreements that have not

been entered on the minutes, fall short of being valid contracts and will not constitute a basis for an action against the county. Commercial Credit Corp. v. Mason, 151 Ga. App. 443, 260 S.E.2d 352, 1979 Ga. App. LEXIS 2567 (1979).

Duty to pay inapplicable. — When one party furnishes and another accepts valuable services, the law generally imposes a duty to pay, regardless of the intention of the parties, but this theory of recovery is not available when a county is the defendant. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285, 1979 Ga. LEXIS 1452 (1979).

Effect of valid contract not entered upon minutes. — County contract, otherwise valid, is not rendered void by not being entered of record by those whose duty it is to record the contract upon their minutes; but it is, through such failure, rendered unenforceable until the contract is recorded, and mandamus will lie to require its record. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Warrant to pay contract not entered on minutes' record illegal. — When under the facts alleged, the purchase was such a contract as must be entered on the minutes of the commissioners, and was not so entered, the issuance of the warrant to pay off the purchase price of the material was illegal, and the court was not authorized to issue a mandamus absolute, under which the commissioners are required to raise by taxation the specified amount annually as will finally pay the claim. Douglas v. Austin-Western Rd. Mach. Co., 173 Ga. 386, 160 S.E. 409, 1931 Ga. LEXIS 320 (1931).

County can be directed to spread a written contract it has entered into on its minutes through a writ of mandamus. Lester Witte & Co. v. Rabun County, 245 Ga. 382, 265 S.E.2d 4, 1980 Ga. LEXIS 805 (1980).

No rescission after failure of duty to record. — County commissioners cannot make a contract in behalf of the county, fail to record the contract in discharge of their official duty, and then rescind the contract because the contract is not recorded. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Sovereign immunity barred contract claim. — Claim for breach of contract brought by a homeowner against a county after a sewer line flooded part of the owner's home was barred by sovereign immunity since there was no written contract. Merk v. DeKalb County, 226 Ga. App. 191, 486 S.E.2d 66, 1997 Ga. App. LEXIS 556 (1997), cert. denied, No. S97C1288, 1997 Ga. LEXIS 834 (Ga. Sept. 18, 1997).

Contract of sale of timber was not void merely because the contract was not read in full by the county attorney when the attorney presented the contract to the county commissioners for consideration and action, and because the contract was not read by the county commissioners themselves before being acted upon. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Ultra vires contract not enforceable under quantum meruit theory of recovery. — Appellate court erred by holding that an environmental engineering company could recover against a city on the company's quantum meruit claim because quantum meruit was not an available remedy against the city since the claim was based on a municipal contract that was ultra vires as the contract was never approved by city council. City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 743 S.E.2d 381, 2013 Ga. LEXIS 441 (2013).

Entry upon Minutes

Duty to enter contracts upon minutes. — Law imposes a duty upon those officers who govern the county's affairs to enter the contracts the officers make in behalf of the county upon the officers' minutes, and the continued neglect on the officer's part to discharge an official duty does not cause the duty to terminate. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Mandamus as remedy. — If the proper county authorities refuse to make the entry, mandamus will lie to compel the authorities to do so, upon the application of a person authorized to institute the

Entry upon Minutes (Cont'd)

proceeding. Jones v. Bank of Cumming, 131 Ga. 614, 63 S.E. 36, 1908 Ga. LEXIS 166 (1908); Wagener v. Forsyth County, 135 Ga. 162, 68 S.E. 1115, 1910 Ga. LEXIS 458 (1910); King v. Casey, 164 Ga. 117, 137 S.E. 776, 1927 Ga. LEXIS 136 (1927).

When a person has a written contract with a county, the person has the legal right to have the contract entered on the minutes of proper authorities and if the proper county authorities fail or refuse to enter such contract, the judge of the superior court should by mandamus compel the authorities to so enter the contract. In a proceeding for mandamus to compel the performance of such duty, the court will not inquire into the validity of the contract further than to see that on the contract's face the contract is prima facie valid. Douglas v. Austin-Western Rd. Mach. Co., 173 Ga. 834, 161 S.E. 811, 1931 Ga. LEXIS 421 (1931).

Mandamus will lie to compel a commissioner or the commissioner's successor in office to record a contract, unless the applicant for such relief has with respect thereto been guilty of gross laches, or has permitted an unreasonable period of time to lapse before applying to the proper court therefor. Southern Airways Co. v. Williams, 213 Ga. 38, 96 S.E.2d 889, 1957 Ga. LEXIS 290 (1957).

Mandamus available only if contract valid. — The contract must be prima-facie legal to obtain mandamus. Weathers v. Easterling, 153 Ga. 601, 113 S.E. 152, 1922 Ga. LEXIS 130 (1922); Board of Comm'rs v. MacDougald Constr. Co., 157 Ga. 595, 122 S.E. 317, 1924 Ga. LEXIS 211 (1924).

Mandamus against successors in office. — When the successors in office of the commissioners fail and refuse to enter the contract upon the commissioners' minutes, the commissioners may be compelled by mandamus to do so. Weathers v. Easterling, 153 Ga. 601, 113 S.E. 152, 1922 Ga. LEXIS 130 (1922).

Person who has made a valid written contract with the county authorities has a legal right, though a nonresident of the state, to have the contract entered on such minutes. If the county authorities refuse to make the entry, the judge of the superior court should by mandamus compel the county authorities to do so. Milburn v. Commissioners of Glynn County, 112 Ga. 160, 37 S.E. 178, 1900 Ga. LEXIS 83 (1900).

Who may apply for mandamus. — When a contractor in the progress of work procured loans from a bank for the purpose of completing the loan, and gave written orders to the bank authorizing the bank to receive the remaining warrants issued under the contract, the bank had such a special interest as authorized the bank to proceed by mandamus to compel the ordinary (now judge of the probate court) to enter the building contract on the minutes. Jones v. Bank of Cumming, 131 Ga. 614, 63 S.E. 36, 1908 Ga. LEXIS 166 (1908).

Curative effect of mandamus. — Entry after the completion of the work, in compliance with a judgment in mandamus proceedings instituted to compel the entry of the contract on the minutes, cures the defect resulting from a failure to enter the contract on the minutes before the work was begun or completed. Wagener v. Forsyth County, 135 Ga. 162, 68 S.E. 1115, 1910 Ga. LEXIS 458 (1910).

No time limit for entering on minutes. — This section does not state when the contract must be entered on the minutes of the ordinary (now judge of the probate court) or county commission, nor does the statute say that the contract cannot be reduced to writing or signed by the parties at a date after the contract is made. Burke v. Wheeler County, 54 Ga. App. 81, 187 S.E. 246, 1936 Ga. App. LEXIS 457 (1936).

Statute fixes no limit of time during which a county contract may be entered of record. Malcom v. Fulton County, 209 Ga. 392, 73 S.E.2d 173, 1952 Ga. LEXIS 515 (1952).

Sufficiency of entry. — All the material terms of a contract entered into in behalf of a county by the county authorities having jurisdiction over county matters must be in writing and entered on their minutes. Spalding County v. Chamberlin & Co., 130 Ga. 649, 61 S.E. 533, 1908 Ga. LEXIS 378 (1908).

When the record shows that the contract was entered upon the minutes of the board of commissioners, but that certain specifications were omitted, it was legal for the judge to order the entry of the contract on the minutes. King v. Casey, 164 Ga. 117, 137 S.E. 776, 1927 Ga. LEXIS 136 (1927).

Specific contract must be entered. — Although the superintendent of public works had general written authority, duly entered upon the minutes, of the board of commissioners of roads and revenues to employ men, if the specific contract with the plaintiff was not in writing and had never been entered upon the minutes of the board, the plaintiff cannot recover. Garner v. Floyd County, 24 Ga. App. 693, 101 S.E. 918, 1920 Ga. App. LEXIS 459 (1920).

Simple memorandum on minutes of county commissioners that designated person was elected county physician will not authorize suit against county. Laurens County v. Thomas, 6 Ga. App. 568, 65 S.E. 302, 1909 Ga. App. LEXIS 388 (1909).

Signature of the chair of the board of commissioners is sufficient if authorized. Pilcher v. English, 133 Ga. 496, 66 S.E. 163, 1909 Ga. LEXIS 256 (1909).

Types of Contracts

When fiscal affairs governed by commissioners. — When a board of commissioners, or a board consisting of a single commissioner, has been created to take the place of the ordinary (now judge of the probate court) in the management of certain county affairs, this section applies. Wood v. Puritan Chem. Co., 178 Ga. 229, 172 S.E. 557, 1934 Ga. LEXIS 23 (1934).

When the fiscal affairs of a county have been placed in the hands of commissioners, this section is applicable to contracts made in behalf of the county by the commissioners. Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775, 1939 Ga. LEXIS 696 (1939).

Statute is applicable to contracts made in behalf of the county by commissioners. Malcom v. Webb, 211 Ga. 449, 86 S.E.2d 489, 1955 Ga. LEXIS 351 (1955).

When the fiscal affairs of a county have been placed in the hands of commissioners, this law is applicable to contracts made in behalf of the county by the commissioners. Commercial Credit Corp. v. Mason, 151 Ga. App. 443, 260 S.E.2d 352, 1979 Ga. App. LEXIS 2567 (1979).

Assignment not within section. — Assignment by a county of claims to a certain bonus was held not to be such a contract as is contemplated by this section. Brown v. Rutledge & Summerour, 20 Ga. App. 118, 92 S.E. 774, 1917 Ga. App. LEXIS 746 (1917).

Creation of relation of principal and agent between a city and a county by which the former authorizes the latter to contract in behalf of the city for the paving of the city's streets, which are to constitute links in an interconnecting county seat highway which the State Highway Department (now Department of Transportation) and the county propose to construct, is not such a contract as is required to be in writing and spread upon the minutes of the board of county commissioners of such county. Faver v. Mayor of Washington, 159 Ga. 568, 126 S.E. 464, 1925 Ga. LEXIS 25 (1925).

Effect on tax levy. — It is not essential to the validity of a tax levy for specified purposes that contracts for effectuating such purposes should have been previously made and entered on the minutes. Blalock v. Adams, 154 Ga. 326, 114 S.E. 345, 1922 Ga. LEXIS 358 (1922).

Applicability to board of education. — This section does not apply to a county board of education. Wilson v. Strange, 235 Ga. 156, 219 S.E.2d 88, 1975 Ga. LEXIS 810 (1975).

Contract by county board of education with a person for the transportation of pupils to and from a public school is not one which is required by this section to be in writing and spread upon its minutes. Board of Educ. v. Hunt, 159 Ga. 749, 126 S.E. 789, 1925 Ga. LEXIS 48 (1925).

Applicability to salaries of county officials. — This section refers only to contracts, and the payment of salaries of county officials and employees is not contractual within the statute's provisions. First Nat'l Bank v. Mann, 211 Ga. 706, 88 S.E.2d 361, 1955 Ga. LEXIS 436 (1955).

While this section provides that all contracts entered into by the governing au-

Types of Contracts (Cont'd)

thority with other persons in behalf of the county shall be in writing and entered on the minutes, the payment of salaries of county officials and employees is not contractual within the statute's provisions. Deason v. DeKalb County, 222 Ga. 63, 148 S.E.2d 414, 1966 Ga. LEXIS 398 (1966).

In a dispute between a county and a county state court judge over a supplement to the judge's salary, summary judgment for the judge was proper on the county's claim for reimbursement of the judge's salary supplement because the county failed to show that the supplement was paid with the total absence or want of power. Even if the supplement was paid in violation of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., the county's counterclaim was filed well outside the 90-day limitation period in O.C.G.A. § 50-14-1(b)(2). Heiskell v. Roberts, 342 Ga. App. 109, 802 S.E.2d 385, 2017 Ga. App. LEXIS 320 (2017), cert. denied, No. S17C1940, 2018 Ga. LEXIS 35 (Ga. Jan. 16, 2018).

No waiver of sovereign immunity without written contract. — Developer failed to meet the developer's burden of showing waiver of sovereign immunity because even if the parties' conduct after the expiration of the contract could be found to demonstrate that the developer was to continue to perform under the original contract, as a matter of law, neither that conduct nor the internal documents created by state agency after the contract expired established a written contract to do so and without a written contract, the state's sovereign immunity was not waived. Georgia Department of Labor v. RTT Associates, Inc., 299 Ga. 78, 786 S.E.2d 840, 2016 Ga. LEXIS 392 (2016).

County attorney. — The exercise of the implied power conferred upon the county commissioners to designate a county attorney and to fix the attorney's term and salary may be effectually executed by a resolution of the county commissioners, duly passed and spread upon their minutes. Such transaction does not fall within the purview of this section, which requires all contracts entered into with other persons on behalf of the county to be in writing and entered on their minutes. The relation between the county and the county attorney does not rest upon contract, but arises from appointment impliedly authorized by legislative enactment. Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248, 1931 Ga. LEXIS 237 (1931).

When the relation between a county and an attorney does not rest upon contract, but arises from the appointment of the attorney as a public officer, the transaction does not fall under this section. Walker v. Stephens, 175 Ga. 405, 165 S.E. 99, 1932 Ga. LEXIS 259 (1932).

Procedure

Compliance must be alleged in plaintiff's petition. Milburn v. Glynn County, 109 Ga. 473, 34 S.E. 848, 1899 Ga. LEXIS 482 (1899); Carolina Metal Prods. Co. v. Taliaferro County, 28 Ga. App. 57, 110 S.E. 331, 1922 Ga. App. LEXIS 298 (1922).

In an action against a county for the breach of an alleged contract with the county authorities in charge of the county's fiscal affairs, it is necessary to allege that the contract was in writing and was entered upon the minutes of such authorities in order to make the contract a valid and enforceable contract against the county. A failure to so allege makes the petition subject to general demurrer (now motion to dismiss). Sosebee v. Hall County, 50 Ga. App. 21, 177 S.E. 71, 1934 Ga. App. LEXIS 605 (1934).

Suit against a county, based upon an alleged contract with the county, is defective unless it is alleged that such contract is in writing and has been entered on the minutes as required by the statute. When the petition fails to make such essential allegations, it is subject to demurrer (now motion to dismiss). Graham v. Beacham, 189 Ga. 304, 5 S.E.2d 775, 1939 Ga. LEXIS 696 (1939).

Petition is subject to general demurrer (now motion to dismiss) which alleges that contracts have been entered into with a county but which fails to allege that the contracts were in writing and entered on the minutes of the proper county authority. Hobbs v. Howell, 204 Ga. 370, 49 S.E.2d 827, 1948 Ga. LEXIS 431 (1948).

All contracts entered into with other persons on behalf of the county shall be in writing and entered upon its minutes. If the fiscal affairs of the county are in charge of a board of commissioners, the law applicable to judges of the probate court with respect to the management of county affairs governs. Unless there has been a full compliance with the statutory provisions relative to contracts with a county, which fact must appear from the plaintiffs' petition, the petition is subject to demurrer (now motion to dismiss). Moore v. Baker, 85 Ga. App. 234, 68 S.E.2d 911, 1952 Ga. App. LEXIS 700 (1952).

Petition sufficient. — Petition alleging that county commissioners had entered into contracts with one of the commissioner's members for the construction of roads in the county without the contracts being in writing and being entered on the minutes of the board, and in violation of the contracts between the State Highway Department (now Department of Transportation) and the county was sufficient as against a general demurrer (now motion to dismiss) to show that the plaintiffs were entitled to some of the substantial relief prayed for. Ferguson v. Randolph County, 211 Ga. 103, 84 S.E.2d 70, 1954 Ga. LEXIS 508 (1954).

Failure to record is a matter of defense against payment, when suit is brought on county warrants, and not upon the contract itself. Americus Grocery Co. v. Pitts Banking Co., 169 Ga. 70, 149 S.E. 776, 1929 Ga. LEXIS 283 (1929), overruled, Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Waiver of noncompliance. — Failure to comply with this section is waived when no objection is made until after the verdict. Early County v. Fielder & Allen Co., 4 Ga. App. 268, 63 S.E. 353, 1908 Ga. App. LEXIS 260 (1908).

Objection must be timely. — Whether or not the provisions of former Code 1933, § 23-1701 (see now O.C.G.A. § 36-10-1), would in any event apply to a written agreement to submit a matter in suit to arbitration under former Code 1933, § 7-411 (see now O.C.G.A. § 9-9-70), the fact that the agreement was never so entered was not available as a defense in the instant suit for mandamus, since an objection based upon this ground, if valid, should have been made before the entry of the judgment on the award. Hall County v. Smith, 178 Ga. 212, 172 S.E. 645, 1934 Ga. LEXIS 13 (1934).

Conformity a matter of proof at trial. — Under this section, and in view of the construction placed upon the statute by the Supreme Court, a suit based upon an alleged contract with the county cannot prevail when it is not shown that there has been compliance with this section. Spears v. Robertson, 170 Ga. 368, 152 S.E. 903, 1930 Ga. LEXIS 459 (1930).

Plaintiff may not recover from a county on a contract unless the contract is on the minutes; this is a matter of proof at trial and not a matter of pleading. PMS Constr. Co. v. DeKalb County, 243 Ga. 870, 257 S.E.2d 285, 1979 Ga. LEXIS 1452 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Statute applies to implied and written county contracts without distinction. 1980 Op. Att'y Gen. No. 80-128.

County may enforce implied contract but implied contract cannot be enforced against a county. 1980 Op. Att'y Gen. No. 80-128.

Not entered upon minutes. — Although county contracts which are written but not entered in the minutes are unenforceable, such failure is a curable defect. 1980 Op. Att'y Gen. No. 80-128.

RESEARCH REFERENCES

C.J.S.

20 C.J.S., Counties, § 218.

ALR.

Elements bearing directly upon the quality of a contract as affecting the character of one as independent contractor, 20 A.L.R. 684.

Construction of paving contract or contractor's bond in respect of the contractor's obligation as to repairs, 72 A.L.R. 644.

Power of municipality to fix specific scale of wages or hours for employees of contractors or subcontractors for municipal contracts, 81 A.L.R. 349; 129 A.L.R. 763.

Inclusion in contract for public work of provision regarding extension of time for performance not specifically set out in the call for bids, 114 A.L.R. 1437.

36-10-2. [Reserved] Letting of contracts for public works.

History.

Ga. L. 1878-79, p. 159, § 1; Ga. L. 1880-81, p. 183, § 1; Code 1882, § 493a; Civil Code 1895, § 344; Civil Code 1910, § 387; Code 1933, § 23-1702; Ga. L. 1982, p. 3, § 36; Ga. L. 1989, p. 356, § 4; repealed by Ga. L. 2000, p. 498, § 2, effective April 20, 2000.

Editor's notes.

Ga. L. 2000, p. 498, § 2 repealed and reserved this Code section, effective April 20, 2000.

36-10-2.1. Letting by counties with population of 800,000 or more.

In any county of this state having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census, contracts for building or repairing any courthouse or other public building, jail, bridge, causeway, or other public works or public property shall be let to the lowest responsible bidder, but the governing authority of any such county shall have the right to reject any or all bids for any such contract. The governing authority of any such county, in considering whether a bidder is responsible, may consider the bidder's quality of work, general reputation in the community, financial responsibility, previous employment on public works, and compliance with a minority business enterprise participation plan or making a good faith effort to comply with the goals of such a plan.

History.

Code 1981, § 36-10-2.1, enacted by Ga. L. 1986, p. 309, § 1; Ga. L. 1987, p. 166, § 1; Ga. L. 2002, p. 1473, § 1.

JUDICIAL DECISIONS

Minority business enterprise. — Enactment of O.C.G.A. § 36-10-2.1 did not affirm a county's authority to take minority business enterprise compliance into account in letting contracts prior to 1986. S.J. Groves & Sons Co. v. Fulton County, 920 F.2d 752, 1991 U.S. App. LEXIS 79 (11th Cir.), cert. denied, 500 U.S. 959, 111 S. Ct. 2274, 114 L. Ed. 2d 725, 1991 U.S. LEXIS 3191 (1991), cert. denied, 501 U.S. 1252, 111 S. Ct. 2893, 115 L. Ed. 2d 1057, 1991 U.S. LEXIS 4016 (1991).

36-10-2.2. Letting by certain counties with population of more than 150,000.

In any county having a population of more than 150,000 in any metropolitan statistical area having a population of not less than 260,000 nor more than 360,000 according to the United States decennial census of 1980 or any future such census, contracts for building or repairing any courthouse or other public building, jail, bridge, causeway, or other public works or public property shall be let to the lowest responsible bidder, but the governing authority of any such county shall have the right to reject any or all bids for any such contract. The governing authority of any such county, in considering whether a bidder is responsible, may consider the bidder's quality of work, general reputation in the community, financial responsibility, previous employment on public works, and compliance with a minority business enterprise participation plan or making a good faith effort to comply with the goals of such a plan.

History.
Code 1981, § 36-10-2.2, enacted by Ga. L. 1988, p. 989, § 1.

36-10-3 through 36-10-5. [Repealed].

History.
Ga. L. 1878-79, p. 159, § 3, p. 160, §§ 2, 4; Code 1882, §§ 493b-493d; Ga. L. 1889, p. 49, § 1; Civil Code 1895, §§ 345, 346; Penal Code 1895, § 279; Civil Code 1910, §§ 388, 389; Penal Code 1910, § 283; Ga. L. 1920, p. 58, § 1; Code 1933, §§ 23-1703, 23-1704, 23-9904; Ga. L. 1939, p. 193, § 1; Ga. L. 1967, p. 547, § 1; Ga. L. 1969, p. 954, § 1; Ga. L. 1978, p. 2029, § 1; Ga. L. 1980, p. 534, § 1; Ga. L. 1987, p. 641, § 1; Ga. L. 1989, p. 278, § 2; Ga. L. 1989, p. 356, § 5; repealed by Ga. L. 2000, p. 498, § 2, effective April 20, 2000.

Editor's notes.
The former Code sections, relating to the posting and publication of notice and specifications, bonds of contractors and related matters, and illegal letting of certain contracts and related matters, consisted of Code Sections 36-10-3 through 36-10-5.

Ga. L. 2020, p. 493, § 36/SB 429, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, deleted the reservation of these Code sections.

CHAPTER 11

CLAIMS AGAINST COUNTIES

Sec.		Sec.	
36-11-1.	Time for presentation of claims.	36-11-4.	Order in which county debts paid.
36-11-2.	Audit and registration of claims against county; issuance of order on treasurer for claim; specification of fund on which order drawn.	36-11-5.	Interest on orders presented and not paid.
		36-11-6.	Negotiability of county orders.
36-11-3.	When orders to be paid; registration of orders issued.	36-11-7.	Satisfaction of judgment against county.

Cross references.

Liability of Department of Transportation for actions against counties relating to public roads forming part of state highway system, § 32-2-6.

36-11-1. Time for presentation of claims.

All claims against counties must be presented within 12 months after they accrue or become payable or the same are barred, provided that minors or other persons laboring under disabilities shall be allowed 12 months after the removal of the disability to present their claims.

History.

Orig. Code 1863, § 479; Code 1868, § 541; Code 1873, § 507; Code 1882, § 507; Civil Code 1895, § 362; Civil Code 1910, § 411; Code 1933, § 23-1602.

Law reviews.

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981).

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For article, "Claims Against Counties: The Difference a Year Makes," see 36 Mercer L. Rev. 1 (1984).

For article, "Defending the Lawsuit: A First-Round Checklist," see 22 Ga. St. B.J. 24 (1985).

For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

For annual survey on law of torts, see 42 Mercer L. Rev. 431 (1990).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

For annual survey on trial practice and procedure, see 67 Mercer L. Rev. 257 (2015).

JUDICIAL DECISIONS

Analysis

General Consideration
Specific Claims
Presentation of Claims
Procedure

General Consideration

Constitutionality. — This section, providing that "all claims against counties must be presented within 12 months after they accrue or become payable, or the same are barred," is not inconsistent with Ga. Const. 1976, Art. IX, Sec. VI, Para. II (see, now, Ga. Const. 1983, Art. IX, Sec. II, Para. IX). Cobb v. Board of Comm'rs of Rds. & Revenue, 151 Ga. App. 472, 260 S.E.2d 496, 1979 Ga. App. LEXIS 2574 (1979).

Purpose of this section is to afford the county an opportunity to investigate the claim and ascertain the evidence, and to avoid the incurrence of unnecessary litigation. Stelling v. Richmond County, 81 Ga. App. 571, 59 S.E.2d 414, 1950 Ga. App. LEXIS 943 (1950).

Rationale behind presentment of claim. — Object of presenting a claim to a county before the institution of suit is to afford the county an opportunity to investigate the claim and ascertain the evidence, and to avoid the incurrence of unnecessary litigation. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814, 1941 Ga. App. LEXIS 349 (1941); Sikes v. Candler County, 247 Ga. 115, 274 S.E.2d 464, 1981 Ga. LEXIS 631 (1981).

Comparison with § 36-33-5. — While former Code 1933, § 69-308 (see now O.C.G.A. § 36-33-5), providing for the filing of a claim against a municipality before suit against such municipality, is unlike the provisions of former Code 1933, § 23-1602 (see now O.C.G.A. § 36-11-1) relative to the presentment of claims against a county, the objects and purposes of these two statutes are similar. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814, 1941 Ga. App. LEXIS 349 (1941).

Construction with O.C.G.A. § 33-24-51(b). — Limited waiver of sovereign immunity set forth in O.C.G.A. § 33-24-51(b) does not implicate the 12-month presentation requirement under O.C.G.A. § 36-11-1. Warnell v. Unified Gov't of Athens-Clarke County, 328 Ga. App. 903, 763 S.E.2d 284, 2014 Ga. App. LEXIS 602 (2014).

Substantial compliance with statutory requirements of ante litem notice is sufficient to give notice of a claim to a county. Burton v. DeKalb County, 202 Ga. App. 676, 415 S.E.2d 647, 1992 Ga. App. LEXIS 126 (1992), cert. denied, No. S92C0627, 1992 Ga. LEXIS 301 (Ga. Apr. 8, 1992).

Not applicable to legislatively-created public water authority. — Trial court erred dismissing complaint against water authority because ante litem notice provisions under O.C.G.A. § 36-11-1 did not extend to independent, legislatively-created public water authority. Thomas v. Henry County Water Auth., 367 Ga. App. 469, 886 S.E.2d 857, 2023 Ga. App. LEXIS 168 (2023).

Existence of cause of action. — Under this section, a cause of action against a county such as can be recovered upon does not exist unless the claim has been presented within 12 months after the claim's accrual. Atlantic Coast Line R.R. v. Mitchell County, 36 Ga. App. 47, 135 S.E. 223, 1926 Ga. App. LEXIS 750 (1926).

Principle of common honesty is beside the mark in determining whether the action, whatever be its nature, is subject to the bar of the statute of limitations. Mobley v. Murray County, 178 Ga. 388, 173 S.E. 680, 1934 Ga. LEXIS 59 (1934).

Availability of injunction. — When a nuisance is continuing, the property owner is entitled to seek an injunction, as well as damages for the 12 months preceding, upon giving notice to the county. Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235, 1978 Ga. LEXIS 1241 (1978).

Trial court erred in denying the city's motion for judgment on the pleadings because it was undisputed that the property owner failed to serve either the mayor, or chair of the city council or city commission; thus, the property owner did not comply with the ante litem notice statute, O.C.G.A. § 36-33-5(f), which was fatal to the property's owner claim. City of Albany v. GA HY Imports, LLC, 348 Ga. App. 885, 825 S.E.2d 385, 2019 Ga. App. LEXIS 96 (2019), overruled in part, Fleureme v. City of Atlanta, No. S24G0995, 2025 Ga. LEXIS 148 (Ga. June 24, 2025).

Specific Claims

When the right to and amount of a claim is fixed by law, such claim does

Specific Claims (Cont'd)

not come within the purview of those claims barred by this section. The claims intended to be barred by this section have reference to claims growing out of contract or breach of duty. Norris v. Nixon, 78 Ga. App. 769, 52 S.E.2d 529, 1949 Ga. App. LEXIS 977 (1949); Owens v. Floyd County, 94 Ga. App. 532, 95 S.E.2d 389, 1956 Ga. App. LEXIS 605 (1956) (see now O.C.G.A. § 36-11-1).

Applicable only to claims arising from contract. — Requirements of O.C.G.A. § 36-11-1 on presenting claims apply to claims arising from contract and do not apply to a claim when the right to and amount of the claim is fixed by law as when a hospital furnishes emergency services to pregnant indigent residents of the county under O.C.G.A. § 31-8-40 et seq. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378, 1987 Ga. LEXIS 576 (1987).

Mandamus claim. — After federal claims were dismissed in a former employee's action against a county employer, the employee's mandamus claims against a county official for reinstatement were not straightforward so as to allow the court to accept jurisdiction of state claims under 28 U.S.C. § 1367 because it was unclear whether ante litem notice was required under O.C.G.A. § 36-11-1 and whether a one-year limitation of O.C.G.A. § 9-3-33 applied to the mandamus claim. Toma v. Columbia County, No. CV 106-145, 2007 U.S. Dist. LEXIS 30096 (S.D. Ga. Apr. 20, 2007).

Affirmative action programs. — O.C.G.A. § 36-11-1 did not apply to bar plaintiffs' federal and state constitutional claims arising from defendants' operation of a county's minority and female business enterprise program. Webster v. Fulton County, 44 F. Supp. 2d 1359, 1999 U.S. Dist. LEXIS 12325 (N.D. Ga. 1999).

Landowners' claims for nuisance, trespass, negligence, and violation of riparian rights. — County was entitled to summary judgment on a landowner's claims for nuisance, trespass, negligence, and violation of riparian rights because the county had sovereign immunity as to all claims which did not amount to an inverse condemnation of the land, and the condemnation claim was barred by the landowner's failure to provide proper ante-litem notice pursuant to O.C.G.A. § 36-11-1 within 12 months of when the landowner's claim accrued. Jones v. E.R. Snell Contr., Inc., 333 F. Supp. 2d 1344, 2004 U.S. Dist. LEXIS 11062 (N.D. Ga.), aff'd, 120 Fed. Appx. 786, 2004 U.S. App. LEXIS 27977 (11th Cir. 2004).

Applicability of sovereign immunity to action between city and county. — In a case involving taxation of alcoholic beverages, the city's claims against the county were not barred by sovereign immunity since the city and county were merely exercising their own respective home rule powers by collecting tax revenues for their own purposes, and neither was acting on behalf of the State of Georgia; thus, there was no sovereignty to be maintained. City of College Park v. Clayton County, 306 Ga. 301, 830 S.E.2d 179, 2019 Ga. LEXIS 438 (2019).

Suit to hold governmental officer personally liable. — Plaintiffs were not compelled to notify sheriff of the suit in advance of filing suit against the sheriff because a party seeking a money judgment holding a governmental officer or agent personally liable, albeit for actions in the officer's or agent's official capacity, is a suit against the individual and not the government. Strickland v. Wilson, 205 Ga. App. 91, 421 S.E.2d 94, 1992 Ga. App. LEXIS 1077 (1992), cert. denied, No. S92C1382, 1992 Ga. LEXIS 822 (Ga. Oct. 2, 1992).

Actions against school districts. — In the absence of an expression of legislative intent to apply the statute of limitations to actions against school districts, and in the absence of any specific bar to limit actions against school districts, O.C.G.A. § 36-11-1 does not apply to school districts. Payne v. Blackwell, 259 Ga. 483, 384 S.E.2d 393, 1989 Ga. LEXIS 409 (1989).

Salaries of public officers which have been fixed by law do not come within the bar of this statute. Stelling v. Richmond County, 81 Ga. App. 571, 59 S.E.2d 414, 1950 Ga. App. LEXIS 943 (1950).

Salary of commissioner. — This section is not applicable to allowances for

salary of the road commissioner under a local law as the commissioner's salary is an allowance provided by law for the benefit of the commissioner as a public officer, and has no reference to contract or breach of duty. Sammons v. Glascock County, 161 Ga. 893, 131 S.E. 881, 1926 Ga. LEXIS 358 (1926).

Tax collector commissions. — Since the duty of the county authorities to pay the tax collector commissions and the amount of commissions thus payable to the tax collector, as compensation to a public officer, are both fixed and determined by law, it is not incumbent upon the tax collector to present the collector's claim within 12 months in order to prevent it from becoming barred under this section. Bibb County v. Winslett, 191 Ga. 860, 14 S.E.2d 108, 1941 Ga. LEXIS 388 (1941).

When bond is given, any action thereon is limited to one year from the completion of the contract and acceptance of the work by proper public authorities. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307, 1936 Ga. App. LEXIS 402 (1936).

Claim of payee of void note. — Claim against a county by a payee of a void note for money used by the county and paid out on outstanding valid warrants, even if enforceable against the county, was barred since it was not presented within 12 months after accrual. Farmers' Loan & Trust Co. v. Wilcox County, 2 F.2d 465, 1924 U.S. App. LEXIS 2081 (5th Cir. 1924).

County warrants. — County warrants are not such "claims" as are required to be presented within 12 months after the claims accrue or become payable. Jackson Banking Co. v. Gaston, 149 Ga. 31, 99 S.E. 30, 1919 Ga. LEXIS 100 (1919); Commercial Trust Co. v. Laurens County, 267 F. 897, 1920 U.S. Dist. LEXIS 1015 (D. Ga. 1920); Central of Ga. Ry. v. Wright, 35 Ga. App. 144, 132 S.E. 449, 1926 Ga. App. LEXIS 591 (1926), aff'd, 165 Ga. 43, 139 S.E. 909, 1927 Ga. LEXIS 305 (1927).

Claim to be subrogated to rights of former holders of county warrants paid with money of claimant is one which must be presented within 12 months after accrual. Farmers' Loan & Trust Co. v. Wilcox County, 298 F. 772, 1924 U.S. Dist. LEXIS 1682 (D. Ga.), aff'd, 2 F.2d 465, 1924 U.S. App. LEXIS 2081 (5th Cir. 1924).

Assertion of ownership of land in possession of county is not such claim as must be presented within 12 months. Lynch v. Harris County, 188 Ga. 651, 4 S.E.2d 573, 1939 Ga. LEXIS 593 (1939).

Nuisance. — When evidence shows that the extent of a nuisance has not increased, so as to amount to the additional taking of property or additional damages to the property owner inside the 12-month period, then any action is barred. However, if the nuisance occurs within or its extent is increased during the 12-month period so as to amount to an additional taking of property belonging to a party, then that portion of the property taken during the 12-month period would be actionable. Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235, 1978 Ga. LEXIS 1241 (1978).

Trial court did not err by failing to allow a property owner to assert the owner's nuisance claim against a county in relation to a second notice sent to the county because at best, the owner would only be allowed to assert a claim for a second time period if the owner could show that the extent of the nuisance had increased, so as to amount to the additional taking of property or additional damages to the property owner in the second 12-month period; the owner did not show that the county's taking increased after the original 12-month period. Bailey v. Annistown Rd. Baptist Church, Inc., 301 Ga. App. 677, 689 S.E.2d 62, 2009 Ga. App. LEXIS 1388 (2009), cert. denied, No. S10C0669, 2010 Ga. LEXIS 468 (Ga. May 17, 2010).

Trial court did not err by denying a county's motion for directed verdict on the ground that a property owner's ante-litem notice expressly limited the owner's trespass and nuisance claims to personal property damages only because a directed verdict was not demanded when the owner's notice was ambiguous at worst, and a reasonable person could construe the notice to refer to all of the owner's property, personal and real. Bailey v. Annistown Rd. Baptist Church, Inc., 301 Ga. App. 677, 689 S.E.2d 62, 2009 Ga. App. LEXIS 1388 (2009), cert. denied, No. S10C0669, 2010 Ga. LEXIS 468 (Ga. May 17, 2010).

Specific Claims (Cont'd)

Continuing nuisance. — Property owner is not barred from recovering for damages for a continuing nuisance, even when notice is not given within 12 months of completion of construction of the roadway. Reid v. Gwinnett County, 242 Ga. 88, 249 S.E.2d 559, 1978 Ga. LEXIS 1105 (1978).

When appellee gave sufficient notice under O.C.G.A. § 36-11-1 that county had duty to abate nuisance, and when appellee was thereafter in compliance with § 36-11-1, appellee was entitled to appellee's remedy, regardless of whether or when subsequent injuries occurred on appellee's property as a result of the continuing nuisance. DeKalb County v. Bolick, 249 Ga. 843, 295 S.E.2d 92, 1982 Ga. LEXIS 953 (1982).

Bar provided by O.C.G.A. § 36-11-1 is applicable in suits seeking to recover against a county for depreciation in market value of the property taken due to the alleged creation and maintenance of a continuing nuisance. Puckett v. Gwinnett County, 200 Ga. App. 53, 406 S.E.2d 561, 1991 Ga. App. LEXIS 733 (1991).

Adverse possession not proven.— Landowners were not entitled to relief on their claim of a prescriptive easement by adverse possession as the evidence showed, at best, a trespass, which can never ripen into prescriptive title. Under O.C.G.A. § 36–11–1, a plaintiff is entitled to recover those damages incurred in the 12 months preceding the giving of the notice. Columbia County v. Satcher, 369 Ga. App. 608, 894 S.E.2d 181, 2023 Ga. App. LEXIS 501 (2023), vacated in part, 319 Ga. 633, 905 S.E.2d 583, 2024 Ga. LEXIS 177 (2024), vacated in part, 373 Ga. App. 19, 907 S.E.2d 341, 2024 Ga. App. LEXIS 382 (2024).

Taking private property. — All claims against a county for taking or damaging private property for public uses must be filed within 12 months, and suit thereon for the depreciation in the market value must be instituted within the period of limitations stipulated by the law. It is not the policy of the law to permit the bringing of suits against counties from time to time for damages which might result by reason of negligently constructed public improvements constituting a nuisance. Bibb County v. Green, 42 Ga. App. 552, 156 S.E. 745, 1931 Ga. App. LEXIS 49 (1931); Jones v. Fulton County, 207 Ga. App. 397, 427 S.E.2d 802, 1993 Ga. App. LEXIS 181 (1993).

Ratification of acts of agent. — Limitation of a claim against a county which is predicated on the ratification of acts of an alleged agent begins to run from the date of the ratification, and the claim is barred after the lapse of 12 months from the ratification. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307, 1936 Ga. App. LEXIS 402 (1936).

Materialman's liens. — Materialman may bring suit against the county prior to the completion of the work, if the contractor is then insolvent; in such case, the time when the contractor becomes insolvent is the time when the loss results and the county becomes subject to suit. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307, 1936 Ga. App. LEXIS 402 (1936).

Claim against a county, for a loss by a person who furnished material for the building of a road to a contractor who was not required by the county to give bond is barred after the lapse of one year from the date when the contractor became insolvent, and from the date when the materialman's lien against the contractor became due. Standard Oil Co. v. Jasper County, 53 Ga. App. 804, 187 S.E. 307, 1936 Ga. App. LEXIS 402 (1936).

Suits by imprisoned persons. — While there is no statutorily imposed disability which would prevent an imprisoned person from suing, O.C.G.A. § 9-3-90 provides an imprisoned person the benefit of a statutory provision tolling the statutes of limitation. The result is that a person imprisoned has an option of bringing an action while incarcerated or waiting until the period of incarceration ends. If the latter option is chosen, the period of limitation begins to run from the date of release, i.e., the time the "disability" is removed. Maddox v. Hall County, 162 Ga. App. 371, 291 S.E.2d 442, 1982 Ga. App. LEXIS 2171 (1982).

Inmate's cause of action for negligence against county jail officials for giving the

inmate another inmate's medication by mistake accrued on the date the inmate became aware of the mistake. Hayes v. Medical Dep't, 197 Ga. App. 563, 398 S.E.2d 837, 1990 Ga. App. LEXIS 1416 (1990).

Claim for hospital care for prisoner. — Board of Regents of the University System of Georgia was required to comply with the ante litem notice requirement with regard to medical bills incurred by a prisoner resulting from a fight in jail since, although O.C.G.A. § 42-5-2(a) provided that a governmental unit having custody of a prisoner must furnish the prisoner with needed hospital attention, there was no law requiring payment by the governmental unit for such services. Board of Regents v. Putnam County, 234 Ga. App. 427, 506 S.E.2d 923, 1998 Ga. App. LEXIS 1246 (1998).

Presentation of Claims

Sufficiency of presentation. — Writing should certainly show who makes the demand, for what reason the demand is made, and the amount thereof. Troup County v. Boddie, 14 Ga. App. 434, 81 S.E. 376, 1914 Ga. App. LEXIS 285 (1914).

Presentation of claim to outside counsel for county satisfies presentment requirement. — Trial court erred in awarding summary judgment to the county based on the fact that the letter from the plaintiff's attorney was not a proper presentment as the attorney for the county was not employed by the county in house because, to the extent that Coweta County v. Cooper, 318 Ga. App. 41 (2012), indicated that presentment could not properly be made to an outside county attorney, the supreme court disapproved of that decision; thus, notwithstanding that the county attorney was an outside attorney, the timely delivery of the plaintiff's otherwise adequate presentation of a claim against the county to the outside county attorney satisfied the statutory presentment requirement of O.C.G.A. § 36-11-1. Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892, 2017 Ga. LEXIS 528 (2017).

Claim barred for failure to serve ante-litem notice. — Trial court did not err in granting summary judgment to the deputy sheriff on the ground that any claim in the plaintiff's complaint that could be construed as a claim against the sheriff was barred because the plaintiff did not serve an ante-litem notice upon the sheriff; O.C.G.A. § 36-11-1 applied to the counties and to the sheriffs, when sued in their official capacities; and claims against a sheriff were not sustainable without the ante-litem notice. Davis v. Morrison, 344 Ga. App. 527, 810 S.E.2d 649, 2018 Ga. App. LEXIS 60 (2018), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

Claim in writing. — It is essential that the claim required to be filed with a county, as provided in this section, be in writing. Griffin Realty & Constr. Co. v. Chatham County, 47 Ga. App. 545, 171 S.E. 237, 1933 Ga. App. LEXIS 704 (1933).

All claims against counties must be presented in writing. A mere oral statement is insufficient. Williams v. Lowndes County, 120 Ga. App. 429, 170 S.E.2d 750, 1969 Ga. App. LEXIS 805 (1969); Doyal v. DOT, 142 Ga. App. 79, 234 S.E.2d 858, 1977 Ga. App. LEXIS 1480 (1977).

Mere conversation not sufficient. — Conversations with members of board of commissioners looking to a compromise are not sufficient presentment. Powell v. County of Muscogee, 71 Ga. 587, 1883 Ga. LEXIS 225 (1883).

Conversations with individual commissioners or verbal proposals to compromise do not circumvent the limitation provided by O.C.G.A. § 36-11-1. Puckett v. Gwinnett County, 200 Ga. App. 53, 406 S.E.2d 561, 1991 Ga. App. LEXIS 733 (1991).

Presentation must be made within 12 months of accrual. — Claims against a county are required to be presented to the chair of the claims of commissioners within 12 months after the claims accrue. Ellenberg v. DeKalb County (In re Maytag Sales & Serv., Inc.), 23 B.R. 384, 1982 Bankr. LEXIS 3257 (Bankr. N.D. Ga. 1982).

Although an ante litem notice served by subdivision owners against a county aris-

Presentation of Claims (Cont'd)

ing out of a drainage system was insufficient under O.C.G.A. § 36-11-1, the owners' complaint complied with § 36-11-1, but the owners' claims for negligence and permanent nuisance were barred by the one-year presentment requirement because the owners had seen standing water more than a year before serving the owners' complaint. Klingensmith v. Long County, 352 Ga. App. 21, 833 S.E.2d 608, 2019 Ga. App. LEXIS 521 (2019).

Landowners' claims were not barred by the running of the statute of limitation as the landowners' ante litem notice was timely for nuisance damage incurred within the 12-month period preceding its presentation, but the landowners could not recover damages incurred after presentation of the notice. Columbia County v. Satcher, 369 Ga. App. 608, 894 S.E.2d 181, 2023 Ga. App. LEXIS 501 (2023), vacated in part, 319 Ga. 633, 905 S.E.2d 583, 2024 Ga. LEXIS 177 (2024), vacated in part, 373 Ga. App. 19, 907 S.E.2d 341, 2024 Ga. App. LEXIS 382 (2024).

Bringing of suit within time limit is sufficient presentation of claim. Dement v. DeKalb County, 97 Ga. 733, 25 S.E. 382, 1895 Ga. LEXIS 565 (1895); Elbert County v. Brown, 16 Ga. App. 834, 86 S.E. 651, 1915 Ga. App. LEXIS 233 (1915); Mitchell County v. Dixon, 20 Ga. App. 21, 92 S.E. 405, 1917 Ga. App. LEXIS 693 (1917); Taylor v. Richmond County, 57 Ga. App. 586, 196 S.E. 303, 1938 Ga. App. LEXIS 342 (1938).

Service within 12 months. — Petition must not only be filed but served within 12 months after claim accrues. Pearson v. Newton County, 119 Ga. 863, 47 S.E. 180, 1904 Ga. LEXIS 382 (1904); Godfrey v. County of Jefferson, 21 Ga. App. 384, 94 S.E. 604, 1917 Ga. App. LEXIS 597 (1917).

Role of county attorney in presentment. — Presentment to the county attorney, inside or outside, is presentment for the purposes of O.C.G.A. § 36-11-1. Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892, 2017 Ga. LEXIS 528 (2017).

Presentment of a claim against a county under O.C.G.A. § 36-11-1 may be submitted to the governing authority by way of the county attorney as a matter of law. Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892, 2017 Ga. LEXIS 528 (2017).

Outside law firm not authorized to receive notice for county. — Trial court erred by ruling that there was substantial compliance with O.C.G.A. § 36-11-1 by the plaintiffs sending notice of the plaintiff's suit against a county to a private law firm used by the county as outside legal counsel because the firm was not in-house or any department or official of a county and, thus, was not authorized to receive notice. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348, 2012 Ga. App. LEXIS 843 (2012), overruled in part, Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892, 2017 Ga. LEXIS 528 (2017).

Presentment of claim to sheriff. — Trial court erred in denying the defendants' motion to dismiss on the ground that the plaintiff's claim against the sheriff was barred by the plaintiff's failure to provide the Sheriff's Office with notice of such claim under O.C.G.A. § 36-11-1 because the plaintiff was legally precluded from even naming the county as the proper defendant, and given that § 36-11-1 did not mandate otherwise, the presentment of a claim for which the sheriff can be held vicariously liable must be directed to the sheriff. Moats v. Mendez, 349 Ga. App. 811, 824 S.E.2d 808, 2019 Ga. App. LEXIS 196 (2019), cert. denied, 310 Ga. 114, 852 S.E.2d 816, 2020 Ga. LEXIS 810 (2020), overruled in part, Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024), overruled in part as stated in Chavez v. Hill, 372 Ga. App. 560, 905 S.E.2d 322, 2024 Ga. App. LEXIS 328 (2024).

While the Georgia Supreme Court agreed with the Georgia Court of Appeals that O.C.G.A. § 36-11-1 applied to official-capacity claims against a county sheriff for the purported negligent use of a covered motor vehicle, the Court overruled a line of Court of Appeals case law holding that, to comply with the requirements of § 36-11-1, a claimant is required to present her claim to the

county sheriff, as opposed to the county governing authority. Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024).

Official-capacity claims against a county sheriff for a deputy's allegedly negligent use of a county-owned vehicle were held to be claims against the county itself, and thus, the presentment requirement of O.C.G.A. § 36-11-1 applied to such claims, including a plaintiff's official-capacity claims against a sheriff. Collington v. Clayton County, 318 Ga. 29, 897 S.E.2d 361, 2024 Ga. LEXIS 13 (2024).

Official-capacity claims against a county sheriff for a deputy's negligent use of a county-owned vehicle were claims against the county itself, thus, the presentment requirement of O.C.G.A. § 36-11-1 applied and presentment of claims against counties covered by § 36-11-1 to the county governing authority was sufficient to comply with the statute. Morney v. Kiker, 371 Ga. App. 804, 903 S.E.2d 188, 2024 Ga. App. LEXIS 222 (2024).

Trial court's dismissal of plaintiff's claims against the sheriff in their official capacity was reversed because plaintiff's timely presentment of notice of claims to the county administrator and the county commission chair satisfied plaintiff's burden under O.C.G.A. § 36-11-1. Morney v. Kiker, 371 Ga. App. 804, 903 S.E.2d 188, 2024 Ga. App. LEXIS 222 (2024).

Twelve-month limit not applicable to claims against school district. — When the plaintiff failed to give the defendant school district written notice of plaintiff's claim within 12 months after the accrual of plaintiff's cause of action, the trial court properly determined that this failure did not constitute a bar to the action because the claim was against a county school district rather than a county because a claim against a county school district did not constitute a claim against the county within the contemplation of O.C.G.A. § 36-11-1. Payne v. Blackwell, 259 Ga. 483, 384 S.E.2d 393, 1989 Ga. LEXIS 409 (1989).

When claim accrues. — Trial court erred in ruling that a subcontractor's claim against a county accrued on the day the subcontractor received notification about the contractor's cash flow problems when, for three months after the letter was written, the contractor continued to work on the project. Kelly Energy Sys. v. Board of Comm'rs, 196 Ga. App. 519, 396 S.E.2d 498, 1990 Ga. App. LEXIS 968 (1990), cert. denied, No. S90C1510, 1990 Ga. LEXIS 590 (Ga. Sept. 4, 1990).

No substitute for presentation. — When the suit was not brought within 12 months after the accrual of the right of action, it cannot be urged as a substitute for or an equivalent of the presentation of a claim. Newsome v. Treutlen County, 168 Ga. 764, 149 S.E. 44, 1929 Ga. LEXIS 236 (1929).

Letter to board of commissioners sufficient. — Letter sent to the county board of commissioners by a party, a copy of which was sent to the Department of Transportation, did constitute a presentation of the claim being sued on, since the letter contained sufficient information to afford the recipients thereof an opportunity to investigate the claim and ascertain the evidence prior to suit. Sikes v. Candler County, 247 Ga. 115, 274 S.E.2d 464, 1981 Ga. LEXIS 631 (1981).

Statement of damages. — O.C.G.A. § 36-11-1 does not create an inflexible requirement that presentation to county of claim must always contain statement of amount of damages in order to be sufficient. Sikes v. Candler County, 247 Ga. 115, 274 S.E.2d 464, 1981 Ga. LEXIS 631 (1981).

Letter met ante litem requirements. — Landowners substantially complied with statutory ante litem requirements of O.C.G.A. § 36-33-5 when the letter the landowners sent to the city alleging damages from a continuing nuisance the city allegedly maintained on the landowners' property and identifying the nature and location of the damage, the cause, and the nature of the potential cause of action, sufficiently put the city on notice of the problem occurring on their property. City of Columbus v. Barngrover, 250 Ga. App. 589, 552 S.E.2d 536, 2001 Ga. App. LEXIS 826 (2001).

Claim need not be presented while governing authority actually in session. — This section does not require that a claim against the county be

Presentation of Claims (Cont'd)

presented at a time when the governing authority or authorities of the county are actually in session, either at a regular or called meeting, for the transaction of county affairs. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814, 1941 Ga. App. LEXIS 349 (1941).

Notice to insurer insufficient. — Formal, written notice to the county is required in presentation of an insurance claim, and notice to the county's liability insurer does not satisfy the statute. Cobb v. Board of Comm'rs of Rds. & Revenue, 151 Ga. App. 472, 260 S.E.2d 496, 1979 Ga. App. LEXIS 2574 (1979).

Presentation for auditing. — Charge by the party presenting a claim need not use the word "audit," but it is sufficient if the party presents it for that purpose, and the ordinary (now judge of the probate court) examines it and refuses to allow it, that is, refuses to audit it and approve it but rejects and disallows it, is not erroneous. County of Cobb v. Adams, 68 Ga. 51, 1881 Ga. LEXIS 307 (1881).

Procedure

Defense must be set forth affirmatively. — It is incumbent on a party pleading to a preceding pleading to set forth affirmatively any statute of limitation as a defense to an action. Failure to do so results in the court's determination that this issue is not raised, even though it may be present and could operate as a bar to recovery. Nipper v. Crisp County, 120 Ga. App. 583, 171 S.E.2d 652, 1969 Ga. App. LEXIS 868 (1969).

Defense under Ga. L. 1971, p. 180, §§ 6, 9 (see now O.C.G.A. § 36-11-1) must be specially pled under Ga. L. 1967, p. 226, § 8 (see now O.C.G.A. § 9-11-8(c)). Gordy Constr. Co. v. KHM Dev. Co., 128 Ga. App. 648, 197 S.E.2d 426, 1973 Ga. App. LEXIS 1565 (1973).

In the absence of distinct averments of the presentation of valid claims against the county within the time prescribed by the statute, the petition was subject to demurrer (now motion to dismiss). Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 541, 1 S.E.2d 222 (1939).

Writing must be alleged. — An allegation that the claim was presented "as provided by law" will not supply the place of a distinct allegation that it was presented in writing. Sparks v. Floyd County, 15 Ga. App. 80, 82 S.E. 583, 1914 Ga. App. LEXIS 23 (1914).

Plaintiff was not dilatory in filing plaintiff's motion to amend to add the county as a new party when the plaintiff filed a negligence suit against a motor company approximately four months after a fatal incident occurred, and moved to add the county for faulty sign-posting approximately two months after filing the original suit. Although O.C.G.A. § 36-11-1 did not require plaintiff to wait for a response from the county after plaintiff notified them of plaintiff's claim, plaintiff's two-month delay in adding the county was not dilatory. Jarriel v. GMC, 835 F. Supp. 639, 1993 U.S. Dist. LEXIS 15901 (N.D. Ga. 1993).

Petition subject to dismissal when petition does not show presentation of claim. — When it did not appear in the petition in a suit against a county that the claim sued on was presented to the county within 12 months after the claim accrued or became payable, and when it did not appear that the petition was filed and service thereon perfected upon the county within this period, the petition failed to set out a cause of action, and was subject to dismissal. Griffin Realty & Constr. Co. v. Chatham County, 47 Ga. App. 545, 171 S.E. 237, 1933 Ga. App. LEXIS 704 (1933); Commissioners of Rds. & Revenue v. Howard, 59 Ga. App. 541, 1 S.E.2d 222 (1939).

Sufficiency of averment of presentation. — Statement by plaintiff that plaintiff had in writing demanded compensation from those commissioners, who had refused payment thereof, is sufficient averment of presentation. Adkins v. Crawford County, 135 Ga. 679, 70 S.E. 335, 1911 Ga. LEXIS 43 (1911).

Allegation of time. — Allegations that the claim arose "some time during the year 1910," and that the plaintiff's claim for damages was filed on October 14, 1911, are not sufficient to show presentation within 12 months. Elbert County v. Chapman, 15 Ga. App. 197, 82 S.E. 808, 1914 Ga. App. LEXIS 59 (1914).

An action against a county, brought in 1923, to recover taxes alleged to have been illegally levied and collected in 1919, and alleging that a month before the filing of the suit a demand that the taxes so collected be refunded was made upon the county authorities and refused, was barred. Atlantic Coast Line R.R. v. Mitchell County, 36 Ga. App. 47, 135 S.E. 223, 1926 Ga. App. LEXIS 750 (1926).

Time to submit claim. — Claim by a hospital for services rendered to a prisoner injured in a fight in jail was untimely when the prisoner was discharged on December 5, 1996, and a claim was not submitted to the defendant county until December 6, 1997; notwithstanding a hospital policy that bills are not due and payable until 30 days after discharge, the 12 month period began to run at the date of discharge. Board of Regents v. Putnam County, 234 Ga. App. 427, 506 S.E.2d 923, 1998 Ga. App. LEXIS 1246 (1998).

In a suit against a county after county workers performed work on private property, it was undisputed that no written ante litem notice was provided to the county of any claim in connection with work performed by the county's workers until August 2003, and by this time, any action either contesting or contrary to the terms of a settlement agreement was barred by the statute of limitations. Meadows v. Houston County, 295 Ga. App. 183, 671 S.E.2d 225, 2008 Ga. App. LEXIS 1321 (2008).

Under O.C.G.A. § 36-11-1, all claims against counties must be presented within 12 months after the claims accrue or become payable or the claims are barred, provided that minors or other persons laboring under disabilities shall be allowed 12 months after the removal of the disability to present their claims. Coweta County v. Cooper, 318 Ga. App. 41, 733 S.E.2d 348, 2012 Ga. App. LEXIS 843 (2012), overruled in part, Croy v. Whitfield County, 301 Ga. 380, 801 S.E.2d 892, 2017 Ga. LEXIS 528 (2017).

Trial court did not err by denying a county's motion for summary judgment because an issue of fact existed as to when the parties expected the project to be complete; thus, it followed that there was an issue of fact regarding when, if ever, the county breached the county's agreement to provide water and sewer lines and when the plaintiff's claim of breach of contract accrued and therefore whether the bankruptcy trustee timely filed notice as required by O.C.G.A. § 36-11-1. Effingham County v. Roach, 329 Ga. App. 805, 764 S.E.2d 600, 2014 Ga. App. LEXIS 705 (2014), cert. denied, No. S15C0577, 2015 Ga. LEXIS 222 (Ga. Mar. 30, 2015), overruled, Rivera v. Washington, 298 Ga. 770, 784 S.E.2d 775, 2016 Ga. LEXIS 248 (2016).

Trial court properly granted a county's motion for summary judgment because the record showed that the plaintiffs failed to present notice of the plaintiffs' claim to the county with the 12-month statutory period and admittedly failed to present the county with formal written notice before the plantiffs filed the plaintiffs' suit, which the plaintiffs did not file against the county until more than 22 months after the accident. Warnell v. Unified Gov't of Athens-Clarke County, 328 Ga. App. 903, 763 S.E.2d 284, 2014 Ga. App. LEXIS 602 (2014).

Trial court erred in dismissing a driver's negligence action against the county on the ground that the driver failed to provide timely ante litem notice because an emergency order in response to the COVID-19 pandemic tolled the time for providing ante litem notice to the county. Lewis v. Gwinnett County, 367 Ga. App. 241, 885 S.E.2d 320, 2023 Ga. App. LEXIS 139 (2023).

Averment of presentation of note evidencing loan insufficient. — When a plaintiff seeks to recover money loaned to a county and used by the county, an allegation that the plaintiff presented the notes evidencing the loan is not a sufficient averment of presentation. The notes were illegal. This section contemplates present legal action. Butts County v. Wright, 143 Ga. 253, 84 S.E. 443, 1915 Ga. LEXIS 370 (1915).

Garnishment not allowed. — System provided by law for the payment of claims against counties is to be adopted in all cases. This system cannot be preserved by allowing counties to be garnished. Dotterer v. Bowe, 84 Ga. 769, 11 S.E. 896, 1890 Ga. LEXIS 340 (1890).

OPINIONS OF THE ATTORNEY GENERAL

Governing authority subject to general law when remitting or crediting county taxes. — Governing authority of the county in exercising the county's authority under former Code 1933, §§ 92-3812 and 92-6502 (see now O.C.G.A. § 48-5-241) was subject to the general law set forth in former Code 1933, § 20-1007 (see now O.C.G.A. § 13-1-13), and was also subject to the limitation prescribed in former Code 1933, § 23-1602 (see now O.C.G.A. § 36-11-1). 1958-59 Ga. Op. Att'y Gen. 379.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 595 et seq.

C.J.S.

20 C.J.S., Counties, § 373 et seq.

ALR.

Power of city, town, or county or its officials to compromise claim, 105 A.L.R. 170; 15 A.L.R.2d 1359.

Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 A.L.R. 637.

Local government tort liability: minority as affecting notice of claim requirement, 58 A.L.R.4th 402.

Sufficiency of notice of claim against local political entity as regards time when accident occurred, 57 A.L.R.5th 689.

36-11-2. Audit and registration of claims against county; issuance of order on treasurer for claim; specification of fund on which order drawn.

Except where otherwise provided by law, each county governing authority shall audit all claims against its respective county. Every such claim, or such part as may be allowed, must be registered. The county governing authority or its clerk must give the claimant an order on the treasurer for the same; in the order, it shall specifically designate upon what particular fund such order is drawn, out of which payment is to be made.

History.

Orig. Code 1863, § 478; Code 1868, § 540; Ga. L. 1871-2, p. 69, § 1; Code 1873, § 506; Code 1882, § 506; Civil Code 1895, § 361; Civil Code 1910, § 410; Code 1933, § 23-1601.

JUDICIAL DECISIONS

Application to county commissioners. — When the fiscal affairs of a county are in charge of a board of county commissioners, the authority to audit and settle claims conferred by Ga. L. 1872, p. 479 (see O.C.G.A. §§ 36-5-1 (now repealed) and 36-11-2) upon the ordinary (now judge of the probate court) must be exercised by the board of county commissioners. Walker v. Stephens, 175 Ga. 405, 165 S.E. 99, 1932 Ga. LEXIS 259 (1932).

The statute applies to county commissioners when commissioners, instead of the ordinary (now judge of the probate court), have control of county affairs. Walden v. Smith, 203 Ga. 207, 45 S.E.2d 660, 1947 Ga. LEXIS 587 (1947), overruled, McCorkle v. Judges of Superior Court, 260 Ga. 315, 392 S.E.2d 707, 1990 Ga. LEXIS 239 (1990).

Duty nondelegable. — Duty of the board of county commissioners to audit and pass upon any claims arising against

the county in connection with a construction project is a duty which cannot be delegated, and the funds in controversy should not be used for the payment of any such charges before a determination of their correctness by such commissioners. McGinty v. Pickering, 180 Ga. 447, 179 S.E. 358, 1935 Ga. LEXIS 286 (1935).

Presumption that order or warrant valid. — It will be presumed that an order or warrant of the commissioners is a valid judgment, unless it shows that the commissioners had no jurisdiction to issue the order or warrant. Blue Island State Bank v. McRae, 169 Ga. 279, 150 S.E. 151, 1929 Ga. LEXIS 334 (1929).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 710.

C.J.S.

20 C.J.S., Counties, § 378.

ALR.

Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 A.L.R. 637.

36-11-3. When orders to be paid; registration of orders issued.

No order shall be paid until after five days from its date and delivery, unless otherwise specially ordered. In the meantime, the county governing authority may furnish the county treasurer with a full statement of all orders issued, which shall be immediately registered by him; when so registered, such orders shall be paid according to law, without further notice to the treasurer previous to the time of payment.

History.

Orig. Code 1863, § 531; Code 1868, § 595; Code 1873, § 557; Code 1882, § 557; Civil Code 1895, § 464; Civil Code 1910, § 580; Code 1933, § 23-1605.

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see now O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Failure to register a warrant drawn by the ordinary (now judge of the probate court) of a county may subordinate the payment of the warrant to that of others duly registered, but it does not render the warrant void. Neal Loan & Banking Co. v. Chastain, 121 Ga. 500, 49 S.E. 618, 1904 Ga. LEXIS 213 (1904).

Mandamus to compel furnishing of statement. — Mandamus issued requiring by virtue of this section the ordinary (now judge of the probate court) to furnish a statement of all orders drawn by a predecessor in office on funds derived from the sale of courthouse bonds. Aaron v. German, 114 Ga. 587, 40 S.E. 713, 1902 Ga. LEXIS 731 (1902).

Interest. — County warrant, which is a liquidated demand, even though the

warrant does not express any date for payment, is as a matter of law payable on demand, when made five days after the date on which the warrant is issued, and will ordinarily bear interest from and after demand was so made. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 383.

36-11-4. Order in which county debts paid.

(a) When there are enough funds to pay all outstanding orders and other forms of indebtedness due which the treasurer is authorized to pay, such debts may be paid indiscriminately without regard to their dates. When there are enough funds to pay all forms of indebtedness dated prior to some particular date, all such forms of indebtedness may likewise be paid indiscriminately. When there are insufficient funds to pay all forms of indebtedness of equal degree, they shall be paid ratably. Under all other circumstances, debts should be paid in the order of their dates.

(b) If any person holding county orders fails to present them by December 1 to the county treasurer for payment, such orders shall be postponed in favor of all orders which were so presented and were not paid for want of funds.

History.
Orig. Code 1863, §§ 530, 532; Code 1868, §§ 594, 596; Code 1873, §§ 556, 558; Code 1882, §§ 556, 558; Civil Code 1895, §§ 463, 465; Civil Code 1910, §§ 579, 581; Code 1933, §§ 23-1604, 23-1607.

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see now O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Compliance with section. — Former Code 1933, § 23-1306 (see now O.C.G.A. § 36-11-6) was substantially complied with by an endorsement upon the order by a designated county officer as follows: "presented for payment" on a named date - "insf. funds," meaning insufficient funds; and this was true notwithstanding it was provided by former Code 1933, §§ 23-1604 and 23-1607 (see now O.C.G.A. § 36-11-4) "when there is not enough to pay all [county orders] of equal

degree, they shall be paid ratably." Candler v. W.A. Neal & Son, 46 Ga. App. 625, 168 S.E. 265, 1933 Ga. App. LEXIS 151 (1933), aff'd, 180 Ga. 89, 178 S.E. 285, 1935 Ga. LEXIS 183 (1935).

Applicability of section when warrants aggregate sum larger than treasury. — When warrants for current expenses, which have been paid by another from the proceeds of a loan which the other person made to the county (to the rights of the several holders of which warrants such person has become subrogated), and other warrants issued by the county commissioners, aggregate a sum larger than that which the county has in the county's treasury, raised from the revenues of the year in which the various liabilities were incurred, payment must be made in accordance with the rules prescribed in former Civil Code 1895, §§ 361 et seq. and 463 et seq. (see now O.C.G.A. § 36-11-2 et seq.). CompareButts County v. Jackson Banking Co., 129 Ga. 801, 60 S.E. 149, 1908 Ga. LEXIS 200 (1908).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 710.

36-11-5. Interest on orders presented and not paid.

(a) On December 1 of each year, the county treasurer and the county governing authority shall together make an entry of all orders entitled to payment which were not so presented for payment and what orders not of equal dignity have been paid instead, in whole or in part, and what other orders are entitled to payment before such nonpresented orders. Persons holding such orders who present them without receiving payment before such day may have the treasurer annually mark thereon "Presented," the day of presentation, and that they were not paid for want of funds. Such county orders, when legally issued and duly presented, as provided in this Code section, and not paid for want of funds, shall bear interest at such rate as may be prescribed by the county governing authority, by resolution duly adopted and entered upon the minutes of the county governing authority, which rate of interest shall in no event be more than 7 percent per annum from date of entry of presentation and nonpayment for want of funds. The rate so fixed shall be plainly written or printed upon the face of the order. However, interest shall not be paid on such warrant or warrants after July 1 following the year in which they were presented unless the warrant or warrants are again presented and payment is refused for want of funds. The treasurer or keeper of county funds shall endorse on the warrant the words "Presented for payment; no funds on hand with which to pay same. This the _____ day of _____, _____."

(b) Any county order issued by any county governing authority shall bear interest at the rate specified by resolution at the time of the issuance of the order, as provided in this Code section. The rate of interest which the warrant shall thereafter bear shall not be changed or affected by any subsequent resolution or change of rate of interest that

may be adopted thereafter by the county governing authority; rather the warrant shall bear the rate of interest written or printed upon the face of the order and established by the county governing authority at the time of the issuance thereof.

History.

Orig. Code 1863, § 533; Code 1868, § 597; Code 1873, § 508; Code 1882, § 508; Civil Code 1895, § 466; Civil Code 1910, § 582; Ga. L. 1920, p. 65, § 1; Code 1933, § 23-1608; Ga. L. 1935, p. 110, §§ 1, 2; Ga. L. 1999, p. 81, § 36.

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see now O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Compliance with section. — Former Code 1933, § 23-1608 (see now O.C.G.A. § 36-11-5) was substantially complied with by an endorsement upon the order by a designated county officer as follows: "presented for payment" on a named date - "insf. funds," meaning insufficient funds; and this was true notwithstanding it was provided by former Code 1933, §§ 23-1604 and 23-1607 (see now O.C.G.A. § 36-11-4), "when there is not enough to pay all [county orders] of equal degree, they shall be paid ratably." Candler v. W.A. Neal & Son, 46 Ga. App. 625, 168 S.E. 265, 1933 Ga. App. LEXIS 151 (1933), aff'd, 180 Ga. 89, 178 S.E. 285, 1935 Ga. LEXIS 183 (1935).

When interest begins. — County warrants do not bear interest, unless the warrants are presented for payment and payment is not made for want of funds, and an entry of such presentation and such nonpayment is made by the county treasurer on the warrant, with the date of presentation. When the above requirements are complied with, such warrants bear interest from the date of entry of such presentation and nonpayment until the first day of July of the year following in which such entry is made. Americus Grocery Co. v. Pitts Banking Co., 169 Ga. 70, 149 S.E. 776, 1929 Ga. LEXIS 283 (1929), overruled, Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Former Code 1933, § 23-1608 (see now O.C.G.A. § 36-11-5) assumed that the county treasurer would pay the warrant when payment was demanded, and if the treasurer failed to pay, contemplated that interest would run in virtue of former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2 and 7-4-15) from the date of the demand. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Interest if funds available. — Provision in former Code 1933, § 23-1608 (see now O.C.G.A. § 36-11-5) that county orders when legally issued and duly presented as therein provided "and not paid for want of funds, shall bear interest" if endorsed by the treasurer as set forth, did not mean that interest allowed generally on liquidated demands as under former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2 and 7-4-15), would be disallowed if sufficient available funds were in hand to pay the warrant. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Recovery of full value of instrument. — In a suit by the endorsee against the endorser to recover upon the contract of endorsement, the plaintiff is

entitled to recover the full face value of the order with any interest legally due thereon as provided in this section. Candler v. W.A. Neal & Son, 46 Ga. App. 625, 168 S.E. 265, 1933 Ga. App. LEXIS 151 (1933), aff'd, 180 Ga. 89, 178 S.E. 285, 1935 Ga. LEXIS 183 (1935).

Treasurer cannot go behind judgment. — Order drawn by the ordinary (now judge of the probate court) of a county on the treasurer for the payment of a debt due by the county is evidence of an adjudication by the ordinary (now judge of the probate court) that the amount stated in the order is due; and the treasurer cannot go behind this judgment, except for fraud or mistake as to the amount of the indebtedness. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880, 1937 Ga. LEXIS 661 (1937).

Duty of treasurer when payment refused. — An official duty of a county treasurer, to whom a regularly issued warrant drawn by the ordinary (now judge of the probate court) having control of the finances of the county is presented for payment, when payment is refused, is to make the entry on the warrant prescribed by the statute. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880, 1937 Ga. LEXIS 661 (1937).

Orders drawn upon nonexistent funds. — This section clearly contemplates the existence of county orders drawn upon funds not in esse, and the warrants are not for that reason illegal. Walker v. Stephens, 175 Ga. 405, 165 S.E. 99, 1932 Ga. LEXIS 259 (1932).

Mandamus. — Court did not err in granting mandamus absolute requiring county treasurer to make entry on a county warrant issued by the ordinary (now judge of the probate court) in favor of petitioner indicating that the warrant was prevented and not paid for by lack of funds. Thompson v. Shurling, 184 Ga. 836, 193 S.E. 880, 1937 Ga. LEXIS 661 (1937).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 388.

36-11-6. Negotiability of county orders.

All county orders are transferable by delivery or endorsement; and the endorser shall be liable according to the terms of his endorsement, as in commercial paper, provided that no transfer can take place so as to prevent a treasurer from setting off any sum that the payee may owe the county at the date of the order.

History.
Orig. Code 1863, § 534; Code 1868, § 598; Code 1873, § 560; Code 1882, § 560; Civil Code 1895, § 467; Civil Code 1910, § 583; Code 1933, § 23-1606.

JUDICIAL DECISIONS

Sections 7-4-2 and 7-4-15 not repealed and construed in pari materia. — Former Code 1933, § 23-1604 et seq. (see now O.C.G.A. § 36-11-3 et seq.) did not expressly or by necessary implication repeal former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2 and 7-4-15). The statutes all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by the county officers in regard to the order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Effect of endorsement. — Payee may have authorized the delivery of a warrant to the payee's son-in-law only for the

purpose of safekeeping, yet, if at that time the warrant bore the payee's genuine signature as an endorsement thereon, the payee thereby gave to the depositary such external indicia of the right of disposing of the warrant that the depositary could, by pledging the same to an innocent person for a present consideration, divest the payee's title. Lilly v. Citizens' Bank & Trust Co., 44 Ga. App. 653, 162 S.E. 639, 1932 Ga. App. LEXIS 440 (1932).

Discounting of warrants. — Inasmuch as the law authorizes a sale of county warrants and provides the method by which the vendor shall be liable to the vendee, and how the county shall be liable for interest, there is nothing illegal in the arrangement which was made between the county and the banks in discounting the legal warrants issued by the county. Southern Ry. v. Fulton County, 170 Ga. 248, 152 S.E. 567, 1930 Ga. LEXIS 432 (1930).

An order or warrant is prima-facie evidence of indebtedness on the part of the county to the payee, transferee, or endorsee, of the validity of the claim for which the warrant is issued, and the burden of proving the warrant invalid is upon the commissioners or the ordinary (now judge of the probate court), as the case may be. Blue Island State Bank v. McRae, 169 Ga. 279, 150 S.E. 151, 1929 Ga. LEXIS 334 (1929).

Subrogation of rights of maker of illegal loan to rights of warrant holder. — When a county incurs a lawful liability for a current expense, and issues a warrant on the treasury for the warrant's payment, and subsequently procures another to pay the warrant out of a loan which the other person makes to the county, upon disaffirmance of the illegal loan by the county the lender is subrogated to the rights of the warrant holder whose warrant was paid out of the proceeds of the illegal loan. CompareButts County v. Jackson Banking Co., 129 Ga. 801, 60 S.E. 149, 1908 Ga. LEXIS 200 (1908).

RESEARCH REFERENCES

C.J.S.

10 C.J.S., Bills and Notes; Letters of Credit, §§ 124, 126.

36-11-7. Satisfaction of judgment against county.

The private property of the citizens of a county shall not be bound by any judgment obtained against the county. Such judgment, if binding, shall be satisfied from money raised by lawful taxation.

History.

Orig. Code 1863, § 480; Code 1868, § 542; Code 1873, § 508; Code 1882, § 508; Civil Code 1895, § 363; Civil Code 1910, § 412; Code 1933, § 23-1603.

JUDICIAL DECISIONS

Appropriation of moneys for liability policy premiums and for damages exceeding policy limits. — Board of commissioners must appropriate moneys for insurance premiums on any policy which might pay a plaintiff if plaintiff's suit is ultimately successful in plaintiff's claim against the county or must appropriate moneys to pay actual damages should plaintiff's recovery exceed the policy limits. Dodson v. Floyd, 529 F. Supp. 1056, 1981 U.S. Dist. LEXIS 16909 (N.D. Ga. 1981).

RESEARCH REFERENCES

C.J.S.

20 C.J.S., Counties, §§ 402, 403.

ALR.

County as subject to garnishment process, 60 A.L.R. 823.

CHAPTER 12

SUPERVISION AND SUPPORT OF PAUPERS

Sec.		Sec.	
36-12-1.	General supervision of paupers.	36-12-4.	Liability of person sending pauper to county for support purposes.
36-12-2.	Eligibility for benefits.	36-12-5.	Final disposition of deceased indigent individuals.
36-12-3.	Duty of relatives to support paupers generally; right of county to recover from relatives for provisions furnished.		

Cross references.
Provision of hospital care for the indigent generally, § 31-8-1.

Establishment of county departments of family and children's services, § 49-3-1.

36-12-1. General supervision of paupers.

The general supervision of all paupers is vested in the county governing authority.

History.
Laws 1792, Cobb's 1851 Digest, p. 346; Laws 1818, Cobb's 1851 Digest, p. 347; Code 1863, § 710; Code 1868, § 776; Code 1873, § 754; Code 1882, § 754; Civil Code 1895, § 426; Civil Code 1910, § 541; Code 1933, § 23-2101.

JUDICIAL DECISIONS

Inquiry as to chargeability. — Until there has been some inquiry into the circumstances of the poor who will be treated as paupers and who shall become chargeable to the county, no persons can be properly said to be so chargeable. Justices of Inferior Court v. Chapman, 16 Ga. 89, 1854 Ga. LEXIS 174 (1854).

Confederate soldiers, referred to in the expression "indigent pensioners," as used in Ga. L. 1909, p. 17, § 2, cannot be classed as paupers. Clark v. Walton, 137 Ga. 277, 73 S.E. 392, 1911 Ga. LEXIS 381 (1911).

RESEARCH REFERENCES

ALR.
Presumption and burden of proof of settlement in action by one town or poor district against another for support of pauper, 99 A.L.R. 457.

Tort liability of municipality or other governmental subdivision in connection with poor relief activities, 134 A.L.R. 762.

36-12-2. Eligibility for benefits.

No person who is able to maintain himself by labor or who has sufficient means shall be entitled to the benefits of the provision for the poor. In cases where women are unable to maintain themselves and the helpless

children they may have, they may be aided to the extent required in the furnishing of food, clothing, or shelter.

History.
Orig. Code 1863, § 715; Code 1868, § 785; Code 1873, § 763; Code 1882, § 763; Civil Code 1895, § 438; Civil Code 1910, § 553; Code 1933, § 23-2301.
Editor's notes.
In light of the similarity of the statutory provisions, decisions decided under former Civil Code 1910, §§ 550 and 553 are included in the annotations for this Code section.

JUDICIAL DECISIONS

Levy valid even if Act unconstitutional. — An item of a county tax levy for the "support of paupers," as provided under the Constitution, will not be enjoined on the ground that it is null and void, even if, as alleged, the moneys are to be expended as provided under an unconstitutional Act, unless it also appears that the levy itself is for some reason invalid. If the Act is invalid, the tax must nevertheless be levied. J.G. McCrory Co. v. Board of Comm'rs of Rds. & Revenues, 177 Ga. 242, 170 S.E. 18, 1933 Ga. LEXIS 156 (1933) (decided under former Civil Code 1910, §§ 550 and 553.).

36-12-3. Duty of relatives to support paupers generally; right of county to recover from relatives for provisions furnished.

The father, mother, or child of any pauper contemplated by Code Section 36-12-2, if sufficiently able, shall support the pauper. Any county having provided for such pauper upon the failure of such relatives to do so may bring an action against such relatives of full age and recover for the provisions so furnished. The certificate of the judge of the probate court that the person was poor and was unable to sustain himself and that he was maintained at the expense of the county shall be presumptive evidence of such maintenance and the costs thereof.

History.
Orig. Code 1863, §§ 716, 717; Code 1868, §§ 786, 787; Code 1873, §§ 764, 765; Code 1882, §§ 764, 765; Civil Code 1895, §§ 439, 440; Civil Code 1910, §§ 554, 555; Code 1933, §§ 23-2302, 23-2303.
Cross references.
Duty of parents to support child, § 19-7-2.
Child Support Recovery Act, § 19-11-1 et seq.
Uniform Reciprocal Enforcement of Support Act, § 19-11-40 et seq.

JUDICIAL DECISIONS

Considering former Code 1933, §§ 23-2302 and 23-2303 (see now O.C.G.A. § 36-12-3) in connection with cognate sections, the words "any pauper contemplated by former Code 1933, § 23-2301 (see now O.C.G.A. § 36-12-2)," refer to one who is completely destitute. Citizens & S. Nat'l Bank v. Cook, 182 Ga. 240, 185 S.E. 318, 1936 Ga. LEXIS 323 (1936).

When mother must support children. — On the death of a father the duty of supporting the children devolves upon the mother, when the mother has the

ability, and the infant child is without means, and is unable to earn a maintenance. Thompson v. Georgia Ry. & Power Co., 163 Ga. 598, 136 S.E. 895, 1927 Ga. LEXIS 33 (1927).

Child must be destitute. — Child has no right to recover unless the child is completely destitute. Crane v. Crane, 225 Ga. 605, 170 S.E.2d 392, 1969 Ga. LEXIS 582 (1969).

Mother's right of support from child. — Destitute mother being a pauper within the meaning of this section and having a son of sufficient ability to support her, has a right to such support from the son, and when the destitute mother has the right to support from her son, a court of equity may provide a remedy to enforce the right. Citizens & S. Nat'l Bank v. Cook, 182 Ga. 240, 185 S.E. 318, 1936 Ga. LEXIS 323 (1936).

Wrongful birth damages. — In action for damages under federal wrongful birth claim, extraordinary expenses of the child's care are recoverable beyond the child's eighteenth birthday if the child will be completely destitute as Georgia law imposes the duty to support on parents of a destitute adult. Campbell v. United States, 795 F. Supp. 1118, 1990 U.S. Dist. LEXIS 20014 (N.D. Ga. 1990), dismissed, 795 F. Supp. 1127, 1991 U.S. Dist. LEXIS 20469 (N.D. Ga. 1991).

Confederate soldiers, referred to in the expression "indigent pensioners," as used in Ga. L. 1909, p. 173, § 2, cannot be classed as paupers. Clark v. Walton, 137 Ga. 277, 73 S.E. 392, 1911 Ga. LEXIS 381 (1911).

Jurisdiction of petition for wife's support. — If a petition by a wife for support from her husband is considered as an action for alimony against the defendant husband, the petition must be brought in the county of his residence, and a court would be without jurisdiction of the cause in another county. Davenport v. Davenport, 215 Ga. 496, 111 S.E.2d 57, 1959 Ga. LEXIS 523 (1959).

RESEARCH REFERENCES

Am. Jur. 2d.

79 Am. Jur. 2d, Welfare Laws, §§ 80 et seq., 89 et seq.

C.J.S.

41 C.J.S., Husband and Wife, §§ 16, 66 et seq. 67A C.J.S., Parent and Child, §§ 44, 45.

ALR.

Liability of parent for dental services to minor child, 7 A.L.R. 1070.

Criminal liability of father for failure to support child who is living apart from him without his consent, 23 A.L.R. 864.

Survival of statutory liability for support of relative, 96 A.L.R. 537.

Nature of care contemplated by statute imposing general duty to care for indigent relatives, 92 A.L.R.2d 348.

Constitutionality of statutory provision requiring reimbursement of public by child for financial assistance to aged parents, 75 A.L.R.3d 1159.

36-12-4. Liability of person sending pauper to county for support purposes.

Any inhabitant of any county, city, town, or village in or out of this state who sends a pauper to some county in this state by paying the expense of his transportation or otherwise has him removed for the purpose of burdening some other community shall be personally liable for the support of the pauper in the county where he locates. If the person who transports a pauper is insolvent or does not respond to such demand from any cause, the county from which the transportation took place shall be liable.

History.
Orig. Code 1863, §§ 718, 719; Code 1868, §§ 789, 790; Code 1873, §§ 767, 768; Code 1882, §§ 767, 768; Civil Code 1895, §§ 442, 443; Civil Code 1910, §§ 557, 558; Code 1933, §§ 23-2305, 23-2306.

RESEARCH REFERENCES

Am. Jur. 2d.
79 Am. Jur. 2d, Welfare Laws, § 86.

36-12-5. Final disposition of deceased indigent individuals.

(a) Whenever any individual dies in this state and the decedent, his or her family, and his or her immediate kindred are indigent and unable to provide for the decedent's decent interment, cremation, or other final disposition, the governing authority of the county where the death occurred shall make available from county funds a sum sufficient to provide a decent interment, cremation, or other final disposition of the deceased indigent individual or to reimburse such individual's immediate kindred as may have expended the cost of such decent interment, cremation, or other final disposition voluntarily, the exact amount thereof to be determined by the governing authority of the county but shall not exceed the lesser of the actual costs of interment, cremation, or other final disposition.

(b) The Department of Corrections is authorized to reimburse the governing authority of the county where expenditures have been made in accordance with this Code section for the burial, cremation, or other final disposition of any inmate under the authority, jurisdiction, or control of the Department of Corrections; provided, however, that in no case shall the governing authority of the county be entitled to reimbursement where the decedent was in the custody of a county correctional institution or other county correctional facility.

History.
Ga. L. 1863-64, p. 60, § 1; Code 1868, § 788; Code 1873, § 766; Code 1882, § 766; Civil Code 1895, § 441; Civil Code 1910, § 556; Code 1933, § 23-2304; Ga. L. 1967, p. 616, § 1; Ga. L. 1972, p. 971, § 1; Ga. L. 1974, p. 616, § 1; Ga. L. 1978, p. 1048, § 1; Ga. L. 1980, p. 722, § 1; Ga. L. 1982, p. 2107, § 34; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 265, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 431, §§ 1, 2; Ga. L. 2013, p. 669, § 1/SB 83; Ga. L. 2025, p. 269, § 2-8/SB 241, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, rewrote subsection (a), which read: "Whenever any person dies in this state and the decedent, his or her family, and his or her immediate kindred are indigent and unable to provide for the decedent's decent interment or cremation, the governing authority of the county wherein the death occurs shall make available from county funds a sum sufficient to provide a decent interment or cremation of the deceased indigent person or to reimburse such person as may have expended the cost thereof voluntarily, the exact amount thereof to be determined by the governing authority of the county but shall not exceed the lesser of the actual costs of interment or cremation."; and, in subsection (b), substituted "burial, crema-

tion, or other final disposition of" for "burial or cremation of" and substituted "provided, however, that" for "but".

Cross references.

Embalming, transportation, and care of bodies generally, § 31-21-1 et seq.

Notifying of commissioner of corrections and county coroner upon sudden death of inmate or death of inmate under unusual circumstances, § 42-5-7.

JUDICIAL DECISIONS

Coroner's right to reimbursement. — When a coroner, not officially but as an individual, caused dead paupers, the victims of a storm, to be buried decently, the coroner was entitled to be reimbursed by the county. Walker v. Sheftall, 73 Ga. 806, 1884 Ga. LEXIS 235 (1884).

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Nature of county's responsibility. — County has fulfilled the county's responsibility under this section when the county makes available from county funds at least $75.00, but not more than $125.00, to provide a decent interment for a deceased pauper; whether these funds are used to provide a lined pine coffin, plus normal burial expenses, or any other means of decent interment, is at the option of the county. 1971 Op. Att'y Gen. No. U71-129 (decided prior to 1991 amendment deleting provisions relating to minimum and maximum amounts from O.C.G.A. § 36-12-5).

CHAPTER 13

BUILDING, ELECTRICAL, AND OTHER CODES

Sec.		Sec.	
36-13-1.	Creation, adoption, amendment, and repeal of codes.		mits and inspections; establishment of fees or charges.
36-13-2.	Matters which may be covered by county codes.	36-13-7.	Areas to which codes, rules, and regulations may be made applicable.
36-13-3.	Adoption of codes by reference to national or regional codes.	36-13-8.	Notice and hearing prior to enactment of codes, rules, or regulations.
36-13-4.	Contracts with other political subdivisions to issue building permits and enforce codes.	36-13-9.	Appropriation and expenditure of funds.
36-13-5.	Appointment of inspectors and assistants.	36-13-10.	Remedies for actual or proposed violations of codes, rules, or regulations.
36-13-5.1.	Issuance of citations for violation in certain counties; jurisdiction; warrant for arrest for failure to appear in response to citation.	36-13-11.	Compliance as prerequisite to issuance of permit; failure to secure required permit.
36-13-6.	Promulgation of rules and regulations concerning per-	36-13-12.	Criminal penalty for violations of codes, rules, or regulations.

Cross references.

Adoption by counties and municipalities of the Georgia State Plumbing Code, the Georgia State Electrical Code, § 8-2-20 et seq.

Local Government Code Enforcement Boards, § 36-74-1 et seq.

JUDICIAL DECISIONS

Authority of county to impose additional tax on building permits. — Ga. L. 1960, p. 560, § 1 et seq. does not give a county the authority to impose a tax or charge in addition to all charges currently imposed for building permits, when those funds are allocated directly to the board of education. DeKalb County v. Brown Bldrs. Co., 227 Ga. 777, 183 S.E.2d 367, 1971 Ga. LEXIS 842 (1971).

36-13-1. Creation, adoption, amendment, and repeal of codes.

The county governing authority in this state is authorized to make, adopt, amend, and repeal building, housing, electrical, plumbing, gas, and other similar codes relating to the construction, livability, sanitation, erection, equipment, alteration, repair, occupancy, or removal of buildings and structures located outside of the corporate limits of any municipality in the county.

History.

Ga. L. 1961, p. 560, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Buildings, §§ 2 et seq., 44.
ALR.
Rights of permittee under illegally issued building permit, 6 A.L.R.2d 960.
Zoning authority as estopped from revoking legally issued building permit, 26 A.L.R.5th 736.

36-13-2. Matters which may be covered by county codes.

The codes authorized in Code Section 36-13-1 may embrace such matters as the preparation and submission of plans and specifications; issuance of permits; standards governing the kind, quality, and performance of materials, equipment, and workmanship; establishment of fire zones; fireproofing; means of egress and ingress; floor area per occupant; and sanitary facilities and usage proceedings in connection with unsafe, unsanitary, or inadequate structures. The enumeration in this Code section shall not be construed as being exclusive.

History.
Ga. L. 1961, p. 560, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Buildings, § 13 et seq.
C.J.S.
101A C.J.S., Zoning and Land Planning, § 255 et seq.

36-13-3. Adoption of codes by reference to national or regional codes.

The codes authorized in Code Section 36-13-1 may be adopted by reference to national or regional codes.

History.
Ga. L. 1961, p. 560, § 3.

36-13-4. Contracts with other political subdivisions to issue building permits and enforce codes.

The county governing authority is permitted to contract with municipalities and other political subdivisions of the state possessing the authority to issue building permits and to enforce building, electrical, plumbing, gas, housing, and other similar codes, in order to administer efficiently the powers granted under this chapter.

History.
Ga. L. 1961, p. 560, § 4.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 412 et seq.

36-13-5. Appointment of inspectors and assistants.

The county governing authority shall have the authority to appoint building, electrical, plumbing, gas, and housing inspectors for its county and to appoint such other assistants as the authority may deem necessary.

History.
Ga. L. 1961, p. 560, § 5.

36-13-5.1. Issuance of citations for violation in certain counties; jurisdiction; warrant for arrest for failure to appear in response to citation.

In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census, any employee who is authorized to enforce any county code, ordinance, regulation, rule, or other order, including such related ordinances, codes, and regulations as drainage regulations, soil erosion and sedimentation control regulations, subdivision and zoning regulations, water and sewer regulations, and any other land development or construction regulations of such county, shall have the authority to issue citations to any person who shall violate any such county code, ordinance, regulation, or order which shall be in effect in such counties. Such citations shall command the appearance of such person at a designated regular session of a court in such county having the jurisdiction of a commitment court throughout the entire county. At such time and place such court shall act as a court of inquiry with all the powers and authorities as specified in Code Section 17-8-5. In the event that any such person shall fail to appear in response to a citation, a warrant shall be issued for the arrest of such person for violation of such county code, ordinance, regulation, rule, or order without the necessity of any further action.

History.
Ga. L. 1981, p. 3261, § 1; Code 1981, § 36-13-5.1, enacted by Ga. L. 1982, p. 2107, § 35; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 3, § 36.

36-13-6. Promulgation of rules and regulations concerning permits and inspections; establishment of fees or charges.

The county governing authority shall have the authority to make rules

and regulations concerning permits for and inspections of construction equipment and the alteration, repair, or removal of buildings, signs, and other structures outside the corporate limits of municipalities located in its county. It may prescribe fees or charges for permits and inspections, which fees shall be fixed and charged by the governing authority and shall be paid to the county treasurer by the applicant for such permits or inspections.

History.
Ga. L. 1961, p. 560, § 6.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Buildings, § 9 et seq.
C.J.S.
101A C.J.S., Zoning and Land Planning, §§ 64, 65, 131, 255, 256.

36-13-7. Areas to which codes, rules, and regulations may be made applicable.

The county governing authority shall have the authority to make such codes, rules, and regulations as are permitted under this chapter for:

(1) The entire unincorporated area of the county;

(2) Any militia district within the unincorporated area of the county;

(3) Any land lot;

(4) Any land and water areas 500 feet wide on either side of any state or county highway or any section of such highway within the unincorporated area of the county;

(5) Any land or water areas 500 feet wide on either side of any water line of the stream or water reservoir or section thereof within the unincorporated area of the county; or

(6) Any portion of the unincorporated area of the county lying within a specified distance of the boundaries of a municipality in the county.

History.
Ga. L. 1961, p. 560, § 8.

36-13-8. Notice and hearing prior to enactment of codes, rules, or regulations.

Before enacting any of the codes, rules, or regulations permitted in this chapter, the county governing authority shall hold a public hearing

thereon. At least 15 days' notice of the time and place of the hearing shall be published in a newspaper of general circulation in the county.

History.
Ga. L. 1961, p. 560, § 7.

RESEARCH REFERENCES

C.J.S.
101A C.J.S., Zoning and Land Planning, § 14.
ALR.
What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-13-9. Appropriation and expenditure of funds.

The county governing authorities are authorized to appropriate and expend funds for the purposes of this chapter.

History.
Ga. L. 1961, p. 560, § 12.

36-13-10. Remedies for actual or proposed violations of codes, rules, or regulations.

When any violation of any of the codes, rules, and regulations which are adopted by the county governing authority under this chapter is or is proposed to be committed, the inspectors appointed under this chapter, the county attorney, some other appropriate authority of the county, or any adjacent or neighboring property owner who would be damaged by the violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent, correct, or abate the violation or threatened violation.

History.
Ga. L. 1961, p. 560, § 11.

RESEARCH REFERENCES

C.J.S.
101A C.J.S., Zoning and Land Planning, § 432 et seq.

36-13-11. Compliance as prerequisite to issuance of permit; failure to secure required permit.

Full compliance with all rules, regulations, and requirements set up under this chapter shall be a prerequisite to issuance of any permit. Failure to secure such permit as is required is declared to be a misdemeanor.

History.
Ga. L. 1961, p. 560, § 9.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Buildings, § 8 et seq.
C.J.S.
101A C.J.S., Zoning and Land Planning, § 255 et seq.

36-13-12. Criminal penalty for violations of codes, rules, or regulations.

The violation of any of the codes, rules, and regulations adopted by the county governing authority under this chapter is declared to be a misdemeanor. Any person violating any such codes, rules, and regulations shall be guilty of a misdemeanor. Each and every day such violation continues shall be deemed a separate offense.

History.
Ga. L. 1961, p. 560, § 10.

RESEARCH REFERENCES

C.J.S.
101A C.J.S., Zoning and Land Planning, § 449 et seq.

CHAPTER 14

COUNTY BRIDGES

Sec.		Sec.	
36-14-1.	Erection of bridges across navigable streams.	36-14-3.	Contracts with federal government for bridges across streams bordering land ceded to United States.
36-14-2.	Building and maintaining bridges over rivers bordering adjacent states.		

Cross references.

Acquisition of property by counties and municipalities for transportation purposes generally, § 32-3-1 et seq.

Bridge repair bonds, § 32-4-70 et seq.

36-14-1. Erection of bridges across navigable streams.

The consent of the state is given to and authority is vested in the county governing authority to erect bridges across the navigable streams that lie wholly within the state, whenever in the judgment of the county governing authority the public interest may be subserved thereby, upon its compliance with the law of Congress requiring the approval of the secretary of transportation and the chief of engineers of the United States, as embodied in the statutes of the United States passed by the Fifty-fifth Congress and approved March 3, 1899.

History.

Ga. L. 1904, p. 100, § 1; Civil Code 1910, § 427; Code 1933, § 23-2004.

U.S. Code.

The federal Act referred to in this Code section is codified at 33 U.S.C. §§ 401, 403.

RESEARCH REFERENCES

Am. Jur. 2d.

39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 34 et seq., 65 et seq.

C.J.S.

11 C.J.S., Bridges, § 4 et seq.

36-14-2. Building and maintaining bridges over rivers bordering adjacent states.

Counties lying adjacent to any river on the border or forming the boundary between this state and another shall have the same power, acting by and through the proper county authorities, to build and maintain bridges over such river as the counties now have to build and maintain bridges over streams lying wholly within their borders, provided that this power shall not be exercised except to cooperate with the proper authorities of the adjacent state in building and maintaining such bridges, on the principle that each state is to build simultaneously

from its own bank to the middle of the river and afterwards to maintain and keep up the part of the bridge which it has built; and provided, further, that no bridge shall be erected under this Code section at any point where the river exceeds, at low-water mark, 2,000 feet in breadth.

History.
Ga. L. 1895, p. 78, § 1; Civil Code 1895, § 372; Civil Code 1910, § 424; Ga. L. 1920, p. 62, § 1; Code 1933, § 23-2001; Ga. L. 1987, p. 3, § 36.

36-14-3. Contracts with federal government for bridges across streams bordering land ceded to United States.

(a) The county governing authority may contract and pay out of the funds of the county such sums of money as it deems equitable and just to the authorities of the United States for the county's fair proportion of the cost of building any bridge which it deems necessary to erect across any stream dividing the county or some part thereof from lands over which the jurisdiction has been ceded to the government of the United States for any purpose, provided that it shall thereafter be the duty of the authorities of the United States to keep such bridges in repair, to renew them as often as may be necessary, and to keep them open for the free and uninterrupted travel of the public.

(b) The United States is vested with full and complete jurisdiction over grounds necessary for the erection of piers and approaches to such bridges on each side of such streams, so far as may be necessary for the erection, repair, and protection of the bridges and approaches.

History.
Ga. L. 1895, p. 76, §§ 1, 2; Civil Code 1895, §§ 373, 374; Civil Code 1910, §§ 425, 426; Code 1933, §§ 23-2002, 23-2003.

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, § 35.

CHAPTER 15

COUNTY LAW LIBRARY

Sec.		Sec.	
36-15-1.	Board of trustees created in each county; composition; chairperson; quorum.	36-15-9.	Collection of additional costs in court cases; amount; determination of need as prerequisite to collection; collection in certain criminal cases.
36-15-2.	Secretary-treasurer of board; designation and compensation of librarian.	36-15-10.	Prior actions, decisions, contracts, and purchases of boards prior to March 19, 1971, ratified.
36-15-3.	Bond of secretary-treasurer.	36-15-11.	[Reserved] Receipt and disbursement of funds by counties having population of 950,000 or more.
36-15-4.	Powers and duties of board of trustees generally.	36-15-12.	Applicability to city court of certain cities.
36-15-5.	Control, deposit, and investment of funds.	36-15-13.	Annual audit required.
36-15-6.	Receipt and investment of money and property.		
36-15-7.	Use of funds.		
36-15-8.	Furnishing of space and utilities by county governing authority.		

Cross references.
County and regional public libraries, § 20-5-40 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Assistant district attorneys eligible to serve on library board. — Assistant district attorneys are practicing attorneys within the meaning of Ga. L. 1971, p. 180, § 1 et seq.; therefore, an assistant district attorney is eligible to serve as a member of the board of trustees of a county law library. 1973 Op. Att'y Gen. No. U73-112.

36-15-1. Board of trustees created in each county; composition; chairperson; quorum.

There is created in each county in this state a board to be known as the board of trustees of the county law library, hereafter referred to as the board. The board shall consist of the chief judge of the superior court of the circuit in which the county is located; the judge of the probate court; the senior judge of the state court, if any; the chief judge of the magistrate court; the district attorney of the circuit in which the county is located; a solicitor-general of the state court, if any; the clerk of the superior court; and two practicing attorneys of the county. The practicing attorneys shall be selected by the other trustees and shall serve at their pleasure. All of the trustees shall serve without pay. The chief judge of the superior court shall be chairperson of the board. A majority of the members of the board shall constitute a quorum for the purpose of transacting all business that may come before the board.

History.
Ga. L. 1971, p. 180, § 1; Ga. L. 1973, p. 430, § 1; Ga. L. 1997, p. 392, § 1; Ga. L. 2016, p. 435, § 2/HB 851; Ga. L. 2017, p. 548, § 1/HB 453.

36-15-2. Secretary-treasurer of board; designation and compensation of librarian.

(a) There is created an office to be known as secretary-treasurer of the board of trustees of the county law library in each county. The secretary-treasurer shall be selected and appointed by the board and shall serve at the pleasure of the board. The board may appoint one of its own members as secretary-treasurer or, in its discretion, may designate some other person to act as secretary-treasurer of the board. The secretary-treasurer of the board shall perform the duties provided for the treasurer in this chapter.

(b) The board of trustees may designate the judge of the probate court or a deputy clerk of the superior court of each county to act as librarian; any such official shall not receive any additional compensation for the performance of such duties. The board, however, in its discretion, may designate some other person to act as librarian and shall fix the compensation for such person.

History.
Ga. L. 1971, p. 180, § 2; Ga. L. 1973, p. 430, § 2; Ga. L. 1976, p. 700, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Dual capacity prohibited. — Librarian designated and compensated under this section may not serve in dual capacity as librarian-secretary. 1975 Op. Att'y Gen. No. U75-16.

36-15-3. Bond of secretary-treasurer.

The secretary-treasurer of the board shall give a good and sufficient surety bond, payable to the county, in such an amount as may be determined by the board, to account faithfully for all funds received and disbursed by him. The premium on the bond shall be paid out of the county law library fund.

History.
Ga. L. 1971, p. 180, § 8.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 153.

36-15-4. Powers and duties of board of trustees generally.

The board of trustees is given the following powers and duties:

(1) To provide for the collection of all money provided for in this chapter;

(2) To select the books, reports, texts, and periodicals;

(3) To make all necessary rules and regulations governing the use of the library;

(4) To keep records of all its meetings and proceedings;

(5) To exercise all other powers necessary for the proper administration of this chapter; and

(6) To enter into agreements with the boards of trustees of other county law libraries within the same judicial circuit for the purpose of pooling funds to purchase books, reports, texts, and periodicals and to purchase or lease computer related research equipment and programs; to provide for the joint use of such books, reports, texts, periodicals, and computer related research equipment and programs within the same judicial circuit; and to provide where said books, reports, texts, periodicals, and computer related research equipment and programs may be maintained.

History.
Ga. L. 1971, p. 180, § 4; Ga. L. 1994, p. 1923, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1994, "computer related" was substituted for "computer-related" in three places in paragraph (6).

36-15-5. Control, deposit, and investment of funds.

The board shall have control of the funds provided for in this chapter. All funds received shall be deposited in a special account to be known as the county law library fund. The board shall have authority to expend the funds in accordance with this chapter and to invest any of the funds so received in any investments which are legal investments for fiduciaries in this state.

History.
Ga. L. 1971, p. 180, § 3.

36-15-6. Receipt and investment of money and property.

The board may take, by gift, grant, devise, or bequest, any money, real or personal property, or other thing of value and may hold or invest the same for the uses and purposes of the library.

History.
Ga. L. 1971, p. 180, § 5.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 206 et seq.

36-15-7. Use of funds.

(a) The money paid into the hands of the treasurer of the board of trustees of the county law library shall be used for the purchase of law books, reports, texts, periodicals, supplies, desks, and equipment and for the maintenance, upkeep, and operation of the law library, including the services of a librarian and, within the discretion of the board of trustees, payment for purchases made by a county's superior court, state court, probate court, magistrate court, or juvenile court, and for the purchase or leasing of computer related legal research equipment and programs, and, at the discretion of the county governing authority, for the establishment and maintenance of the codification of county ordinances. However, the amount transferred to the county governing authority for codification pursuant to this subsection shall not exceed the cost of establishing or maintaining the codification.

(b) In addition to the uses specified in subsection (a) of this Code section, the board of trustees of a county law library shall be authorized to use funds to establish a law library or libraries for the judges of the superior courts of the judicial circuit and for the judges of the state court in which the county lies. A request for the establishment of one or more such libraries shall be made to the board of trustees by the chief judge of the judicial circuit with the assent of a majority of the superior court judges of the circuit or by the chief judge of the state court of the county with the assent of a majority of the state court judges of the county. Additionally, the probate judge, chief magistrate, presiding juvenile court judge, or any chief judge of any county court may make a similar request. It shall be in the discretion of the board of trustees of each county whether to grant such a request. Any one or more county boards of trustees in the judicial circuit may participate in the establishment of the law library or libraries and, for the purpose of such participation, may enter into agreements regarding the proportional share of expenditures to be borne by each county board of trustees. Purchases made from county law library funds under this subsection shall not duplicate the law books and materials supplied to each judge by the state or by other sources. Such purchases shall become the property of the judge who requested the purchase and shall be passed on to his or her successor in office.

(c) In the event the board of trustees determines in its discretion that it has excess funds, such funds as may be designated by the board of

trustees shall be disbursed by the board of trustees to charitable tax-exempt organizations which provide civil legal representation for low-income people; used to purchase software, equipment, fixtures, or furnishings for any office related to county judicial facilities or services, including, but not limited to, courtrooms and jury rooms; or turned over to the county commissioners and used by the county commissioners for the purchase of software, equipment, fixtures, or furnishings for the courthouse.

(d) Except as provided in subsection (b) of this Code section, all law books, reports, texts, and periodicals purchased by the use of gifts and from the funds of the county law library shall become the property of the county.

History.
Ga. L. 1971, p. 180, § 7; Ga. L. 1973, p. 430, § 4; Ga. L. 1982, p. 1103, § 1; Ga. L. 1983, p. 3, § 27; Ga. L. 1987, p. 843, § 1; Ga. L. 1994, p. 1923, § 2; Ga. L. 1997, p. 392, § 2; Ga. L. 2000, p. 865, § 1; Ga. L. 2002, p. 785, § 1; Ga. L. 2010, p. 555, § 1/HB 858; Ga. L. 2016, p. 435, § 3/HB 851.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1994, "computer related" was substituted for "computer-related" in the first sentence of subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Subscription to computer assisted legal research. — County law libraries may execute base subscription agreements for computer assisted legal research and purchase or lease related equipment. 1983 Op. Att'y Gen. No. U83-22.

36-15-8. Furnishing of space and utilities by county governing authority.

The county governing authority shall furnish necessary space, offices, lights, heat, and water for the maintenance of the county law library.

History.
Ga. L. 1976, p. 700, § 3.

36-15-9. Collection of additional costs in court cases; amount; determination of need as prerequisite to collection; collection in certain criminal cases.

(a) For the purpose of providing funds for those uses specified in Code Section 36-15-7, a sum not to exceed $5.00, in addition to all other legal costs, may be charged and collected in each action or case, either civil or criminal, including, without limiting the generality of the foregoing, all adoptions, petitions for review, applications by personal representatives for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of civil or criminal or quasi-criminal nature, filed in the superior, state, probate,

and any other courts of record, except county recorders' courts or municipal courts. The amount of such additional costs to be charged and collected, if any, in each such case shall be fixed by the chief judge of the superior court of the circuit in which such county is located. Such additional costs shall not be charged and collected unless the chief judge first determines that a need exists for a law library in the county. The clerk of each and every such court in such counties in which such a law library is established shall collect such fees and remit the same to the treasurer of the board of trustees of the county law library of the county in which the case was brought, on the first day of each month. Where fees collected by the treasurer have been allocated for the purpose of establishing or maintaining the codification of county ordinances, the allocated amount shall in turn be remitted by the treasurer to the county governing authority for said purpose on a monthly basis or as otherwise agreed by the treasurer and the county governing authority. The county ordinance code provided for in subsection (a) of Code Section 36-15-7 shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fine and bond forfeiture fund of the court in which the case is filed, before any other disbursement or distribution of such fines or forfeitures is made.

(a.1) In any county having a population of more than 550,000 according to the United States decennial census of 1980 or any future such census, the power and authority provided in subsection (a) of this Code section for the chief judge shall be exercised by the superior court judge who has the most service as a superior court judge.

(b) A case, within the meaning of subsection (a) of this Code section, shall mean and be construed as any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned, whether such matter is contested or not.

(c) Reserved.

(d) Notwithstanding that provision of subsection (a) of this Code section which excepts recorders' courts from the requirement of charging and collecting the additional costs provided for by said subsection (a), said subsection (a) and subsection (b) of this Code section shall be applicable to the recorder's court of each county of this state having a population of not less than 200,000 nor more than 275,000 according to the United States decennial census of 1980 or any future such census.

(e) Notwithstanding that provision of subsection (a) of this Code section which excepts county recorders' courts and municipal courts from the requirement of charging and collecting the additional costs provided for by that subsection (a), subsections (a) and (b) of this Code section shall apply to any municipal court of a municipality if the

governing authority thereof, by ordinance or resolutions, approves the charging and collecting of such costs pursuant to subsections (a) and (b) of this Code section.

(f) Reserved.

(g) In counties where a law library authorized by this chapter has not been established, upon request of the county governing authority, the chief judge of a circuit shall direct that the fees authorized by this Code section be charged and collected for the purpose of the establishment and maintenance of the codification of county ordinances. However, the amount transferred to the county governing authority pursuant to this subsection shall not exceed the cost of establishing or maintaining the codification. The clerk of each and every court in such counties in which costs are collected for the purpose of carrying out the provisions of this subsection shall remit the same to the county governing authority on the first day of each month. The county ordinance code provided for in this subsection shall be maintained by the county governing authority. When the costs in criminal cases are not collected, the cost provided in this Code section shall be paid from the fine and bond forfeiture fund of the court in which the case is filed before any other disbursement or distribution of such fines or forfeitures is made.

History.

Ga. L. 1971, p. 180, §§ 6, 9; Ga. L. 1973, p. 430, § 3; Ga. L. 1976, p. 700, § 2; Ga. L. 1982, p. 520, §§ 1, 2; Ga. L. 1982, p. 591, § 1; Ga. L. 1982, p. 1103, § 2; Ga. L. 1983, p. 3, § 27; Ga. L. 1985, p. 999, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 843, § 2; Ga. L. 1991, p. 1324, § 6; Ga. L. 1993, p. 91, § 36; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 1923, § 3; Ga. L. 1997, p. 392, §§ 3, 4; Ga. L. 1999, p. 81, § 36; Ga. L. 2000, p. 865, § 2; Ga. L. 2015, p. 693, § 3-33/HB 233; Ga. L. 2016, p. 435, § 4/HB 851; Ga. L. 2022, p. 767, § 2-24/HB 916.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, "recorders'" was substituted for "recorder's" in subsection (e).

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Ga. L. 2022, p. 767, § 3-1/HB 916, not codified by the General Assembly, makes this Code section applicable to petitions for review filed in superior or state court on or after July 1, 2023.

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Costs not authorized in addition to costs for filing articles of incorporation. — Clerks of superior courts are not authorized to collect costs in support of county law libraries as authorized in Ga. L. 1976, p. 700, § 2 (see now O.C.G.A. § 36-15-9) in addition to those costs set forth in former Code 1933, § 22-803 (see now O.C.G.A. § 14-2-122(1)) for the filing of articles of incorporation. 1977 Op. Att'y Gen. No. 77-23.

Surcharge is an additional penalty to be added to the fine. 1996 Op. Att'y Gen. No. U96-8.

Section applicable to probate courts. — Probate court is expressly authorized to collect costs in support of county law libraries in all actions specified by O.C.G.A. § 36-15-9. 1988 Op. Att'y Gen. No. U88-3.

Actions filed under Family Violence Act. — Clerk of the superior court would be authorized to collect costs in support of county law libraries as authorized by the chief judge in any action filed under the Family Violence Act, O.C.G.A. § 19-13-1 et seq. 1988 Op. Att'y Gen. No. U88-11.

36-15-10. Prior actions, decisions, contracts, and purchases of boards prior to March 19, 1971, ratified.

All actions, decisions, contracts, and purchases made by any board of trustees of a county law library or any other person charged with the responsibility of operating or maintaining a county law library under any law of this state enacted prior to March 19, 1971, are ratified.

History.
Ga. L. 1971, p. 180, § 10.

36-15-11. [Reserved] Receipt and disbursement of funds by counties having population of 950,000 or more.

History.
Ga. L. 1981, p. 959, § 1; Ga. L. 2001, p. 1031, § 1; Ga. L. 2010, p. 555, § 3/HB 858; repealed by Ga. L. 2019, p. 723, § 1/HB 134, effective May 7, 2019.

Editor's notes.
Ga. L. 2019, p. 723, § 1/HB 134, repealed and reserved this Code section, effective May 7, 2019.

36-15-12. Applicability to city court of certain cities.

Notwithstanding any other provision of this chapter, this chapter shall not apply to a city court, which is authorized to try state traffic offenses, of any city of this state having a population of 300,000 or more according to the United States decennial census of 1980 or any future such census.

History.
Ga. L. 1982, p. 586, § 1; Code 1981, § 36-15-12, enacted by Ga. L. 1982, p. 586, § 2.

36-15-13. Annual audit required.

Each board created pursuant to this chapter shall, at the end of each fiscal year for the preceding year, have an annual audit of its financial affairs, books, and accounts performed by the county accountant as employed pursuant to Code Section 36-1-10; the internal auditor employed by the governing authority of the county, if such internal auditor is a certified public accountant; or a certified public accountant. The determination of the performance of such audit by the county accountant, the internal auditor, or a certified public accountant shall

be made by the board. Such audit shall be conducted in accordance with generally accepted accounting principles, including, but not limited to, a report on whether the control, deposit, and investment of funds, the receipt and investment of money and property, and the use of funds by such board have been conducted as provided for under this chapter. A copy of such audit shall be made available to the governing authority of the county and shall be a public document.

History.
Code 1981, § 36-15-13, enacted by Ga. L. 2016, p. 435, § 5/HB 851.

CHAPTER 16

COUNTY HISTORICAL CONTAINER

Sec.		Sec.	
36-16-1.	Furnishing of historical container.		documents relating to soldiers and widows.
36-16-2.	Receipt of historical data for preservation in container.	36-16-4.	Maintenance of record and index; fee for filing of documents.
36-16-3.	Determination of admissibility of documents submitted for filing; deposit of	36-16-5.	Applicability of chapter.

36-16-1. Furnishing of historical container.

The county governing authority shall furnish, purchase, or cause to be furnished or purchased a suitable filing case or other container to be placed in the office of the judge of the probate court of the county and labeled "Historical."

History.
Ga. L. 1935, p. 383, § 1.

36-16-2. Receipt of historical data for preservation in container.

The judge of the probate court of the county shall be required to receive from any responsible citizen or citizens any data of a historical nature and place the same on file in the historical container provided for in Code Section 36-16-1, for safe preservation and historical reference. The matter to be entered for preservation must be of general interest and not of a personal nature; it may include records, proceedings, or minutes of any religious body or organization; school records not otherwise preserved; records of civic, patriotic, or fraternal organizations; and records of purely community affairs when of such nature as to be of general interest and not otherwise recorded by court procedure.

History.
Ga. L. 1935, p. 383, § 2.

36-16-3. Determination of admissibility of documents submitted for filing; deposit of documents relating to soldiers and widows.

The judge of the probate court and the county board of education are made the sole judges of the admissibility of any matter or document which may be submitted to the judge of the probate court for filing, should any question arise as to the historical value of such matter or document so submitted; and the judge of the probate court and the board of education sitting in regular session shall have authority to

accept or reject any matter so submitted, provided that the judge of the probate court shall be required to deposit in the historical container all documents in his office pertaining to records of Confederate soldiers and widows of such soldiers, as well as soldiers and their surviving spouses of all other wars of our nation, a record of which he may have in his office, and to make proper notations thereof in the book of record.

History.
Ga. L. 1935, p. 383, § 4.

36-16-4. Maintenance of record and index; fee for filing of documents.

The judge of the probate court shall be required to keep a suitable record and index in a book prepared for that purpose of all matter placed in the historical container, with notations as to the nature of the matter on file, by whom, and when placed on file. He shall be entitled to a fee of 25¢, payable by the person filing such historical matter, for each article or document so deposited by such person for preservation with him, provided that the county historian may submit documents for preservation without payment of a fee to the judge of the probate court.

History.
Ga. L. 1935, p. 383, §§ 3, 4.

36-16-5. Applicability of chapter.

This chapter shall not become operative in any county of this state until it has been adopted and recommended by a majority vote of two successive regular grand juries of the county.

History.
Ga. L. 1935, p. 383, § 5.

CHAPTER 17

GRANTS OF STATE FUNDS TO COUNTIES

Article 1

Grants for Public Purposes Based upon Road Mileage

Sec.
36-17-1. Legislative purpose and intent.
36-17-2. Computation of individual county grants.
36-17-3. Disbursement and expenditure of funds.

Article 2

Grants to Counties for County Roads and Maintenance

36-17-20. Authorization of grants.
36-17-21. Allocation of funds; grant of tax credit to homesteads as prerequisite to receipt of funds; use of surplus funds.
36-17-22. Allocation of funds; grant of credit on certain tangible property taxes as prerequisite to receipt of funds.
36-17-23. Limits on granting of credits; claim and certification of credits by taxpayer; recovery of credits erroneously or illegally granted; payment of tax liability prerequisite to credit.
36-17-24. Credits and surplus to be shown on tax bills; disbursal of funds on certification of state revenue commissioner.
36-17-25. Administration of article by state revenue commissioner; promulgation of rules and regulations.

Cross references.
Grants by state to county and municipal hospital authorities, § 31-7-94.

ARTICLE 1

GRANTS FOR PUBLIC PURPOSES BASED UPON ROAD MILEAGE

36-17-1. Legislative purpose and intent.

It is declared to be the purpose and intent of the General Assembly that state funds be made available to the governing authorities of the counties of this state to be expended for any public purposes.

History.
Ga. L. 1967, p. 888, § 1.

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, § 404 et seq.

36-17-2. Computation of individual county grants.

To the extent that funds are made available by the budget authorities pursuant to the general appropriations Acts or any other laws for the purposes set out in Code Section 36-17-1, except for the grants to counties which are appropriated as a part of the appropriation to the Department of Transportation designated "For grants to counties for aid in county road construction and maintenance," the Office of the State Treasurer is authorized and directed to grant such funds to the counties of this state in the same proportion which the total public road mileage of each county bears to the total public road mileage in the state, as such mileage information is furnished by the Department of Transportation. The computation of individual county grants, as provided for in this Code section, shall be prepared and certified by the state treasurer, who shall make such payments.

History. Ga. L. 1967, p. 888, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.

OPINIONS OF THE ATTORNEY GENERAL

Use of funds for social security. — Appropriated grant moneys allocated to a county under the authority of this section may be withheld by the Department of Administrative Services and released to the Employees' Retirement System of Georgia to protect the system from delinquent social security reports and remittances for which the county is liable. 1975 Op. Att'y Gen. No. 75-65.

36-17-3. Disbursement and expenditure of funds.

Funds distributed under this article by the Office of the State Treasurer shall be paid to the counties in the name of the county treasurer or other fiscal authority authorized to receive county funds. Such funds shall be expended by the county only for the purposes prescribed in Code Section 36-17-1.

History. Ga. L. 1967, p. 888, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

ARTICLE 2

GRANTS TO COUNTIES FOR COUNTY ROADS AND MAINTENANCE

Cross references. Schedule of amounts of money to be appropriated to counties for use exclusively for construction and maintenance of public roads, § 48-14-3.

JUDICIAL DECISIONS

Constitutionality of Ga. L. 1973, p. 475. — Georgia Laws 1973, p. 475, which authorized the grant of state funds "to aid in the construction of county roads and maintenance thereof," to the counties of the state, upon each county's providing a property tax credit in accordance with formulas prescribed in the Act, was a constitutionally permissible legislative grant, and did not violate the due process or equal protection provisions of the Constitution of Georgia or the United States. Brown v. Wright, 231 Ga. 686, 203 S.E.2d 487, 1974 Ga. LEXIS 1190 (1974).

Provision in Ga. L. 1973, p. 475 that no county was eligible to receive any funds unless a tax credit was given on homesteads first and then on tangible property (exclusive of motor vehicles and trailers), in accordance with the formulas prescribed in the Act, was not a forbidden gratuity within the meaning of the Georgia Constitution. Brown v. Wright, 231 Ga. 686, 203 S.E.2d 487, 1974 Ga. LEXIS 1190 (1974).

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, § 404 et seq.

36-17-20. Authorization of grants.

Pursuant to the authority granted to the General Assembly in Article III, Section IX, Paragraph II(c) of the Constitution of Georgia and in order to provide for a more effective management and fiscal administration of the state and pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia, in order to provide funds to counties to aid in the construction and maintenance of county roads and, in addition to funds provided pursuant to other laws, there may be allotted to each county annually for county road construction and maintenance certain grants as provided in Code Sections 36-17-21 and 36-17-22.

History.
Ga. L. 1973, p. 475, § 1; Ga. L. 1975, p. 1079, § 1; Ga. L. 1983, p. 3, § 57; Ga. L. 1985, p. 149, § 36.

36-17-21. Allocation of funds; grant of tax credit to homesteads as prerequisite to receipt of funds; use of surplus funds.

(a) In any year in which the General Assembly appropriates by line item, and with reference to this Code section, funds necessary to provide grants to counties to aid in the construction and maintenance of county roads, such grants shall be allotted to each county pro rata according to each county's share of the total number of homesteads in the state for the immediately preceding year. As used in this Code section and Code Section 36-17-22, the term "homestead" shall mean and include all that tangible property upon which an ad valorem property tax homestead exemption was claimed and allowed.

(b) In order to provide better fiscal management, the funds provided pursuant to this Code section are intended to be utilized for the relief of ad valorem taxation on tangible property. No county shall be entitled to receive any of the funds provided for in this Code section unless and until a credit against county ad valorem property taxes levied and expended by the county governing authority is granted by the governing authority of the county to each homestead located within the county. Each credit shall equal an amount computed as follows: the amount of the grant allotted, pursuant to this Code section, to the county to aid in the construction and maintenance of county roads, divided by the number of homesteads in the county.

(c) No credit granted pursuant to this Code section shall exceed one-half of the credit recipient's total tax liability for county ad valorem property taxes levied and expended by the county governing authority.

(d) If a surplus remains from the funds allotted to such county by this Code section after complying with this Code section, such remaining funds shall be deemed appropriated and allotted to the county under Code Section 36-17-22.

History.

Ga. L. 1973, p. 475, § 3; Ga. L. 1975, p. 1079, § 2; Ga. L. 1982, p. 3, § 36; Ga. L. 2025, p. 1029, § 36(4)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" at the beginning of the second sentence in subsection (a).

36-17-22. Allocation of funds; grant of credit on certain tangible property taxes as prerequisite to receipt of funds.

(a) In any year in which the General Assembly appropriates by line item, and with reference to this Code section, funds necessary to provide grants to counties to aid in the construction and maintenance of county roads, such grants shall be allotted to each county pro rata according to each county's share of the total number of homesteads in the state for the immediately preceding year.

(b) In order to provide better fiscal management, the funds provided pursuant to this Code section are intended to be utilized for the relief of ad valorem taxation on tangible property. No county shall be entitled to receive any of the funds provided for in this Code section unless and until a credit against county ad valorem property taxes levied and expended by the county governing authority is granted by the governing authority of the county to all eligible tangible property, as defined in subsection (c) of this Code section, except motor vehicles and trailers, located within the county. Each credit shall equal an amount computed

as follows: a pro rata share of the sum of the grant allotted, pursuant to this Code section, to the county to aid in the construction and maintenance of county roads and the surplus, if any, from the funds allotted to such county by subsection (a) of Code Section 36-17-21, after compliance by the county with the provisions of subsection (b) of Code Section 36-17-21.

(c) As used in this Code section, the term "eligible tangible property" means all tangible property except that tangible property required to be returned to and assessed by the state revenue commissioner pursuant to statutes passed by the General Assembly under the authority of Article VII, Section I, Paragraph III of the Constitution of Georgia.

History.
Ga. L. 1975, p. 1079, § 3; Ga. L. 1982, p. 3, § 36.

36-17-23. Limits on granting of credits; claim and certification of credits by taxpayer; recovery of credits erroneously or illegally granted; payment of tax liability prerequisite to credit.

(a) No credit or combination of credits granted pursuant to this article shall exceed the lesser of (1) $1,000.00 or (2) the credit recipient's total tax liability for county ad valorem property taxes levied and expended by the county governing authority. No credit authorized by such Code sections shall be granted unless the taxpayer claims his entitlement to such credit and certifies that the sum of all such credits so claimed by him does not exceed $1,000.00. The state revenue commissioner shall provide by regulation for the forms and procedures by which taxpayers shall claim credits and certify the sum thereof. The governing authorities of the various counties shall make available to the taxing authorities of such counties funds sufficient to defray the administrative costs of this article. Any person who, with intent to receive credit not authorized by this article, claims a credit to which he is not lawfully entitled or falsely certifies the sum of credits claimed by him shall be guilty of a misdemeanor. Any credit erroneously or illegally granted, whether due to negligence or any other cause, shall be recoverable by the county granting such credit in the same fashion as any other delinquent property tax.

(b) No credit authorized under this article shall be granted to any taxpayer unless the taxpayer pays his then current tax liability for county ad valorem property taxes levied and expended by the county governing authority on or before the date such liability becomes due. However, in order to comply with this subsection, the governing authority of any county may, by appropriate resolution, extend the date that such tax liability becomes due.

History.
Ga. L. 1975, p. 1079, § 4.

36-17-24. Credits and surplus to be shown on tax bills; disbursal of funds on certification of state revenue commissioner.

The taxing authority of each county receiving funds pursuant to this article shall show in a prominent manner on the tax bill of each ad valorem taxpayer the dollar amount of credit against ad valorem property taxes which the taxpayer is receiving as a result of the funds allocated and shall show that such credit is a result of the passage of such Code sections by the General Assembly. Each such tax bill shall also show in a prominent manner the amount of any surplus, from the funds allotted to the county by such Code sections, after compliance by the county with subsection (b) of Code Section 36-17-21 and subsection (b) of Code Section 36-17-22, retained by the governing authority of the county. The form of the notice shall be as prescribed by the state revenue commissioner, who shall determine and certify to the appropriate state fiscal officer the amount of funds to which each county is entitled pursuant to this article. The determination of the state revenue commissioner shall be final and the appropriate state fiscal officer shall disburse the funds pursuant to the certification.

History.
Ga. L. 1973, p. 475, § 4; Ga. L. 1975, p. 1079, § 5.

36-17-25. Administration of article by state revenue commissioner; promulgation of rules and regulations.

It shall be the duty of the state revenue commissioner to administer this article. The commissioner shall have the authority to promulgate such rules and regulations as he may deem necessary for the effective administration of this article.

History.
Ga. L. 1975, p. 1079, § 6.

CHAPTER 18

REGULATION OF CABLE TELEVISION SYSTEMS

Sec.		Sec.	
36-18-1.	Cable television system defined.		counties and municipalities to regulate.
36-18-2.	Powers of governing authorities.	36-18-4.	Intent and construction of chapter.
36-18-3.	Restriction on authority of	36-18-5.	Applicability of chapter.

Cross references.
Theft of telecommunication services, § 46-5-2 et seq.

RESEARCH REFERENCES

ALR.
Validity and construction of provision of Cable Communications Policy Act (47 USC § 541(a)(2)) allowing cable companies access to utility easements on private property, 113 A.L.R. Fed. 523.

36-18-1. Cable television system defined.

As used in this chapter, the term "cable television system" means a nonbroadcast facility consisting of a set of transmission paths and associated generation, reception, transmission, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations and programs received via satellite, microwave, video tape, or video discs or produced by the franchised cable system.

History.
Ga. L. 1981, p. 865, § 1.

36-18-2. Powers of governing authorities.

The governing authority of each county in this state is authorized to limit the operation of cable television systems within its territorial limits, except as limited by Code Section 36-18-3, to operators licensed and franchised by the county; to grant, in its sole discretion, one or more franchise licenses for the operation of cable television systems within the territorial limits of that county, except as limited by Code Section 36-18-3; and to regulate by ordinance or resolution the operation of cable television systems licensed and franchised by that county. The governing authority of each such county, in connection with the grant of such franchises, is further authorized to charge franchise fees to cable television systems for the right to operate the systems within the unincorporated areas of the county and within any incorporated areas which are subject to the limitation contained in Code Section 36-18-3.

Cable television system franchise fees shall be negotiated between each county and each franchisee, in an amount not to exceed that amount authorized under applicable federal law and regulations.

History.
Ga. L. 1981, p. 865, § 2.
Cross references.
Taxation of special franchises, § 48-5-420 et seq.
Law reviews.
For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

No authorization of municipalities. — O.C.G.A. § 36-18-2 confers authority only upon the governing authority of each county in the state, and there is no similar authorization of municipalities. Cable Holdings of Battlefield, Inc. v. Lookout Cable Servs., Inc., 178 Ga. App. 456, 343 S.E.2d 737, 1986 Ga. App. LEXIS 1683 (1986).

RESEARCH REFERENCES

Am. Jur. 2d.
36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.
C.J.S.
37 C.J.S., Franchises, §§ 26, 27.
ALR.
Validity and construction of municipal ordinances regulating community antenna television service (CATV), 41 A.L.R.3d 384.
Standing to contest award of, or acquisition of right to operate, cable TV certificate, license, or franchise in state court action, 78 A.L.R.3d 1255.

36-18-3. Restriction on authority of counties and municipalities to regulate.

A county shall neither grant a franchise nor collect a franchise fee for the operation of cable television systems within the corporate limits of any municipality except by agreement with the municipality. A municipality shall neither grant a franchise nor collect a franchise fee for the operation of cable television systems within the unincorporated area of a county except by agreement with the county.

History.
Ga. L. 1981, p. 865, § 3.
Law reviews.
For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

RESEARCH REFERENCES

Am. Jur. 2d.
36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.
C.J.S.
37 C.J.S., Franchises, §§ 26, 27.

36-18-4. Intent and construction of chapter.

It is the intent of this chapter to confirm expressly the authority of

counties to grant franchises for, and to regulate by ordinance or resolution, cable television systems within their territorial limits, except as limited by Code Section 36-18-3. Nothing in this chapter shall be construed to impair any cable television system franchise license lawfully issued by a county or municipality prior to April 9, 1981; and any such license shall be entitled to the benefits of this chapter.

History.
Ga. L. 1981, p. 865, § 4.

JUDICIAL DECISIONS

Pre-1981 franchises which were not lawfully issued, as the franchises purported to be "exclusive," were not entitled to the benefits bestowed by O.C.G.A. Ch. 18, T. 36. Cable Holdings of Battlefield, Inc. v. Lookout Cable Servs., Inc., 178 Ga. App. 456, 343 S.E.2d 737, 1986 Ga. App. LEXIS 1683 (1986).

RESEARCH REFERENCES

Am. Jur. 2d.
36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.

C.J.S.
37 C.J.S., Franchises, §§ 26, 27.

36-18-5. Applicability of chapter.

This chapter shall not apply to any cable television system owned or operated by a city, a county, or a school system as to operations within the geographical area of such city, county, or school system.

History.
Ga. L. 1981, p. 865, § 5; Ga. L. 2004, p. 990, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
36 Am. Jur. 2d, Franchises from Public Entities, §§ 36, 37.

C.J.S.
37 C.J.S., Franchises, §§ 26, 27.

CHAPTER 19

IMMUNITY FROM ANTITRUST LIABILITY

Sec.
36-19-1 and 36-19-2. Redesignated.

36-19-1 and 36-19-2. Redesignated.

Editor's notes.

Chapter 19 of Title 36, relating to immunity from antitrust liability, was redesignated as Chapter 65 of Title 36 by Ga. L. 1985, p. 149, § 36, effective February 12, 1985.

CHAPTER 20

COUNTY LEADERSHIP TRAINING

Sec.		Sec.	
36-20-1.	Short title.	36-20-7.	Membership of board.
36-20-2.	Legislative findings and intent.	36-20-8.	Acceptance by board of federal, state, or local appropriations, grants, or contributions; authority to enter into contracts, leases, or agreements.
36-20-3.	Definitions.		
36-20-4.	Training of elected members of county governing authority.	36-20-9.	Report on accomplishments of academy.
36-20-5.	Georgia County Leadership Academy.		
36-20-6.	Board supervision of Georgia County Leadership Academy.		

Law reviews.
For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

36-20-1. Short title.

This chapter shall be known and may be cited as the "Georgia County Leadership Act."

History.
Code 1981, § 36-20-1, enacted by Ga. L. 1990, p. 1642, § 1.

36-20-2. Legislative findings and intent.

The General Assembly finds and declares that it is in the best interests of the citizens of this state to require newly elected members of a county governing authority, prior to taking office, to attend a course of training and education on matters pertaining to the administration and operation of county government. The purpose of such course shall be to instruct such individuals in the powers, duties, and responsibilities of their positions of public trust.

History.
Code 1981, § 36-20-2, enacted by Ga. L. 1990, p. 1642, § 1.

36-20-3. Definitions.

As used in this chapter, the term:

(1) "Academy" means the Georgia County Leadership Academy.

(2) "Board" means the Board of the Georgia County Leadership Academy.

(3) "County governing authority" means the governing authority as defined in paragraph (7) of Code Section 1-3-3 and an elected chief executive officer of a county.

(4) "State" means the State of Georgia and any department, board, bureau, commission, or other agency thereof.

History.
Code 1981, § 36-20-3, enacted by Ga. L. 1990, p. 1642, § 1.

36-20-4. Training of elected members of county governing authority.

(a) All persons elected as members of a county governing authority who were not serving as members of a county governing authority on July 1, 1990, shall enroll in, attend, and satisfactorily complete a course of training and education of at least 18 hours on matters pertaining to the administration and operations of county governments. Such course of training and education shall include, but not be limited to, orientation in local government finance and budgeting; methods of taxation; planning; public works and utilities; parks and recreation; environmental management; public safety, health, and welfare; personnel management; responsiveness to the community; the ethics, duties, and responsibilities of members of a county governing authority or a chief executive officer; and such other matters as may be deemed necessary and appropriate by the academy.

(b) All expenses incurred by a newly elected member of a county governing authority related to the course of training and education authorized and required by subsection (a) of this Code section, including the reasonable costs of housing, travel, and meals, shall be paid from public funds appropriated for such purposes. All expenses not paid for by state funds shall be paid from county funds by the county governing authority whose newly elected member or members shall attend such course.

History.
Code 1981, § 36-20-4, enacted by Ga. L. 1990, p. 1642, § 1.

36-20-5. Georgia County Leadership Academy.

(a) There is created and established the Georgia County Leadership Academy. Except as otherwise provided in Code Section 36-20-4, all

costs of operating and conducting the academy shall be paid for from public funds appropriated for such purposes.

(b) The academy shall have the power, duty, and authority to design, implement, and administer the course of training and education required by Code Section 36-20-4.

(c) The initial course of training and education required by Code Section 36-20-4 shall be conducted by the academy on the Tuesday after the first Monday in November of 1990 and completed before January 1, 1991. Subsequent courses shall be conducted by the academy biennially between the Tuesday after the first Monday in November and before January 1 of the following year or as otherwise changed by general law. The academy shall have sole responsibility for determining the exact date or dates the course of training and education shall be conducted.

(d) The academy shall establish guidelines and procedures to permit any person elected or appointed as a member of a county governing authority after January 1 of a calendar year or any person who is unable to attend or complete the course of training and education when offered by the academy due to medical disability, providential cause, or any other reason deemed sufficient by the academy, to comply with the requirements of Code Section 36-20-4.

(e) The academy shall perform such other duties and have such other powers and authority as may be necessary and proper or as prescribed by general law.

History.
Code 1981, § 36-20-5, enacted by Ga. L. 1990, p. 1642, § 1.

36-20-6. Board supervision of Georgia County Leadership Academy.

(a) The academy shall be under the direction and supervision of the board of the Georgia County Leadership Academy. The board shall have the power and duty to organize, administer, control, oversee, and advise the academy so that the academy is operated in accordance with the provisions of this chapter.

(b) The academy is assigned to the Department of Community Affairs for administrative purposes only, as prescribed in Code Section 50-4-3.

History.
Code 1981, § 36-20-6, enacted by Ga. L. 1990, p. 1642, § 1; Ga. L. 2020, p. 493, § 36/SB 429.

36-20-7. Membership of board.

The board shall consist of seven members and shall be composed of the commissioner of the Department of Community Affairs, the director of the Carl Vinson Institute of Government of the University of Georgia, the administrator of Governmental Training of the Carl Vinson Institute of Government of the University of Georgia, the president of the Association County Commissioners of Georgia, the executive director of the Association County Commissioners of Georgia, and two members appointed by the Governor. Members of the board appointed by the Governor shall serve for four-year terms.

History.
Code 1981, § 36-20-7, enacted by Ga. L. 1990, p. 1642, § 1.

36-20-8. Acceptance by board of federal, state, or local appropriations, grants, or contributions; authority to enter into contracts, leases, or agreements.

(a) The board may accept appropriations, grants, gifts, donations, or contributions from the federal government; the state government; any county, municipal, or local government; any board, bureau, commission, agency, or establishment of any such government; any other organization, firm, or corporation, public or private; and any individual or groups of individuals in furtherance of the services, purposes, duties, responsibilities, or functions vested in the board and academy.

(b) The board is authorized to make such contracts, leases, or agreements as may be necessary and convenient to carry out the duties and purposes for which the board is created. The board is authorized to enter into contracts, leases, or agreements with any person, firm, or corporation, public or private, upon such terms and for such purposes as may be deemed advisable by the board.

History.
Code 1981, § 36-20-8, enacted by Ga. L. 1990, p. 1642, § 1.

36-20-9. Report on accomplishments of academy.

On or before February 1 of each year, the director of the Carl Vinson Institute of Government, on behalf of the board, shall make a report to the Governor, the chairman of the Senate State and Local Governmental Operations Committee, and the chairman of the State Planning and Community Affairs Committee of the House of Representatives. The report shall include a summary of the accomplishments of the academy during the preceding calendar year, including, but not limited to, the total number of members of a county governing authority who attended

the course of training and education offered by the academy; an outline of the academy's programs for the current calendar year; an evaluation of the programs and services offered by the academy; and recommendations, if any, for legislation as may be necessary to improve the programs and services offered by the academy.

History.
Code 1981, § 36-20-9, enacted by Ga. L. 1990, p. 10, § 1; Ga. L. 1995, p. 10, § 36.

CHAPTER 21

GROUP HEALTH BENEFITS PROGRAM

Sec.		Sec.	
36-21-1.	Legislative intent.	36-21-6.	Investment of funds.
36-21-2.	Definitions.	36-21-7.	Funds not subject to process, levy, or attachment; nonassignability.
36-21-3.	Corporation governed by a board of directors; powers, duties, and operations; bond; administrative expenses.	36-21-8.	Chapter exempt from regulation under Title 33.
36-21-4.	Annual audits.	36-21-9.	Tax-exempt status.
36-21-5.	Establishment of benefit plans.	36-21-10.	State debt not created.

Cross references.
Health Care Plan Act, § 33-20-1 et seq.

36-21-1. Legislative intent.

It is declared to be the intent of the General Assembly that a method be provided whereby counties and certain other entities of this state may, in the discretion of their respective governing bodies, provide group health and other employee benefits to their employees through a common administrative and investment system. Such a system based on joint participation will permit counties and other entities, regardless of size, to provide certain benefits to their employees, will reduce overall administrative costs which might be prohibitive if undertaken individually, and will make possible better investment opportunities. It is intended that this chapter be liberally construed to effectuate this intent.

History.
Code 1981, § 36-21-1, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-2. Definitions.

As used in this chapter, the term:

(1) "Benefit system" or "system" means the plan or plans of employee benefits offered and administered pursuant to this chapter.

(2) "Board" means the board of directors of the ACCG Group Health Benefits Program, Inc.

(3) "Contract" means a contract executed pursuant to this chapter between the board and a county.

(4) "Corporation" means the ACCG Group Health Benefits Pro-

gram, Inc., a corporation established under Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," created to provide benefits pursuant to this chapter.

(5) "County" means the group health benefits program operated by the corporation; the Association County Commissioners of Georgia and any affiliate; any Georgia county government; any consolidated city-county government; or any public authority, commission, board, or similar body created or activated by an Act of the General Assembly or by resolution or ordinance of the county governing authority, individually or jointly with any other political subdivision or subdivisions of the State of Georgia, pursuant to the Constitution or an Act of the General Assembly and which carries out its function on a county-wide basis, a multicounty basis, or wholly within the unincorporated area of a county.

(6) "Employee" means any salaried or hourly rated person employed by a county. Notwithstanding any laws to the contrary, the term also includes any appointed or elected member of the governing authority of a county, the chief legal officer and any associate legal officer, and any other elected or appointed county official.

(7) "Employee benefits" means group health benefits, group short-term disability benefits, group death benefits, group accidental death and dismemberment benefits, and such other benefits as from time to time the board may deem advisable.

(8) "Member county" means a county which has contracted to become a member of the benefit system as provided for in this chapter.

History.
Code 1981, § 36-21-2, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-3. Corporation governed by a board of directors; powers, duties, and operations; bond; administrative expenses.

(a) Any county in this state may enter into a contract with the board for the purpose of providing employee benefits to its employees.

(b) The corporation shall be governed by a board of directors, which shall be appointed and shall serve in accordance with the bylaws of the corporation. The board shall be authorized to operate and administer the benefit system in accordance with its bylaws and such other rules and regulations as may be established by the board as necessary or desirable for the administration of the benefit system.

(c) The board shall maintain a fidelity bond, and errors and omis-

sions coverage or other appropriate liability insurance, in an amount deemed sufficient by the board.

(d) The administrative expenses of the board, including all operational expenses, fees, compensation, and other costs, shall be paid from funds held by it and may be chargeable by it to either principal or income or both, as determined by it, as of any valuation date. Further, the board shall have the authority to allocate expenses among member counties on the basis of costs.

History.
Code 1981, § 36-21-3, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-4. Annual audits.

The benefit system authorized under this chapter shall have an annual audit of its books and accounts performed by a certified public accountant. Such audit shall be conducted in accordance with generally accepted accounting principles. A copy of such audit shall be made available to member counties.

History.
Code 1981, § 36-21-4, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-5. Establishment of benefit plans.

(a)(1) The board has the power to establish one or more plans which may be adopted by any county that meets the criteria established by the board. The employees to be covered, the benefits to be provided, and the terms and conditions for benefits shall be provided in the plan. A county is empowered to adopt such a plan by ordinance and to execute an agreement with the board to provide employee benefits as provided in the plan. The agreement and plan entered into by each member county may constitute a separate plan, unless the contract between the board and one or more counties specifically provides that funds of the counties are to be pooled and treated as a single plan. A plan providing employee benefits may provide for the method of funding such benefits through the use of insurance, self-funding, or otherwise.

(2) Any agreement between the board and a county which provides for self-funded benefits shall contain a provision that such benefits are to be provided, to the extent fixed in the plan, by the county and that the corporation does not guarantee the benefits.

(b) The board is authorized to specify in the plan reasonable employee classifications.

(c) Counties are authorized to appropriate funds to provide the benefits specified in such plan and to pay their portion of the administrative costs of the board in administering the system. Each county is authorized to pay the total contribution on behalf of its employees or to provide that a portion be deducted from the salaries of participating employees.

(d) Contributions paid by a county shall be paid from county funds which are on hand or which will be collected in the year the contribution is made and shall not be deemed to create a debt of the county.

History.
Code 1981, § 36-21-5, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-6. Investment of funds.

The board is authorized to invest and reinvest funds held by it, in accordance with the bylaws of the corporation, in any investments which are legal investments for domestic insurance companies under the laws of this state or in any investments authorized for trustees of private employee benefit plans by the federal Employees Retirement Income Security Act of 1974, as amended.

History.
Code 1981, § 36-21-6, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-7. Funds not subject to process, levy, or attachment; nonassignability.

Funds held by the board of trustees or for its account shall not be subject to process, levy, or attachment; nor shall benefits arising under this chapter or any contract pursuant to this chapter be assignable unless otherwise specifically permitted under the plan of benefits.

History.
Code 1981, § 36-21-7, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-8. Chapter exempt from regulation under Title 33.

The provision of employee benefits pursuant to this chapter shall not be subject to regulation under Title 33.

History.
Code 1981, § 36-21-8, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-9. Tax-exempt status.

The employee benefit system shall be exempt from state and local taxes and fees.

History.
Code 1981, § 36-21-9, enacted by Ga. L. 1999, p. 1190, § 1.

36-21-10. State debt not created.

Nothing in this chapter shall create a debt of the State of Georgia.

History.
Code 1981, § 36-21-10, enacted by Ga. L. 1999, p. 1190, § 1.

CHAPTER 22

LAND CONSERVATION

Sec.
36-22-1 through 36-22-15. Redesignated.

36-22-1 through 36-22-15. Redesignated.

Editor's notes.

Code Sections 36-22-1 through 36-22-4 and Code Sections 36-22-8 through 36-22-15, relating to land conservation, were redesignated as Chapter 6A of Title 12 by Ga. L. 2008, p. 90, § 1-1/HB 1176, effective July 1, 2008.

Code Sections 36-22-5 through 36-22-7, relating to community greenspace programs, were previously reserved and repealed by Ga. L. 2005, p. 175, § 2/HB 98, effective April 14, 2005, and were based on Code 1981, §§ 36-22-5 through 36-22-7, enacted by Ga. L. 2000, p. 392, § 1.

CHAPTERS 23 THROUGH 29
[RESERVED]

Provisions Applicable to Municipal Corporations Only

CHAPTER 30

GENERAL PROVISIONS

Sec.	
36-30-1.	Meaning of terms "city," "town," "municipality," or "village."
36-30-2.	Management and disposition of property.
36-30-3.	Ordinances of a council not to bind succeeding councils; exceptions.
36-30-4.	Eligibility of members of municipal councils or boards of aldermen for other municipal offices.
36-30-5.	Inclusion of residency in annexed territory in computing period of residence necessary to qualify for office.
36-30-6.	Voting upon questions by interested councilmembers.
36-30-7.	Authorization and procedure for surrender of corporate charter.
36-30-7.1.	Inactive municipalities.
36-30-8.	Confinement of violators of ordinances.
36-30-9.	Compensation of law enforcement officers.
36-30-10.	Grant of right to obstruct public street prohibited.
36-30-11.	Enclosure of lanes or alleys.
36-30-12.	Closing streets adjacent to or through institutions of higher learning in municipal corporations having a population of 350,000 or more.
36-30-13.	Special election to fill vacancies when all seats are vacant.

Cross references.

Self authentication, § 24-9-902.

Jurisdiction and authority of municipalities as to public roads, § 32-4-90 et seq.

Procedure for abatement of nuisances in cities generally, § 41-2-5.

Prohibition against requiring municipal or county officers or employees to reside within boundaries of municipality or county, § 45-2-5.

Municipal Electric Authority of Georgia, § 46-3-110 et seq.

Law reviews.

For annual survey of local government law, see 35 Mercer L. Rev. 233 (1983).

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

36-30-1. Meaning of terms "city," "town," "municipality," or "village."

Wherever the words "city," "town," "municipality," or "village" appear in the statutory laws of this state, such words shall be construed as synonymous, and the General Assembly so declares this to be its intention in the use of these words; such words shall be held to mean a municipal corporation as defined by statutory law and judicial interpretation.

History.

Ga. L. 1964, p. 170, § 1.

Law reviews.

For article, "Selected Oddities in

Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

JUDICIAL DECISIONS

Statute is not unconstitutional for being a legislative restriction of the judiciary. Holloway v. Mayor of Whitesburg, 225 Ga. 152, 166 S.E.2d 576, 1969 Ga. LEXIS 407 (1969).

Statute does not operate to diminish the power of a city to impose a sentence after violations of penal ordinances of the city. City of Albany v. Key, 124 Ga. App. 16, 183 S.E.2d 20, 1971 Ga. App. LEXIS 794 (1971).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 1 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 1 et seq.

ALR.

Irrigation district as municipality within the tax laws, 17 A.L.R. 81; 55 A.L.R. 639.

36-30-2. Management and disposition of property.

The council or other governing body of a municipal corporation has discretion in the management and disposition of its property. Where such discretion is exercised in good faith, equity will not interfere therewith.

History.

Civil Code 1895, § 746; Civil Code 1910, § 895; Code 1933, § 69-203.

History of Code section.

This Code section is derived from the decision in Semmes v. Columbus, 19 Ga. 471 (1856) and Mayor of Athens v. Camak, 75 Ga. 429 (1885).

Law reviews.

For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B. J. 494 (1969).

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Property held by municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended. McPherson v. City of Dawson, 221 Ga. 861, 148 S.E.2d 298, 1966 Ga. LEXIS 727 (1966).

Statute authorizes a city to sell any property owned in the city's purely proprietary capacity. McPherson v. City of Dawson, 221 Ga. 861, 148 S.E.2d 298, 1966 Ga. LEXIS 727 (1966).

Rule of judicial noninterference. — Court of equity will not interfere with the discretionary action of the governing officers of a city within the sphere of their legally delegated powers, unless such action is arbitrary, and amounts to an abuse of discretion. McMaster v. Mayor of Waynesboro, 122 Ga. 231, 50 S.E. 122, 1905 Ga. LEXIS 159 (1905); Mayor of

Gainesville v. Dunlap, 147 Ga. 344, 94 S.E. 247, 1917 Ga. LEXIS 181 (1917); South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513, 1929 Ga. LEXIS 428 (1929).

Courts cannot inquire into the motives of the mayor and general council of a municipality in enacting an ordinance, and cannot set the same aside if it is not unreasonable, ultra vires, or unconstitutional. South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513, 1929 Ga. LEXIS 428 (1929).

Municipality having discretion under this section in the management and disposition of the municipality's property, in the absence of illegality, fraud, or clear abuse of discretion of the municipal authorities, equity will not interfere therewith, nor inquire into the propriety, economy, and general wisdom of the undertaking. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953).

Business affairs of a municipality are committed to the corporate authorities, and the courts will not interfere except in a clear case of mismanagement or fraud. J.C. Lewis Motor Co. v. Mayor of Savannah, 210 Ga. 591, 82 S.E.2d 132, 1954 Ga. LEXIS 394 (1954), overruled in part, Department of Transp. v. Brooks, 254 Ga. 303, 328 S.E.2d 705, 1985 Ga. LEXIS 675 (1985); Singer v. City of Cordele, 225 Ga. 323, 168 S.E.2d 138, 1969 Ga. LEXIS 488 (1969); Hamsley v. City of Unadilla, 265 Ga. 494, 458 S.E.2d 627, 1995 Ga. LEXIS 508 (1995).

Allegations that the city was employing extra police officer's and expending large sums of money to protect property during an emergency brought about by a strike were insufficient to show such abuse of city council's discretion as would entitle the petitioners, suing as "citizens and taxpayers," to the injunctive relief prayed for. Gulledge v. Augusta Coach Co., 210 Ga. 377, 80 S.E.2d 274, 1954 Ga. LEXIS 312 (1954).

Board of a municipality empowered to perform a particular act in the board's discretion will not be interfered with or controlled by the courts in the board's discretionary acts unless the board's discretion is manifestly abused, nor will the court inquire into the propriety, economy, or wisdom of the undertaking, or into the details of the manner adopted to carry the matter into execution. Macon Ambulance Serv., Inc. v. Snow Properties, Inc., 218 Ga. 262, 127 S.E.2d 598, 1962 Ga. LEXIS 476 (1962).

Governing body of city is not answerable for erroneous exercise of that body's discretion, although injurious consequences may result therefrom. Semmes v. Mayor of Columbus, 19 Ga. 471, 1856 Ga. LEXIS 204 (1856); Mayor of Athens v. Camak, 75 Ga. 429, 1885 Ga. LEXIS 149 (1885).

Municipal corporation may bind itself, and cannot abrogate any contract which the municipality has the right to make under the municipality's charter. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852, 1971 Ga. LEXIS 756 (1971).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 125 et seq., 157 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 140. 63 C.J.S., Municipal Corporations, §§ 1124 et seq., 1133.

ALR.

Validity of municipal ordinance as affected by motive of members of council which adopted it, 32 A.L.R. 1517.

Power of municipal corporation to purchase or charter a boat or barge, 39 A.L.R. 1332.

Power to detach land from municipal corporations, towns, or villages, 117 A.L.R. 267.

Injunction against legislative body of state or municipality, 140 A.L.R. 439.

Power of municipal corporation to lease or sublet property owned or leased by it, 47 A.L.R.3d 19.

36-30-3. Ordinances of a council not to bind succeeding councils; exceptions.

(a) One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government.

(b) The governing authorities of municipal corporations having a population of not less than 100,000 and not more than 135,000 according to the United States decennial census of 1970 or any future such census may on behalf of such municipal corporations enter into contracts with respect to the ownership, maintenance, construction, or reconstruction of street overpasses and underpasses of railroad properties which shall be binding upon such authorities and successors. Contracts executed by the governing authorities of such municipal corporations prior to December 31, 1977, with respect to the ownership, maintenance, construction, or reconstruction of street overpasses and underpasses of railroad properties are ratified and confirmed.

(c)(1) The governing authorities of municipal corporations having a population of not less than 350,000 according to the United States decennial census of 1980 or any future such census may, on behalf of such municipal corporations, authorize the mayor to enter into contracts with private or public entities not involving the incurring of indebtedness by such municipal corporations or security for indebtedness of such private and public entities for periods not exceeding 50 years and for a valuable consideration, which contracts shall be binding on such municipal corporations and on such authorities and successors, with respect to the leasing, subleasing, maintenance, or management of property for retail facilities, restaurants, or office or other commercial use, or for residential use, or with respect to property or facilities used for nonprofit museum purposes, which property or facilities are located in its downtown development area, as defined in paragraph (3) of Code Section 36-42-3; and to authorize the mayor to include in any such contracts for use of property which is located in a downtown development area and is in or contiguous to an urban redevelopment area established pursuant to Chapter 61 of this title or to enter into amendments to any such existing or future contracts for use of property which is located in such areas in order to include terms and conditions which provide for renewals or extensions of the term of such contracts for a period of time not to exceed an additional 50 years. The limitation involving the incurring of indebtedness by such municipal corporations or security for indebtedness of such private and public entities shall not apply to contracts for the use of property for nonprofit museum purposes, nor shall such limitation apply to contracts for the leasing, subleasing, maintenance, or management of property or facilities which, in addition to being located in a downtown development area, are also

located in or contiguous to an urban redevelopment area established pursuant to Chapter 61 of this title, the "Urban Redevelopment Law."

(2) The governing authorities of any municipal corporation in this state having a population of 350,000 or more according to the United States decennial census of 1980 or any future such census may authorize the mayor to execute contracts on behalf of such municipal corporation for periods not exceeding 50 years and for valuable consideration with public or private entities to support certificates of participation in a principal amount of not more than $100 million, which contracts shall be for the development, construction, leasing, subleasing, maintenance, or management of property or facilities used for criminal justice purposes and located within the downtown development area of such municipal corporation as defined in paragraph (3) of Code Section 36-42-3 and shall be binding on such municipal corporation and such authorities and their successors.

(d) The governing authority of any municipal corporation in this state may authorize the execution of one or more contracts which specify the rates, fees, or other charges which will be charged and collected by the municipal corporation for electric, natural gas, or water utility services to be provided by the municipal corporation to one or more of its utility customers. Nothing in this subsection, however, shall be construed to grant to any municipal governing authority the right or power to specify the rates, fees, or charges to be collected for electric, natural gas, or water utility services provided by a local authority, as defined in subsection (a) of Code Section 36-80-17, where the right or power to specify such rates, fees, or charges is otherwise vested by local constitutional amendment, general statute, or local law in the governing body of such local authority. Any such contract shall be subject to the following conditions and limitations:

(1)(A) Except as provided in subparagraph (B) of this paragraph, no such contract shall be for a term in excess of ten years.

(B) No such contract for solar utility services or for wind utility services shall be for a term in excess of 20 years;

(2) Any such contract which is for a term in excess of two years shall include commercially reasonable provisions under which the rates, fees, or other charges shall be adjusted with respect to inflationary or deflationary factors affecting the provision of the utility service in question; and

(3) Any such contract shall include commercially reasonable provisions relieving the municipal corporation from its obligations under the contract in the event that the municipal corporation's ability to comply with the contract is impaired by war, natural disaster, catastrophe, or any other emergency creating conditions under which

the municipal corporation's compliance with the contract would become impossible or create a substantial financial burden upon the municipal corporation or its taxpayers.

History.

Civil Code 1895, § 743; Civil Code 1910, § 892; Code 1933, § 69-202; Ga. L. 1979, p. 521, § 1; Ga. L. 1982, p. 2107, § 36; Ga. L. 1986, p. 841, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 175, § 1; Ga. L. 1987, p. 275, § 1; Ga. L. 1989, p. 1287, § 1; Ga. L. 1990, p. 286, § 1; Ga. L. 1991, p. 989, § 1; Ga. L. 1998, p. 1113, § 2; Ga. L. 2019, p. 605, § 2/SB 95.

History of Code section.

This Code section is derived from the decision in Williams v. City Council, 68 Ga. 816 (1882).

Cross references.

Constitutional provisions placing limitations on debt which may be incurred by a county, municipality, or political subdivision, Ga. Const. 1983, Art. IX, Sec. V, Para. I.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, "United States" was substituted for "United State" in subsection (c) (now paragraph (c)(1)).

Law reviews.

For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969).

For article, "Binding Contracts in Georgia Local Government Law: Recent Perspectives," see 11 Ga. St. B. J. 148 (1975).

For article discussing the origin and construction of Georgia statute concerning the authority of a council to bind its successors, see 14 Ga. L. Rev. 239 (1980).

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

For article, "Binding Contracts in Georgia Local Government Law: Configurations of Codification," see 24 Ga. L. Rev. 95 (1989).

For note on 1990 amendment of this Code section, see 7 Ga. St. U. L. Rev. 324 (1990).

For article, "The Georgia Supreme Court and Local Government Law: Two Sheets to the Wind," see 16 Ga. St. U. L. Rev. 361 (1999).

For article, "Local Government Litigation: Some Pivotal Principles," see 55 Mercer L. Rev. 1 (2003).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

JUDICIAL DECISIONS

Analysis

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General Consideration

Origin of section. — This statute is not of statutory origin, and is not peculiar to Georgia. The statute is a codification of a principle which is applicable generally to legislative or governmental bodies. Aven v. Steiner Cancer Hosp., 189 Ga. 126, 5 S.E.2d 356, 1939 Ga. LEXIS 660 (1939).

Legislative intent. — Framers of this section intended to preserve for municipal governments freedom from ordinances which bind and prevent free legislation in matters such as operating budgets. Brown v. City of E. Point, 152 Ga. App. 801, 264 S.E.2d 267, 1979 Ga. App. LEXIS 3089 (1979), aff'd, 246 Ga. 144, 268 S.E.2d 912, 1980 Ga. LEXIS 996 (1980).

General Consideration (Cont'd)

Standing of citizen-taxpayer. — Absent expenditures of public revenue or performance of a duty owed to the public, a citizen-taxpayer has no standing in equity to challenge a council's action which allegedly binds future councils unless the citizen has special damages not shared by the general public. Juhan v. City of Lawrenceville, 251 Ga. 369, 306 S.E.2d 251, 1983 Ga. LEXIS 806 (1983).

Power to contract for future. — All legislative bodies are limited in their legal capacity in such a manner as not to deprive succeeding bodies of the right to deal with matters involving the same questions as may arise from time to time in the future, and as the then present exigencies may require. But a municipal corporation may make a valid contract to continue for a reasonable time beyond the official term of the officers entering into the contract for the municipality. Horkan v. City of Moultrie, 136 Ga. 561, 71 S.E. 785, 1911 Ga. LEXIS 143 (1911).

No power to cede away governmental powers. — Powers are conferred upon municipal corporations for public purposes, and as their legislative powers cannot be delegated, so they cannot be bargained or bartered away. Such corporations may make authorized contracts, but they have no power, as a party, to make contracts or pass bylaws which shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties. Horkan v. City of Moultrie, 136 Ga. 561, 71 S.E. 785, 1911 Ga. LEXIS 143 (1911).

Effect of section. — This section prohibits, as ultra vires, the enactment of ordinances or the execution of contracts which are effective beyond the term of the commissioners then in office. Ledbetter Bros. v. Floyd County, 237 Ga. 22, 226 S.E.2d 730, 1976 Ga. LEXIS 1134 (1976).

Contract which restricts governmental or legislative functions of a city council has been traditionally held to be a nullity, ultra vires, and void even though it may present a trap for the unwary in dealing with municipal corporations; the municipality would not be estopped from asserting the invalidity of such a contract at any time. Brown v. City of E. Point, 246 Ga. 144, 268 S.E.2d 912, 1980 Ga. LEXIS 996 (1980).

Action void as ultra vires. — Settlement agreement entered into by a county and the county's board of commissioners was void as an ultra vires act because it purported to forever bind the hands of future boards of commissioners regarding land use and zoning decisions for certain property. Buckhorn Ventures, LLC v. Forsyth County, 262 Ga. App. 299, 585 S.E.2d 229, 2003 Ga. App. LEXIS 911 (2003).

Applicability to counties. — Principle stated in O.C.G.A. § 36-30-3 applies to counties as well as to municipalities. Madden v. Bellew, 260 Ga. 530, 397 S.E.2d 687, 1990 Ga. LEXIS 433 (1990).

When power to grant franchises stems from Ga. L. 1976, p. 188, § 1 (see now O.C.G.A. § 36-34-2(7)), there was no violation of former Code 1933, § 69-202 (see now O.C.G.A. § 36-30-3). City of Lithonia v. Georgia Pub. Serv. Comm'n, 238 Ga. 339, 232 S.E.2d 832, 1977 Ga. LEXIS 1023 (1977).

Section applicable to governmental, not proprietary functions. — This section does not apply to a situation where a political subdivision is operating in a proprietary rather than a governmental capacity. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234, 1960 Ga. App. LEXIS 762 (1960).

While long-term commitments which could be characterized as proprietary have been permitted, attempts at binding arrangements with respect to governmental functions have been prohibited. Brown v. City of E. Point, 152 Ga. App. 801, 264 S.E.2d 267, 1979 Ga. App. LEXIS 3089 (1979), aff'd, 246 Ga. 144, 268 S.E.2d 912, 1980 Ga. LEXIS 996 (1980).

Rules of procedure passed by one legislative body are not binding upon subsequent legislative bodies operating

within same jurisdiction; no legislative body can divest that body's successor of its legislative powers by passing ordinances or resolutions which deprive their successor of the power to exercise fully their legislative discretion, and each legislative body, when it meets, and unless restrained by the authority which created it, is without rules of procedure, and has inherent power to make its own rules without reference to the action of preceding bodies. South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513, 1929 Ga. LEXIS 428 (1929).

Applicability to authorities. — This section does not prohibit authorities, as distinguished from municipalities, from entering long-term contracts: there is no basis for the assertion that it applies to authorities. City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76, 1975 Ga. App. LEXIS 1483 (1975).

Unpublished decision: Dismissal of a probationer's claims, seeking to invalidate the service contract between the state court and the private company that contracted to supervise the court's probationers and for money had and received, was proper due to failure to state a claim because there was no challenge to the alternative ground that the district court had relied on. Keen v. Judicial Alternatives of Ga., Inc., 637 Fed. Appx. 546, 2015 U.S. App. LEXIS 21961 (11th Cir. 2015), cert. denied, 580 U.S. 818, 137 S. Ct. 55, 196 L. Ed. 2d 30, 2016 U.S. LEXIS 5238 (2016).

If statute is too rigidly applied, there would be few contracts which municipalities could legally enter into, since contracts, by definition, must be binding, and many of the contracts, to be practical and effective, must extend beyond the existing councils' terms because of the nature of their subject matter. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852, 1971 Ga. LEXIS 756 (1971).

One municipal council may not by ordinance bind itself or the council's successors so as to prevent free legislation in matters of municipal government. Aven v. Steiner Cancer Hosp., 189 Ga. 126, 5 S.E.2d 356, 1939 Ga. LEXIS 660 (1939); Lawson v. City of Moultrie, 194 Ga. 699, 22 S.E.2d 592, 1942 Ga. LEXIS 662 (1942).

What cannot be done by an ordinance cannot be done by a contract. Screws v. City of Atlanta, 189 Ga. 839, 8 S.E.2d 16, 1940 Ga. LEXIS 396 (1940).

Ratification of contracts by subsequent council. — Future council may be bound by the terms of a contract if that council either approves the terms of the contract or ratifies the contract. Brown v. City of E. Point, 246 Ga. 144, 268 S.E.2d 912, 1980 Ga. LEXIS 996 (1980).

Duration of contracts. — Municipal corporation may make a valid contract to continue for a reasonable time beyond the official term of the officers entering into the contract for the municipality. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852, 1971 Ga. LEXIS 756 (1971).

O.C.G.A. § 36-30-3(a) does not prevent a contract from extending beyond the term of the commission in office at the time of the contract's execution. Unified Gov't v. North, 250 Ga. App. 432, 551 S.E.2d 798, 2001 Ga. App. LEXIS 775 (2001), cert. denied, No. S01C1609, 2001 Ga. LEXIS 935 (Ga. Nov. 30, 2001).

While a municipality is not estopped to deny the validity of a contract wholly beyond the municipality's powers, the municipality may be estopped by the exercise of contractual powers legally vested in the municipality, and even by the exercise of governmental powers, to prevent manifest injustice and wrongs to private persons, where the restraint placed upon a municipality to accomplish that purpose does not interfere with the exercise of governmental powers of the municipality. Brown v. City of E. Point, 246 Ga. 144, 268 S.E.2d 912, 1980 Ga. LEXIS 996 (1980).

Post-retirement benefits of Community Service Board's Executive Director not gratuities. — After the community service board filed a declaratory judgment action against the board's former executive director, contending that the director's contract violated public policy and that the director was not entitled to payment and benefits for various reasons, and the director

General Consideration (Cont'd)

counterclaimed against the board, the trial court did not err in ruling in favor of the director because the board's broad powers encompassed all of the benefits paid to the director, and it did not show that any of the director's benefits fell outside of the provisions of the enabling legislation; the director was entitled to payment for any compensation related to performance already rendered; and the director's post-retirement benefits were not gratuities. Gateway Cmty. Serv. Bd. v. Bonati, 346 Ga. App. 653, 816 S.E.2d 743, 2018 Ga. App. LEXIS 432 (2018).

Street Overpasses and Railroad Underpasses

Subsection (b) inapplicable to easement involving grade crossing. — Subsection (b) of O.C.G.A. § 36-30-3, which speaks specifically of "the ownership, maintenance, construction, or reconstruction of street overpasses and underpasses of railroad properties," is inapplicable to an easement involving grade crossings. Chatham County Comm'rs v. Seaboard C.L.R.R., 169 Ga. App. 607, 314 S.E.2d 449, 1984 Ga. App. LEXIS 1649 (1984).

Specific Contracts

Contracts made by virtue of express authority granted in the city charter are outside this prohibition. Brown v. City of E. Point, 246 Ga. 144, 268 S.E.2d 912, 1980 Ga. LEXIS 996 (1980).

Employment contracts. — Provisions of county's personnel handbook regarding merit salary increases for employees could not bind the board of commissioners to approve the funding of future increases. International Bhd. of Police Officers Local 471 v. Chatham County, 232 Ga. App. 507, 502 S.E.2d 341.

Judgment in favor of former employee was reversed because the contract was renewed automatically and the severance package required the city to pay the employee the employee's salary and benefits for an entire year after the year in which the contract was terminated; as such, the contract was ultra vires and void under O.C.G.A. § 36-30-3(a). City of McDonough v. Campbell, 289 Ga. 216, 710 S.E.2d 537, 2011 Ga. LEXIS 433 (2011).

Ordinance providing severance pay for retiring city employees fell into express authority exception to O.C.G.A. § 36-30-3 in view of charter provisions conferring broad authority upon the city to establish a pension system upon such terms and conditions as the mayor and council deemed proper. City of Athens v. McGahee, 178 Ga. App. 76, 341 S.E.2d 855, 1986 Ga. App. LEXIS 2486 (1986).

O.C.G.A. § 36-30-3 does not apply to construction contracts, which typically extend beyond the term of the officer entering into the contract for the municipality. City of Atlanta v. Brinderson Corp., 799 F.2d 1541, 1986 U.S. App. LEXIS 31205 (11th Cir. 1986).

Construction of county buildings. — Agreements authorized by the County Building Authority Act, in regard to the acquisition and construction of certain county buildings, were not in violation of O.C.G.A. § 36-30-3, for the necessary authority of the county and the building authority to enter into contracts for up to 50 years was contained in the intergovernmental contracts provision (Ga. Const., 1983, Art. IX, Sec. III, Para. I). Building Auth. v. State, 253 Ga. 242, 321 S.E.2d 97, 1984 Ga. LEXIS 893 (1984).

Construction of roads. — O.C.G.A. § 36-30-3(a) did not prevent a unified government's liability on a contract with a developer to build a road diverting traffic from a water treatment plant away from the developer's subdivision after the road was not completed on time. Unified Gov't v. North, 250 Ga. App. 432, 551 S.E.2d 798, 2001 Ga. App. LEXIS 775 (2001), cert. denied, No. S01C1609, 2001 Ga. LEXIS 935 (Ga. Nov. 30, 2001).

Agreement to construct and maintain parking area and sidewalk. — Agreement entered in 1954 between a city and an apartment owner for the construction of a parking lot and sidewalk to relieve traffic congestion was not subject to O.C.G.A. § 36-30-3(a)'s prohibition against binding successor councils because the construction and maintenance of the sidewalk and parking

area were in the nature of a government's proprietary functions. Unified Gov't of Athens-Clarke Co. v. Stiles Apts., 295 Ga. 829, 764 S.E.2d 403, 2014 Ga. LEXIS 744 (2014).

Contracts limiting governmental powers. — Restriction against one council binding itself or a successor also applies to contracts which limit a municipality's legislative or governmental powers. City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 222 S.E.2d 76, 1975 Ga. App. LEXIS 1483 (1975).

Provisions of Ga. L. 1937, p. 761, § 1 et seq. (see now O.C.G.A. § 36-82-60 et seq.), do not render meaningless the mandate of former Code 1933, § 69-202 (see now O.C.G.A. § 36-30-3). The express statutory authority for a municipality to contract with the bond holders as to specified future utility rates does not extend to contracts with the wholesaler of electrical power. Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651, 1962 Ga. App. LEXIS 554 (1962).

Each case must stand on the case's own peculiar factual situation. Jonesboro Area Athletic Ass'n v. Dickson, 227 Ga. 513, 181 S.E.2d 852, 1971 Ga. LEXIS 756 (1971).

Statute does not prohibit a contract that will be completed within the term of the commissioners, even though the depreciable life of the property contracted for extends beyond the term of the commissioners. Ledbetter Bros. v. Floyd County, 237 Ga. 22, 226 S.E.2d 730, 1976 Ga. LEXIS 1134 (1976).

Option to purchase land. — Lease by city of parcel of land accompanied by ten-year option to purchase land at a fixed price did not bind council or the council's successors so as to prevent free legislation in matters of municipal government. Silver v. City of Rossville, 253 Ga. 13, 315 S.E.2d 898, 1984 Ga. LEXIS 789 (1984).

Lease of land for hospital. — Lease of land owned by the city for a rental or consideration to the city in the form of medical and surgical treatment to be furnished to the poor by the lessee corporation would have the effect of preventing free legislation in a matter of municipal government and for this reason would be illegal and void. Aven v. Steiner Cancer Hosp., 189 Ga. 126, 5 S.E.2d 356, 1939 Ga. LEXIS 660 (1939).

Contract for rail trail. — Denial of a city's motion to dismiss a corporation's breach of contract complaint for the development of a rail trail was upheld because the city's actions were primarily undertaken for the purpose of producing revenue, rather than for benefitting the public; thus, O.C.G.A. § 36-60-13(a) did not immunize the city from the breach claim and the prohibition delineated in subsection (a) was inapplicable to the agreement as the subsection did not apply to proprietary functions of the government. City of Albany v. S. Ga. Rails to Trails, 2025 Ga. App. LEXIS 178.

Lease of property to airport. — When a county through the county's proper authority leases property which the county owns for use as an airport, the county is engaging in a proprietary and not a governmental function. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234, 1960 Ga. App. LEXIS 762 (1960).

Furnishing water to lessee. — When a municipality leases certain property for a term of 25 years, a provision of such contract obligating the city to supply the leased premises with water free of charge during the term of the lease is ultra vires and void. Screws v. City of Atlanta, 189 Ga. 839, 8 S.E.2d 16, 1940 Ga. LEXIS 396 (1940).

Furnishing water and sewage facilities to airport. — Provision in a contract requiring a county to furnish water and sewage facilities to airport leased to private party without charge during 15 years, to begin at an undetermined future date, is invalid. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234, 1960 Ga. App. LEXIS 762 (1960).

Municipality's agreement to provide access to sewer system does not impair governmental function and therefore is not subject to subsection (a) of O.C.G.A. § 36-30-3, which prohibits a council from binding itself or others so as to prevent free legislation in matters of municipal government. City of Powder Springs v. WMM Properties, Inc., 253 Ga.

Specific Contracts (Cont'd)

753, 325 S.E.2d 155, 1985 Ga. LEXIS 574 (1985).

Franchise granted by a city council to a public service corporation, under the charter powers of the city, constitutes a binding contract, and as such is not violative of this section. City of Summerville v. Georgia Power Co., 205 Ga. 843, 55 S.E.2d 540, 1949 Ga. LEXIS 608 (1949).

Rezoning is legislative in nature and one county commission cannot deprive or restrict a succeeding commission in the exercise of the commission's legislative power by the device of entering into a contract or agreement purporting to limit the authority of the county commission to legislate in this regard. Barton v. Atkinson, 228 Ga. 733, 187 S.E.2d 835, 1972 Ga. LEXIS 895 (1972).

Use of bond funds. — County commission cannot limit the commission's successors in the exercise of legislative power by ordinance or by contract; however, this principle has no application to the legitimate use of bond funds for an authorized public purpose. Lindsey v. Guhl, 237 Ga. 567, 229 S.E.2d 354, 1976 Ga. LEXIS 1306 (1976).

Holding title on easement to land. — There is no inhibition against the acquisition by a municipality of title to or of an easement in land to be held in perpetuity for the public use such as streets, alleys, sidewalks, parks, water and sewerage systems, cemeteries, and the like. The power was recognized as inherent at common law and is generally provided specifically or in the general welfare provisions of the municipality's charter, for without it a municipality could not effectively function. City of Douglas v. Cartrett, 109 Ga. App. 683, 137 S.E.2d 358, 1964 Ga. App. LEXIS 956 (1964).

Municipal corporation acts in proprietary rather than governmental capacity in operating an electric distribution system. — Restriction placed upon municipal corporations by this section relates only to its governmental functions. Therefore, there is generally no objection to a contract by a municipal corporation for a supply of electrical power which extends beyond the term of office of the officers making the contract. The only restriction is that it must be reasonable in length of time for which it is to extend. Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651, 1962 Ga. App. LEXIS 554 (1962).

Agreement to accept payment in lieu of ad valorem taxes void. — Any agreement reached by plaintiff city that it would accept a reasonable annual amount from defendant in lieu of ad valorem taxes was void as an ultra vires act because the effect of the agreement would be to bind successive city commissions indefinitely. Georgia Presbyterian Homes, Inc. v. City of Decatur, 165 Ga. App. 395, 299 S.E.2d 900, 1983 Ga. App. LEXIS 1883, aff'd, 251 Ga. 290, 304 S.E.2d 908, 1983 Ga. LEXIS 779 (1983).

No agreement as to schedule of payments to city. — When a contract is fully executed by a city and the only remaining obligations are payments owed to the city by the other party to the contract, but there is no agreement as to the annual sum to be paid beyond a certain year, no contract exists; the fact that the other party expects to pay some amount to be agreed upon, and does pay a certain amount annually for several years, does not show an agreement by it to pay, or by the city to accept, that amount. City of Decatur v. Georgia Presbyterian Homes, Inc., 251 Ga. 290, 304 S.E.2d 908, 1983 Ga. LEXIS 779 (1983).

Power of a municipality to fix and regulate water rates is a legislative or governmental power and falls within the limitation placed upon councils of municipalities by this section. Screws v. City of Atlanta, 189 Ga. 839, 8 S.E.2d 16, 1940 Ga. LEXIS 396 (1940); City of Warm Springs v. Bulloch, 212 Ga. 149, 91 S.E.2d 13, 1956 Ga. LEXIS 284 (1956); Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651, 1962 Ga. App. LEXIS 554 (1962).

Contract for exemption from sewer assessments. — Under the provisions of this section, a contract made by a municipality with property owners, to exempt the owners from future sewer assessments, is ultra vires, even though upon faith of the agreement the property

owners conveyed rights of way to the city and the city accepted and entered upon the contract. Accordingly, a subsequent council of the municipality is not prevented from levying and enforcing proper sewer assessments against such property owners. J.S.H. Co. v. City of Atlanta, 193 Ga. 1, 17 S.E.2d 55, 1941 Ga. LEXIS 565 (1941).

An agreement whereby the city would aid plaintiff in collecting a "tap-on" fee to sewer and water mains constructed by plaintiff and hooked to the city lines would attempt to bind governing authorities and would therefore be illegal. Simmons v. City of Clarkesville, 234 Ga. 530, 216 S.E.2d 826, 1975 Ga. LEXIS 1179 (1975).

Easement for effluent line. — Collateral agreements in the grant of an easement to a municipality for the purpose of constructing and maintaining an effluent line which relate to the manner of the line's maintenance cannot be effective beyond the term of the mayor and council accepting the easement and making the agreements, and beyond that time are void. City of Douglas v. Cartrett, 109 Ga. App. 683, 137 S.E.2d 358, 1964 Ga. App. LEXIS 956 (1964).

Contract for placement of bus stop benches. — Pretermitting the applicability of O.C.G.A. § 36-30-3(a) to counties, the subsection would not invalidate a county's contract with a company for the placement of bus benches at transit system stops. Board of Comm'rs v. Chatham Advertisers, 258 Ga. 498, 371 S.E.2d 850, 1988 Ga. LEXIS 368 (1988).

Employee pay raises. — County employees could not establish a promissory estoppel claim that the county could not promise mandatory annual four percent pay raises. Johnson v. Fulton County, 235 Ga. App. 277, 509 S.E.2d 355.

City not bound by county's issuance of fifteen year alcohol license. — Although a nude dancing business had entered into a 15-year contract with the newly-incorporated city's predecessor (the county) for an alcohol license, the city was not bound by the county's agreement pursuant to O.C.G.A. § 36-30-3(a). Trop, Inc. v. City of Brookhaven, 296 Ga. 85, 764 S.E.2d 398, 2014 Ga. LEXIS 755 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Acts which a city cannot do by an ordinance cannot be done by a contract. 1965-66 Op. Att'y Gen. No. 65-42.

Contract restricting governmental powers. — While a contract can be entered into which extends beyond the terms of office of a mayor and council members, the fact must be noted that a municipal corporation has no power to make contracts restricting or limiting the municipality's legislative or governmental powers, and a contract which restricts the legislative and governmental powers of future councils is ultra vires and void. 1965-66 Op. Att'y Gen. No. 65-42.

Water supply contract. — Municipalities may enter into a valid and binding contract to provide a system of water supply mutual to all for a period not to exceed 50 years; further, municipalities may not bind themselves by any agreement respecting the sewage system or regulation of the rates of water or sewage, for a period longer than the life of the present council. 1952-53 Ga. Op. Att'y Gen. 126.

Fixing of water rates is a legislative and governmental power, and one council may not, by contract or ordinance, deprive succeeding councils of this legislative or governmental power; the prohibition extends to counties as well as municipalities. 1969 Op. Att'y Gen. No. 69-336.

Waste water treatment services contracts. — O.C.G.A. § 36-60-2, permitting municipalities to enter into multi-year contracts to provide industrial waste water treatment services, provides an explicit statutory exception to O.C.G.A. § 36-30-3 and allows contracts between municipalities and certain private entities for periods up to 50 years. The contract must enable the municipality to comply with the state and federal pollution standards and to receive public allotments. In addition, the contract must comply with the statutory requirement that the private corporation be charged a

rate never less than the actual cost to the municipality. A contract meeting the above requirements would not violate the statutory prohibition against binding successors in office. 1992 Op. Att'y Gen. No. 92-4.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 134.

C.J.S.

64 C.J.S., Municipal Corporations, § 1154.

ALR.

Power of board to appoint officer or make contract extending beyond its own term, 70 A.L.R. 794; 149 A.L.R. 336.

36-30-4. Eligibility of members of municipal councils or boards of aldermen for other municipal offices.

A councilman or alderman of a municipal corporation shall be ineligible to hold any other municipal office during the term of office for which the councilman or alderman was chosen unless he first resigns as councilman or alderman before entering such other office. This Code section shall apply to all elected officials of a municipal corporation.

History.

Ga. L. 1889, p. 181, § 1; Ga. L. 1890-91, p. 226, § 1; Ga. L. 1895, p. 79, § 1; Civil Code 1895, § 739; Ga. L. 1899, p. 26, § 1; Civil Code 1910, § 886; Code 1933, § 69-201; Ga. L. 1957, p. 97, § 1.

Cross references.

Vacancies created by elected officials qualifying for other office, Ga. Const. 1983, Art. II, Sec. II, Para. V.

Law reviews.

For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Second sentence not restrictive. — Provision that O.C.G.A. § 36-30-4 shall apply to all elected officials of a municipality does not necessarily mean that the statute shall apply solely to such elected officials. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515, 1982 Ga. LEXIS 831 (1982).

Office of mayor of city or town having more than 2,000 inhabitants is municipal office. Crovatt v. Mason, 101 Ga. 246, 28 S.E. 891, 1897 Ga. LEXIS 206 (1897).

Councilman as member of city-county recreation commission. — Even assuming that councilman's job with a city-county recreation commission could properly be considered a "municipal office" within the ambit of O.C.G.A. § 36-30-4, and further assuming that the councilman's simultaneous service as councilman would result in an impermissible conflict of interest, it is clear that the result would not be to disqualify the councilman from holding the office of city councilman but rather to render the councilman ineligible to continue the councilman's employment with the commission while serving as a councilman. Hughley v. City of Thomaston, 180 Ga. App. 207, 348 S.E.2d 570, 1986 Ga. App. LEXIS 2079 (1986).

City police officers are municipal officers. — Fact that city police officer has been held to be an officer of the state, does not negate the fact that a police officer is also a municipal officer. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515, 1982 Ga. LEXIS 831 (1982).

Fact that appellants may have been

employees in their position as city police officers does not necessarily contra-indicate their status as office holders in that same position. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515, 1982 Ga. LEXIS 831 (1982).

City police officer cannot be alderman. — O.C.G.A. § 36-30-4 prohibits one from simultaneously holding office of alderman and police officer of city. Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515, 1982 Ga. LEXIS 831 (1982).

Mayor of city is eligible to hold office of school commissioner. Akerman v. Ford, 116 Ga. 473, 42 S.E. 777, 1902 Ga. LEXIS 144 (1902).

Provision in city charter. — Under a city charter the mayor of a municipality could act not only as mayor, and receive the salary therefor, but could also be elected treasurer of the board of lights and waterworks, of which the mayor was ex officio a member, and receive the compensation fixed by the board for those services. There is no inhibition against one person holding both positions, and receiving both salaries, when authorized by the charter. Board of Lights & Waterworks v. Dobbs, 151 Ga. 53, 105 S.E. 611, 1921 Ga. LEXIS 147 (1921).

Commissioners of a city cannot select and appoint one of themselves as city manager, the office of commissioner and city manager being incompatible. Board of Comm'rs v. Montgomery, 170 Ga. 361, 153 S.E. 34, 1930 Ga. LEXIS 457 (1930).

Alderman ineligible to be board of education member. — An alderman comes under the inhibition of this section, and during such term as alderman is incompetent to hold office as a member of the board of education. Matthews v. Morris, 169 Ga. 723, 151 S.E. 391, 1930 Ga. LEXIS 16 (1930).

Membership on the board of education is a municipal office within the meaning of this section. Matthews v. Morris, 169 Ga. 723, 151 S.E. 391, 1930 Ga. LEXIS 16 (1930).

Membership on board of water commissioners prohibited. — Because the city council of Columbus serves a supervisory and/or appellate function in relation to the board of water commissioners, a conflict of interest would exist if a council member were to serve concurrently on the board. Columbus, Ga. v. Board of Water Comm'rs, 261 Ga. 219, 403 S.E.2d 791, 1991 Ga. LEXIS 210 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Scope of section's prohibition. — Prohibition of O.C.G.A. § 36-30-4 applies to all elected city officials. 1982 Op. Att'y Gen. No. U82-27.

Statute renders a councilman ineligible to hold another municipal office unless the councilman has resigned the seat on the council at some time prior to entering the second office; the councilman is not required to resign prior to qualifying to run for the second office. 1975 Op. Att'y Gen. No. 75-18.

Council member of a municipality may run for the office of mayor or other municipal office but must resign such council seat prior to taking the second office. 1975 Op. Att'y Gen. No. 75-18.

Date of termination of office. — Officer whose present position will be finally terminated prior to the beginning date of any new office the officer may gain by election, is eligible to seek and hold such second office. 1963-65 Ga. Op. Att'y Gen. 565.

Council member of a city is ineligible to hold the office of clerk of the city while still holding the office of councilman. 1967 Op. Att'y Gen. No. 67-36.

Trustee of school board. — Member of City Council of Chickamauga cannot lawfully serve as trustee of city school board. 1982 Op. Att'y Gen. No. U82-27.

Recorder of court. — Councilman is prohibited from serving as recorder of the mayor's court. 1983 Op. Att'y Gen. No. U83-61.

Building inspector. — City commissioner cannot simultaneously hold office of city building inspector. 1962 Ga. Op. Att'y Gen. 333.

County commissioner. — Member of State Agricultural Commodities Commission may simultaneously hold the office of county commissioner. 1976 Op. Att'y Gen. No. U76-30.

Volunteer firefighter. — Dual service as a volunteer firefighter and member of a city council or county commission does not violate the provisions of O.C.G.A. § 36-30-4 or O.C.G.A. § 45-2-2; however, cities and counties must determine for themselves, based on the circumstances, whether a common-law conflict of interest exists. 1998 Op. Att'y Gen. No. U98-8.

Position with political committee. — An officer, member, or employee of a political committee is not a "public officer." 1966 Op. Att'y Gen. No. 66-181.

Holding party office. — Since state officials are not prevented from holding city or county offices, and since the positions involved are not ones for which political activity is banned by the rules and regulations of the merit system, a member of the board of commissioners is eligible to hold office on the Democratic executive committee at either the county or state level. 1966 Op. Att'y Gen. No. 66-181.

City commissioner may not sit on city zoning board. — Member of a city commission may not so serve and at the same time serve on a city planning and zoning board. 1971 Op. Att'y Gen. No. U71-107.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 216. 63C Am. Jur. 2d, Public Officers and Employees, §§ 57, 62.

C.J.S.

62 C.J.S., Municipal Corporations, § 262 et seq.

ALR.

Time as of which eligibility or ineligibility to office is to be determined, 143 A.L.R. 1026.

36-30-5. Inclusion of residency in annexed territory in computing period of residence necessary to qualify for office.

Whenever the charter of any incorporated municipality provides for a prior period of residency in the municipality as a qualification for the election or appointment of any person to any office or position in the municipal government, residence in territory which is afterwards annexed to the municipality shall be deemed residence within the municipality for the purpose of computing the period of residence to make one eligible to hold such office or position.

History.

Ga. L. 1963, p. 426, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 209.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 406, 410 et seq.

36-30-6. Voting upon questions by interested councilmembers.

It is improper and illegal for a member of a municipal council to vote upon any question brought before the council in which he is personally interested.

History.

Civil Code 1895, § 751; Civil Code 1910, § 900; Code 1933, § 69-204.

History of Code section.

This Code section is derived from the decision in Daly v. Georgia S. & F.R.R., 80 Ga. 793, 7 S.E. 146 (1888).

Law reviews.

For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

For article surveying important general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965).

For article discussing the impropriety of municipal employees representing their own self-interests in public matters, specifically relating to municipal purchasing, see 5 Ga. St. B.J. 309 (1969).

For article discussing the effect of the general criminal statute on self-interest and municipal purchasing on the general statute on votes by municipal councilmen in matters of personal interest and on local statutory law, see 7 Ga. St. B.J. 431 (1971).

JUDICIAL DECISIONS

"Personal" interest is construed as a "financial" interest. Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396, 1949 Ga. LEXIS 411 (1949).

Contract void when council member stockholder in benefited corporation. — Contract entered into between a private corporation and a city, under which the corporation is to perform certain work for which payment is to be made out of the city treasury, is void if at the time of the contract's execution one of the members of the city council was also a stockholder in such private corporation and such a contract does not become valid and legal when, subsequently, the interested member of the council sells the stock which the member owned at the time of the execution of the contract. Hardy v. Mayor of Gainesville, 121 Ga. 327, 48 S.E. 921, 1904 Ga. LEXIS 135 (1904).

Contract between a city and a construction company, in which a member of a council is a large stockholder, is null and void, although such member of a council did not vote for the ordinance authorizing such contract, and did not use the member's influence in procuring other members of council to approve and authorize the making of such contract, and although such contract is fair and free from fraud. Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152, 1926 Ga. LEXIS 235 (1926).

Contract cannot be ratified by resignation of member. — When such an illegal contract has been made, the contract cannot subsequently be ratified by the resignation of the interested councilman and the confirmation of the contract by the council. Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152, 1926 Ga. LEXIS 235 (1926).

Appointment of depository of which mayor and councilman are officers. — An ordinance naming a certain bank as the city depository and requiring the treasurer of the city to place all the municipal funds coming into the treasurer's hands therein is not necessarily void because the mayor of the city and one of the councilmen voting to adopt the ordinance were respectively officer and director of the bank named as depository. Smith v. City of Winder, 22 Ga. App. 278, 96 S.E. 14, 1918 Ga. App. LEXIS 302 (1918).

Ownership of land subject of public improvement. — Ownership by a member of a municipal council of land which will be affected by a public improvement does not disqualify the member from voting on such

improvement. Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396, 1949 Ga. LEXIS 411 (1949).

Councilman employed as attorney by contractor. — Abutting owners cannot complain after completion of a municipal contract because of illegal participation in the execution of a municipal contract by a councilman who had been employed as an attorney by the contractor. Cochran v. City of Thomasville, 167 Ga. 579, 146 S.E. 462, 1928 Ga. LEXIS 194 (1928).

Employment by school subject of rezoning. — Fact that a councilman is employed by a school which would benefit from a rezoning which is being voted on is not a sufficient "personal interest" to fall under this section. Crawford v. Brewster, 225 Ga. 404, 169 S.E.2d 317, 1969 Ga. LEXIS 511 (1969), overruled, East Lands, Inc. v. Floyd County, 244 Ga. 761, 262 S.E.2d 51, 1979 Ga. LEXIS 1400 (1979).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 127.

C.J.S.

62 C.J.S., Municipal Corporations, § 286.

ALR.

Validity of municipal ordinance as affected by motive of members of council which adopted it, 32 A.L.R. 1517.

Member of governmental board voting on measure involving his personal interest, 133 A.L.R. 1257.

36-30-7. Authorization and procedure for surrender of corporate charter.

A municipal corporation in this state is authorized to surrender its corporate charter when such municipal corporation has not functioned under the corporate charter for a period of ten years, by petitioning the superior court of the county in which the municipal corporation lies, such petition being made by a majority of the registered voters of the nonfunctioning municipal corporation. Thereupon, the judge of the superior court may receive the surrendered corporate charter and by order of the court declare the municipal corporation to be dissolved. Any order of any superior court judge dissolving any municipal corporation within this state will be furnished in duplicate to the Secretary of State and shall serve as notice upon the Secretary of State that the municipal corporation has, by order of the court, been dissolved as a municipal corporation.

History.

Ga. L. 1947, p. 1545, § 1.

Law reviews.

For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1872, p. 18, are included in the annotations for this Code section.

Delegation of legislative power to courts. — Basic principle embodied in the separation of powers doctrine is that the legislature cannot delegate legislative power to the courts. This does not mean, however, that the legislature is forbidden from conferring power on the courts to ascertain whether the statutory requirements for dissolution of a municipal charter have been satisfied in particular cases. Harrell v. Courson, 234 Ga. 350, 216 S.E.2d 105, 1975 Ga. LEXIS 1131 (1975).

No delegation of legislative authority to voters. — Under the terms of this section, there is no delegation of legislative authority to a majority of the voters of municipalities. Harrell v. Courson, 234 Ga. 350, 216 S.E.2d 105, 1975 Ga. LEXIS 1131 (1975).

Cessation of official duties. — Fact that mayor, recorder, and alderman voluntarily ceased to perform their official duties did not operate to terminate corporate existence. Such officers held office until their successors were elected and qualified, though not functioning. Sell v. Turner, 138 Ga. 106, 74 S.E. 783, 1912 Ga. LEXIS 212 (1912) (decided under Ga. L. 1872, p. 18).

OPINIONS OF THE ATTORNEY GENERAL

Statute provides exclusive method of dissolution. 1963-65 Ga. Op. Att'y Gen. 519.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 80.

C.J.S.
62 C.J.S., Municipal Corporations, §§ 127, 131.

36-30-7.1. Inactive municipalities.

(a) On and after July 1, 1995, any municipal corporation in this state shall be deemed an inactive municipality and its charter shall be repealed by operation of law if the municipal corporation fails to meet any of the minimum standards provided in subsection (b) of this Code section for determining an active municipality.

(b) An active municipality is any incorporated municipality in this state the governing body of which meets each of the following minimum standards:

(1) Provides at least three of the following services, either directly or by contract:

(A) Law enforcement;

(B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;

(C) Road and street construction or maintenance;

(D) Solid waste management;

(E) Water supply or distribution or both;

(F) Waste-water treatment;

(G) Storm-water collection and disposal;

(H) Electric or gas utility services;

(I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;

(J) Planning and zoning; and

(K) Recreational facilities;

(2) Holds at least six regular, monthly or bimonthly, officially recorded public meetings within the 12 months next preceding the execution of the certificate required by subsection (c) of this Code section; and

(3) Qualifies for and holds a regular municipal election as provided by law, other than a municipality which has a governing authority comprised of commissioners or other members who are appointed by a judge of the superior court.

(c) Not later than July 1, 1994, each municipal corporation in this state shall file with the Department of Community Affairs either:

(1) A certification from the governing authority that the municipal corporation meets the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section; or

(2) A certification from the governing authority that the municipal corporation does not meet the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section, including a statement that the governing authority recognizes that its legal existence will under the provisions of this Code section be terminated as of July 1, 1995.

(d) After October 15, 1994, the Department of Community Affairs shall transmit to the governing authority of each municipal corporation in the state either:

(1) A statement confirming that the Department of Community Affairs has received from the municipal corporation the filing required by subsection (c) of this Code section, including a statement of which type of filing was received from that municipal corporation; or

(2) A statement that the Department of Community Affairs has not received from the municipal corporation the filing required by sub-

section (c) of this Code section, including a statement that the municipal corporation's legal existence will be terminated as of July 1, 1995, unless such filing is received by December 31, 1994.

(e) A municipal corporation which does not timely make the filing required by subsection (c) of this Code section shall have a grace period until December 31, 1994, to make such filing. However, if such filing is not made by December 31, 1994, the legal status of the municipal corporation shall be the same as that of a municipal corporation which does not meet the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section; and such municipal corporation shall cease to have legal existence as of July 1, 1995.

(f) As quickly as practicable after December 31, 1994, the Department of Community Affairs shall compile a listing of all municipal corporations in this state indicating those whose legal existence will be terminated as of July 1, 1995, and those whose legal existence will not be so terminated. A certified copy of such listing shall be provided to the Secretary of State and shall be conclusive evidence, acceptable in any court and recordable in any public records, of the termination or continuation of existence of a municipal corporation. The Secretary of State shall transmit such a certified copy of the listing to the legislative counsel for publication in the Georgia Laws for the year 1995, and all courts of this state may take judicial notice of the listing so published.

(g) Upon the termination of existence of a municipal corporation as provided for in this Code section, the existence of any local authority created by or for such municipal corporation shall likewise terminate on the same date. Upon the termination of any municipal corporation or local authority under this Code section, all assets, property, and legal rights and obligations of the municipal corporation or local authority shall devolve by operation of law upon the governing authority of the county in which the legal situs of the municipal corporation or local authority was located; provided, however, that this devolution of rights and obligations shall in no manner obligate the county to provide continued employment for any employee of the abolished municipal corporation or local authority. In the case of legal indebtedness of a municipal corporation or local authority devolving upon a county under this Code section, the county shall be authorized but not required to levy a special district tax, fee, or assessment within the formerly incorporated territory (or a portion thereof corresponding to any special district for which the indebtedness was incurred) for the purpose of retiring all or a portion of such indebtedness. Assets devolved to the county governing authority pursuant to this Code section which are deemed to be excess by the county shall be used to retire any indebtedness of the terminated municipal corporation or local authority.

Property devolved to the county governing authority pursuant to this Code section which is deemed to be unnecessary by the county shall be sold and the proceeds from such sale used to retire any indebtedness of the terminated municipal corporation or local authority.

(h)(1) Upon the termination of existence of a municipal corporation as provided in this Code section, the geographic area that was contained in the boundaries of the former municipal corporation may continue to be identified under the same name and style as the former municipal corporation, and for such purpose signs and other appropriate insignia may be erected for such identification.

(2) The Department of Community Affairs shall establish a designation of "historic township" for communities created on or before 1900, provide for the establishment of unincorporated town councils, provide a procedure for converting such municipalities to townships, and for registration of such.

(i) At the session of the General Assembly held in the year 1996 only, a new charter may be granted to a municipal corporation which ceased to exist under the provisions of this Code section solely because of a failure to make the required filing with the Department of Community Affairs (not including any case where the municipal corporation failed to meet the minimum standards of an active municipality enumerated in subsection (b) of this Code section), without regard to the minimum standards for incorporation set out in Chapter 31 of this title. In such a case the local law granting the new charter shall have attached thereto, in lieu of the certificate otherwise required by Code Section 36-31-5, a certificate by the author of the bill stating that the requirements of this subsection are met by the municipal corporation being reincorporated. In any such case assets and property and rights and obligations which devolved upon the county shall be retransferred from the county back to the municipal corporation.

(j) In any case in which the legal dissolution of a municipal corporation has not been certified under the provisions of subsection (f) of this Code section but the municipal corporation does not in fact meet the minimum standards for determining an active municipality enumerated in subsection (b) of this Code section, any citizen of the municipal corporation or the county in which the legal situs of the municipal corporation is located may bring at any time on or after July 1, 1995, a declaratory judgment action for a declaration of the dissolution of the municipal corporation. Any such action shall be brought in the superior court of the county wherein the legal situs of the municipal corporation is located. If a judgment is entered declaring the dissolution of the municipal corporation, the court shall file a certified copy of the judgment with the Secretary of State and the legislative counsel. A copy of such judgment shall be published in the next publication of the

annual session laws with the same status and effect provided for in subsection (f) of this Code section; and a certified copy of the judgment from the court or the Secretary of State shall have the same status and effect as described in subsection (f) of this Code section.

History.

Code 1981, § 36-30-7.1, enacted by Ga. L. 1993, p. 1579, § 1; Ga. L. 1996, p. 6, § 36.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "Recreational facilities" was substituted for "Recreational Facilities" in subparagraph (b)(1)(K), the paragraph (1) and (2) designations were added in subsection (h), and a comma was inserted following "to townships" in paragraph (h)(2).

Law reviews.

For note on 1993 enactment of this Code section, see 10 Ga. St. U. L. Rev. 160 (1993).

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Standing to bring action to dissolve city. — Subsection (j) of O.C.G.A. § 36-30-7.1, authorizing "any citizen" to bring an action for dissolution of a city, does not apply only to those municipalities which the Georgia Department of Community Affairs omitted from the list of inactive and active municipalities compiled pursuant to subsection (f) of O.C.G.A. § 36-30-7.1. City of Lithia Springs v. Turley, 241 Ga. App. 472, 526 S.E.2d 364, 1999 Ga. App. LEXIS 1667 (1999), cert. denied, No. S00C0666, 2000 Ga. LEXIS 415 (Ga. May 5, 2000).

Unified government meets the statutory criteria of an "active municipality." Athens-Clarke County v. Walton Elec. Membership Corp., 265 Ga. 229, 454 S.E.2d 510, 1995 Ga. LEXIS 149 (1995).

City meets requirements of an active municipality. — City's contract with county under which the county provided law enforcement, street construction and maintenance, solid waste collection, and recreational services in consideration of the county's receipt of sales taxes was valid and showed that the city met the requirements of an active municipality. Sherrer v. City of Pulaski, 228 Ga. App. 78, 491 S.E.2d 129, 1997 Ga. App. LEXIS 1035 (1997).

Order dissolving a city was vacated since it was determined that the city provided road or street construction or maintenance services and water supply services and since there were issues of fact as to whether the city provided fire protection services, enforcement of the city's building code, or planning and zoning services. City of Lithia Springs v. Turley, 241 Ga. App. 472, 526 S.E.2d 364, 1999 Ga. App. LEXIS 1667 (1999), cert. denied, No. S00C0666, 2000 Ga. LEXIS 415 (Ga. May 5, 2000).

36-30-8. Confinement of violators of ordinances.

The right and power to organize work gangs or other means of confinement and to confine at labor therein, for a term not exceeding 30 days, persons convicted of violating the ordinances of municipal corporations is conferred on the municipal corporations or their respective authorities. In addition to other punishment allowed by law, municipal corporations, by and through their municipal courts, shall have the right and power to punish persons convicted of violating the ordinances of such municipal corporations by confinement or confinement at labor for a period of time not to exceed 30 days.

History.
Ga. L. 1880-81, p. 179, § 1; Code 1933, § 69-205.
Law reviews.
For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

One purpose of statute is the broadening of powers of municipalities by permitting the imposition of an alternative sentence, which had previously been held to be taboo because it was coercive in nature. City of Albany v. Key, 124 Ga. App. 16, 183 S.E.2d 20, 1971 Ga. App. LEXIS 794 (1971).

Statute is permissive, and not mandatory. City of Albany v. Key, 124 Ga. App. 16, 183 S.E.2d 20, 1971 Ga. App. LEXIS 794 (1971).

RESEARCH REFERENCES

Am. Jur. 2d.
21A Am. Jur. 2d, Criminal Law, §§ 862, 863. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 350.

C.J.S.
72 C.J.S., Prisons and Rights of Prisoners, §§ 1, 4.

36-30-9. Compensation of law enforcement officers.

It shall be unlawful for any municipal corporation to provide commissions or percentages of any fines and bond forfeitures derived from any arrests made by law enforcement officers as compensation or any part thereof. The sole basis of compensating such employees shall be by a fixed salary, to be provided by the governing authority of such municipal corporation.

History.
Ga. L. 1963, p. 479, § 1; Ga. L. 2015, p. 693, § 3-32/HB 233.
Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."
Law reviews.
For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.
70 Am. Jur. 2d, Sheriffs, Police, and Constables, § 42 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, § 621 et seq.

36-30-10. Grant of right to obstruct public street prohibited.

Without express legislative authority, a municipal corporation may not grant to any person the right to erect or maintain a structure or obstruction in a public street.

History.
Civil Code 1895, § 745; Civil Code 1910, § 894; Code 1933, § 69-304.
History of Code section.
This Code section is derived from the decision in Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107 (1891).

Law reviews.
For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Analysis

General Consideration
Specific Obstructions

General Consideration

General application of statute has been to deny a city's right to permit obstructions that would constitute a nuisance and impede travel. City Council v. Shields, 108 Ga. App. 790, 134 S.E.2d 481, 1963 Ga. App. LEXIS 772 (1963).

Delegability of power to abolish, vacate or close street. — Legislature may delegate to a municipal corporation the power to abolish, vacate, or close a street in a municipality. When a street is abolished or closed by a municipality by virtue of such delegated power, the interest of the public therein ceases, and the owners of the fee, who are presumptively the abutting landowners, become entitled to use the property without regard to the former servitude imposed upon the land. Harbuck v. Richland Box Co., 207 Ga. 537, 63 S.E.2d 333, 1951 Ga. LEXIS 448 (1951).

Streets are primarily intended for the use of travelers; and a municipal corporation has no power, in the absence of express legislative authority, to allow a street to be used for any other purpose. City Council v. Reynolds, 122 Ga. 754, 69 Ga. 564, 50 S.E. 998, 1905 Ga. LEXIS 319 (1905).

Obstruction defined. — Any permanent structure in a road which materially interferes with travel is a nuisance per se, and any obstruction permanent in nature or continuously maintained which interferes with the free use of the road by the public is a public nuisance, and it is immaterial that space may be left on either side of the obstruction for the passage of the public. The public has the right to the unobstructed use of the whole road as the road was acquired by the county or city. Harbuck v. Richland Box Co., 204 Ga. 352, 49 S.E.2d 883, 1948 Ga. LEXIS 440 (1948).

Use of streets not absolute. — Use of streets and highways is not absolute and unrestricted, but is subject to reasonable regulation. Schlesinger v. City of Atlanta, 161 Ga. 148, 129 S.E. 861, 1925 Ga. LEXIS 318 (1925).

Limitations on right of public use. — Right of the public to the free and unobstructed use of a street or public way is subject to reasonable and necessary limitations. The right to temporarily obstruct the street springs from the necessities of the case, and such right is necessarily limited by the necessity existing. Those who exercise the right must do so in such manner as will create the least possible inconvenience to others, and the impediment must be removed within a reasonable time. Harbuck v. Richland Box Co., 204 Ga. 352, 49 S.E.2d 883, 1948 Ga. LEXIS 440 (1948).

Section not basis for municipal liability. — In the planning and the construction of a safety zone on a city street, the city was engaged in a governmental function and could not be held liable for any error in judgment in such planning. Beall v. City of Atlanta, 72 Ga. App. 760, 34 S.E.2d 918, 1945 Ga. App. LEXIS 692 (1945).

Statute is not primarily a safety measure, and is not a basis for liability for injury caused indirectly by a condition

General Consideration (Cont'd)

in or adjacent to the traveled portion of the street. City Council v. Shields, 108 Ga. App. 790, 134 S.E.2d 481, 1963 Ga. App. LEXIS 772 (1963).

Specific Obstructions

Permanent structures. — Municipal corporation has no power, in the absence of express legislative authority, to authorize the erection of permanent structures in a public street, which interfere with the free use of such street by the public. Savannah & W.R.R. v. Woodruff, 86 Ga. 94, 13 S.E. 156, 1890 Ga. LEXIS 189 (1890); Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107, 1891 Ga. LEXIS 56 (1891); City Council v. Jackson, 20 Ga. App. 710, 93 S.E. 304, 1917 Ga. App. LEXIS 1038 (1917); Mayor of Savannah v. Markowitz, 155 Ga. 870, 118 S.E. 558, 1923 Ga. LEXIS 176 (1923).

Permissibility of noninterfering structures. — Permanent structures which do not interfere with travel and which are erected for public purposes, such as telegraph and telephone poles, and the like, are permissible. But no permanent structure of any character which interferes in the slightest degree with the right of travel upon the street is ever permissible if such structure is erected for purely private purposes. City Council v. Reynolds, 122 Ga. 754, 69 Ga. 564, 50 S.E. 998, 1905 Ga. LEXIS 319 (1905).

Temporary obstructions. — Temporary obstructions in a street are permissible under certain circumstances, even if the obstruction is for the benefit or convenience of an individual. The general rule is that if the purpose for which the obstruction is created is lawful, and the obstruction exists only for such a time as is reasonably necessary to accomplish the purpose which brings about the necessity for the obstruction, such an obstruction would not be a public nuisance. City Council v. Reynolds, 122 Ga. 754, 69 Ga. 564, 50 S.E. 998, 1905 Ga. LEXIS 319 (1905).

Any temporary obstruction in a public street is presumptively a public nuisance, and it is incumbent upon the persons responsible for the presence of such obstruction to show that the destruction was placed in the street in furtherance of a lawful and legitimate purpose, and has not been continued any longer than was reasonably necessary for the accomplishment of this purpose. City Council v. Reynolds, 122 Ga. 754, 69 Ga. 564, 50 S.E. 998, 1905 Ga. LEXIS 319 (1905).

Expenses incurred in erecting obstruction no defense. — It is no reason for not removing the obstructions from a street that the plaintiff has incurred expense in erecting and maintaining the obstruction, and no lapse of time will render the license irrevocable. Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107, 1891 Ga. LEXIS 56 (1891); Mayor of Savannah v. Markowitz, 155 Ga. 870, 118 S.E. 558, 1923 Ga. LEXIS 176 (1923).

Obstructions "for purely private gain" are not permissible. — Streets are primarily intended for the use of travelers, and any permanent structure in a street which materially interferes with travel thereon is a public nuisance. Permanent structures which do not interfere with travel, and which are erected for public purposes, such as telegraph and telephone poles, and the like, are permissible. City Council v. Reynolds, 122 Ga. 754, 69 Ga. 564, 50 S.E. 998, 1905 Ga. LEXIS 319 (1905); Butler v. City of Atlanta, 47 Ga. App. 341, 170 S.E. 539, 1933 Ga. App. LEXIS 401 (1933).

Fair in public street a nuisance. City Council v. Reynolds, 122 Ga. 754, 69 Ga. 564, 50 S.E. 998, 1905 Ga. LEXIS 319 (1905).

Constitutionality of restriction of buses. — Use of streets by common carriers for the purpose of gain is extraordinary and may be conditioned or prohibited as the legislature or municipality deems proper. Hence, if the state or city determines that the use of streets by buses should be restricted or prohibited there is nothing in the Constitution of the United States or this state which prohibits such action. Schlesinger v. City of Atlanta, 161 Ga. 148, 129 S.E. 861, 1925 Ga. LEXIS 318 (1925).

Use by streetcars. — Legislature has expressly given to cities the power to permit the use of streets for the operation of streetcars, and has conferred upon the city commissioners the authority to determine the location of trolley poles by provisions of former Code 1933, § 94-301 (see now O.C.G.A. § 46-8-100(5)). Townsend v. Georgia Power Co., 44 Ga. App. 132, 160 S.E. 712, 1931 Ga. App. LEXIS 611 (1931).

Medians. — When a median does not interfere with the plaintiffs' ingress and egress to plaintiff's properties but requires mere circuity of travel only, abutting landowners have no cause of action as this section does not apply. Hadwin v. Mayor of Savannah, 221 Ga. 148, 143 S.E.2d 734, 1965 Ga. LEXIS 403 (1965).

Construction of "safety islands". — Municipality and street railroad companies operating within its limits have the power, without being guilty of maintaining a nuisance or committing thereby an act of negligence per se, to authorize the construction and maintenance of, and to construct and maintain under such municipal authority, what are termed "safety islands" or "safety zones" in streets at the side of a streetcar line, for the use and safety of the public from automobile and other traffic when entering and departing from streetcars. Butler v. City of Atlanta, 47 Ga. App. 341, 170 S.E. 539, 1933 Ga. App. LEXIS 401 (1933).

Municipal ordinance which was an attempt to vacate 20 feet of a public street for the benefit of a private corporation is in excess of statutory authority. Harbuck v. Richland Box Co., 204 Ga. 352, 49 S.E.2d 883, 1948 Ga. LEXIS 440 (1948).

Constructing bridges. — City may in the proper exercise of the city's discretion, and as a movement in the direction of public improvement, build a bridge in one of the city's streets, and, incidentally, close the street during the reasonable duration of the work. In like manner, the municipal authorities may authorize a railroad company to build the bridge for the benefit of the city, giving the company power to close the street for a reasonable time while the work is being done. Adair v. City of Atlanta, 124 Ga. 288, 52 S.E. 739, 1905 Ga. LEXIS 703 (1905).

City's right to obstruct street. — When it is not prohibited by law, a city may legally erect and maintain an obstruction in one of the city's streets, provided the obstruction is not dangerous, and does not constitute an unreasonable interference with the lawful use of the street. South Ga. Power Co. v. Smith, 42 Ga. App. 100, 155 S.E. 80, 1930 Ga. App. LEXIS 249 (1930).

RESEARCH REFERENCES

C.J.S.

64 C.J.S., Municipal Corporations, § 1816.

ALR.

Power of municipality to permit permanent loading platforms in street, 11 A.L.R. 442.

Power to close or obstruct street temporarily to permit its use for purposes of sport or entertainment, 34 A.L.R. 270.

Validity, construction, and application of ordinances prohibiting or regulating "curb service", 111 A.L.R. 131.

Municipality's power to permit private owner to construct building or structure overhanging or crossing the air space above public street or sidewalk, 76 A.L.R.2d 896.

Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose, 14 A.L.R.3d 896.

36-30-11. Enclosure of lanes or alleys.

The municipal authorities of any municipal corporation are authorized to permit the enclosure of any lane, alley, or portion thereof in such municipal corporation when the owners of the lots abutting on such

lane or alley and the owners of any other lots to the enjoyment of which access through such lane or alley is necessary consent thereto. Such municipal authorities shall have the right at any time to reopen such lane or alley.

History.
Ga. L. 1878-79, p. 174, § 1; Code 1933, § 69-207.
Law reviews.
For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, § 163 et seq.
C.J.S.
64 C.J.S., Municipal Corporations, § 1749 et seq.
ALR.
Right of public to use alley, 58 A.L.R. 239.

36-30-12. Closing streets adjacent to or through institutions of higher learning in municipal corporations having a population of 350,000 or more.

In all municipal corporations of this state having a population of 350,000 or more according to the United States decennial census of 1980 or any future such census, the municipal authorities of such municipal corporations are authorized to close any municipal streets adjacent to or through institutions of higher learning during any hours in which the municipal authorities determine that it is in the best interest of the public safety and welfare to do so. For the purposes of this Code section, "public safety and welfare" shall be defined to include not only considerations of the flow of traffic, but may also include a determination that to close said streets during such hours will enhance police protection on said streets.

History.
Code 1981, § 36-30-12, enacted by Ga. L. 1982, p. 1177, § 1; Ga. L. 1983, p. 3, § 27; Ga. L. 1991, p. 989, § 2.

36-30-13. Special election to fill vacancies when all seats are vacant.

Except as provided in subsection (g) of Code Section 21-4-13, in the event that all seats on the governing authority of a municipality are vacant, the election superintendent of the county in which the municipality is located shall have the authority to call for a special election to fill the vacant offices and to conduct, or to appoint a superintendent of elections for the municipality for the purpose of conducting, the special election. The board of registrars for the county shall prepare the electors list for the special election.

History.
Code 1981, § 36-30-13, enacted by Ga. L. 1987, p. 178, § 1; Ga. L. 1990, p. 8, § 36.

CHAPTER 31

INCORPORATION OF MUNICIPAL CORPORATIONS

Sec.
36-31-1. Legislative intent.
36-31-2. Two-year inapplicability of provisions regarding inactive municipalities.
36-31-3. Minimum population standards for proposed municipal corporation.
36-31-4. Use and subdivision of areas proposed to be incorporated.
36-31-5. Certificate of existence of minimum standards; manner of determination; disposition and evidentiary effect of certificate.
36-31-6. [Reserved] Responsibility of the Attorney General for preclearances.
36-31-7. Power to license and regulate alcoholic beverages.
36-31-7.1. Ownership and control of county road rights of way.
36-31-8. Transition periods for governmental functions; appointment by the Governor of interim representatives.
36-31-9. Initial terms of office.
36-31-10. Appropriation of funds for grants or loans.
36-31-11. Removal of new municipal corporations from county special districts for provision of local government services.
36-31-11.1. Municipality control over parks and fire stations; obligation of county.
36-31-11.2. Transition of services for certain municipalities incorporated by local Act on or after January 1, 2024.
36-31-12. Legislative findings; special districts divided into noncontiguous areas; information required in audits; informational summary.

36-31-1. Legislative intent.

It is declared to be the intention of the General Assembly to prescribe certain minimum standards which must exist as a condition precedent to the original incorporation of a municipal corporation of this state.

History.
Ga. L. 1963, p. 251, § 1.

Law reviews.
For article surveying history of grant of municipal charters in Georgia, see 11 Ga. B. J. 133 (1948).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 13.

C.J.S.
62 C.J.S., Municipal Corporations, § 9.

36-31-2. Two-year inapplicability of provisions regarding inactive municipalities.

When a municipal corporation is created by local Act as authorized in this chapter, the provisions of Code Section 36-30-7.1 shall not apply for two years from the date the first elected officials of such municipal corporation take office. No later than July 1 following the expiration of

such two-year period, the governing authority of the municipal corporation shall file a certification with the Department of Community Affairs stating whether the municipal corporation does or does not meet the standards for an active municipality under subsection (b) of Code Section 36-30-7.1.

History.
Ga. L. 1963, p. 251, § 2; Ga. L. 1967, p. 718, § 1; Ga. L. 1971, p. 90, § 1; Ga. L. 1996, p. 399, § 1; Ga. L. 2005, p. 185, § 1/HB 36.

Editor's notes.
Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

JUDICIAL DECISIONS

Section not retroactive. — When a municipality was created prior to this section, the restrictions of this section do not apply to an amendatory Act. To construe this section as applicable to acts amending the corporate powers of municipalities in existence prior to this section would violate the statute's plain and unambiguous language, and the constitutional prohibition against enactment of retroactive laws. Brown v. City of Marietta, 220 Ga. 826, 142 S.E.2d 235, 1965 Ga. LEXIS 644 (1965).

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 9.

36-31-3. Minimum population standards for proposed municipal corporation.

To be eligible for original incorporation as a municipal corporation, the minimum population standards of the area embraced within the proposed municipal boundary shall be as follows:

(1) A total resident population of at least 200 persons; and

(2) An average resident population of at least 200 persons per square mile for the total area.

History.
Ga. L. 1963, p. 251, § 3.

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 22.

36-31-4. Use and subdivision of areas proposed to be incorporated.

To be eligible for original incorporation as a municipal corporation, the area embraced shall be so developed that at least 60 percent of the total number of lots and tracts in the area at the time of incorporation are used for residential, commercial, industrial, institutional, recreational, or governmental purposes and shall be subdivided into lots and tracts such that at least 60 percent of the total acreage, not counting the acreage which at the time of incorporation is used for, held for future use for, or subject to a contract for future use for commercial, industrial, governmental, recreational, or institutional purposes, consists of lots and tracts of five acres or less in size.

History.
Ga. L. 1963, p. 251, § 4; Ga. L. 1986, p. 10, § 36; Ga. L. 2005, p. 185, § 2/HB 36.
Editor's notes.
Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, §§ 23, 24.

36-31-5. Certificate of existence of minimum standards; manner of determination; disposition and evidentiary effect of certificate.

Every local law granting an original municipal charter shall have attached thereto a certificate by the author of the bill stating that the minimum standards required by this chapter exist as to the area embraced. Existence of the standards may be determined, as to population, by estimate based on the number of dwellings in the area multiplied by the average family size in the area, as determined by the last preceding federal census or by other reliable evidence acceptable to the author. As to development of the area, existence of the standards may be determined by estimate based on actual survey, county maps or records, aerial photographs, or some other reliable map acceptable to the author. The certificate shall be a permanent part of the charter and shall constitute conclusive evidence of the existence of the standards required by this chapter.

History.
Ga. L. 1963, p. 251, § 5.

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 21.

36-31-6. [Reserved] Responsibility of the Attorney General for preclearances.

History.
Code 1981, § 36-31-6, enacted by Ga. L. 2005, p. 185, § 3/HB 36; repealed by Ga. L. 2015, p. 385, § 6-3/HB 252, effective July 1, 2015.
Editor's notes.
Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

36-31-7. Power to license and regulate alcoholic beverages.

When a new municipal corporation is created by local Act, the governing authority of the municipal corporation shall have all the same powers to license and regulate alcoholic beverages within its territory as did the governing authority of the county when such territory was within the unincorporated area of the county. Without limiting the generality of the foregoing, it is specifically provided that no petition, election, or other condition precedent which might otherwise be required under Title 3 to authorize sales of any alcoholic beverages shall be required in order for the governing authority of the municipality to exercise such powers.

History.
Code 1981, § 36-31-7, enacted by Ga. L. 2005, p. 185, § 3/HB 36.
Editor's notes.
Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-7.1. Ownership and control of county road rights of way.

(a) When a new municipal corporation is created by Act of the General Assembly, the new municipality shall assume the ownership, control, care, and maintenance of county road rights of way located within the area incorporated unless the municipality and the county agree otherwise by joint resolution.

(b) This Code section shall apply to any new municipal corporation created by Act of the General Assembly on or after April 15, 2005.

History.
Code 1981, § 36-31-7.1, enacted by Ga. L. 2015, p. 1358, § 2/HB 477.

36-31-8. Transition periods for governmental functions; appointment by the Governor of interim representatives.

(a) When a new municipal corporation is created by local Act, the local Act may provide for a transition period not to exceed 24 months for the orderly transition of governmental functions from the county to the new municipal corporation. The local Act may specify the time or times during the transition period (or the method or methods for determining the time or times during the transition period) at which:

(1) Various governmental functions, services, and responsibilities will be assumed by the new municipal corporation within its territory; and

(2) The municipal court of the new municipality shall begin to exercise its jurisdiction over various subject matters.

(b) When a chartering local Act so provides for a transition period, the county in which the new municipality is located shall continue to provide within the territory of the new city all government services and functions which it provided as of the date of enactment of the chartering local Act. The county shall continue to provide such services and functions until the end of the transition period; provided, however, that the new city may assume the provision of any service or function at such earlier time as may be specified in the chartering local Act or at such earlier time as may be agreed upon by the county and the new city.

(c) When a chartering local Act so provides for a transition period, on and after the first day the initial governing authority takes office, the governing authority may from time to time adopt appropriate measures to initiate collection within the territory of the new city during the transition period of all taxes, fees, assessments, fines and bond forfeitures, and other moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected by the city during the transition period is specifically related to the provision of a particular government service or function by the county, the service or function shall continue to be provided by the county during the transition period contingent upon payment by the city of the actual cost of providing such service or function unless otherwise provided in a written agreement between the new city and the county.

(d) When a chartering local Act so provides for a transition period, the county in which the new city is located shall not from the time of enactment of the charter until the end of the transition period remove from the county road system any road within the territory of the new city except with the agreement of the new city.

(e) When a chartering local Act so provides for a transition period, the new municipality shall not be subject to the laws specified in this subsection during the transition period; provided, however, that the new city and other political subdivisions may during the transition period commence planning, negotiations, and other actions necessary or appropriate for compliance after the transition period. During the transition period, the new municipality shall not be subject to:

(1) Chapter 70 of this title, relating to planning and service delivery strategies;

(2) Provisions of Code Section 12-8-31.1, relating to solid waste planning;

(3) Provisions of Code Section 48-13-56, relating to reporting of excise taxes collected and expended pursuant to Article 3 of Chapter 13 of Title 48; and

(4) Provisions of Code Section 36-81-8, relating to reporting of local government finances, reporting of revenues derived from a tax levied pursuant to Article 3 of Chapter 13 of Title 48, and reporting of local government services and operations.

(f) When a chartering local Act so provides for a transition period, upon the termination of the transition period subsections (b) through (e) of this Code section shall cease to apply and the new city shall be a fully functioning municipal corporation and subject to all general laws of this state.

(g) As of the date a chartering local Act is approved by the Governor or becomes law without such approval, the Governor is authorized to appoint five persons to serve as interim representatives of the newly incorporated municipality until the election of the municipality's first governing authority. The interim representatives shall cease to serve as of the time the members of the first governing authority take office. The function of the interim representatives shall be to facilitate the provision of municipal services and facilities, the collection of taxes and fees, and the negotiation of intergovernmental agreements in preparation of the establishment of the new municipality. The interim representatives shall not have the ability to enter into any binding agreements, to expend public funds, or to incur any liability on behalf of the new municipality. Any person who is serving as or has served as an interim representative shall be ineligible to qualify for election as a member of the initial governing authority of the new municipality.

History.

Code 1981, § 36-31-8, enacted by Ga. L. 2005, p. 185, § 3/HB 36; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2015, p. 693, § 3-32/HB 233.

Editor's notes.

Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not

codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

For article, "The Municipalization of Urban Counties in Georgia," see 23 Ga. Bar. J. 18 (Dec. 2017).

36-31-9. Initial terms of office.

When a new municipal corporation is created by local Act, the chartering local Act may provide for the initial terms of office of members of the governing authority to be of any length or lengths; and the provisions of this Code section shall control over any conflicting provisions of Code Sections 21-2-541.1 and 21-2-541.2.

History.

Code 1981, § 36-31-9, enacted by Ga. L. 2005, p. 185, § 3/HB 36.

Editor's notes.

Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-10. Appropriation of funds for grants or loans.

The General Assembly may, in connection with the incorporation of a new municipal corporation, at any time (before, after, or contemporaneously with the passage of the chartering Act) appropriate to the Department of Community Affairs funds for grants or loans or both to a specific existing or proposed municipal corporation. When funds are so appropriated, the department shall make grants as specified by recipient, amount, and purpose and loans as specified by recipient, amount, interest rate, term, and purpose in the appropriation unless the chartering Act fails to secure passage or otherwise fails to become effective.

History.

Code 1981, § 36-31-10, enacted by Ga. L. 2005, p. 185, § 3/HB 36.

Editor's notes.

Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-11. Removal of new municipal corporations from county special districts for provision of local government services.

When a municipal corporation is created by local Act within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county, the territory within the new municipal corporation shall be removed from the special district except to the extent otherwise provided by Code Section 36-31-8 during a transition period and except that the county may continue to levy within such territory any previously imposed tax for the purpose of retiring any special district debt until such time as such debt is retired.

History.

Code 1981, § 36-31-11, enacted by Ga. L. 2005, p. 185, § 3/HB 36.

Editor's notes.

Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

36-31-11.1. Municipality control over parks and fire stations; obligation of county.

(a) As used in this Code section, the term:

(1) "County" means a county in which a tax is being levied and collected for purposes of a metropolitan area system of public transportation.

(2) "Fire station" means any property or facility that is located wholly within the territory of a qualified municipality, owned by the county or subject to a lease-purchase or installment sale arrangement by the county, and used by the county as of the date immediately prior to the date the local Act incorporating a qualified municipality became law to provide fire protection services authorized by Article IX, Section II, Paragraph III(a)(1) of the Constitution. Such term shall include any buildings, fixtures, or other improvements on such property or in such facilities.

(3) "Park" means any property or facility that is located wholly within the territory of a municipality, including but not limited to athletic fields, athletic courts, recreation centers, playgrounds, swimming pools, arts centers, historical properties, and adjacent greenspace, owned by the county, or subject to a lease-purchase or installment sale arrangement by the county and used by the county as of the date immediately prior to the date the local Act incorporating a qualified municipality became law to provide any services authorized

by Article IX, Section II, Paragraph III(a)(5) of the Constitution or to provide any services authorized by Article IX, Section II, Paragraph III(a)(10) of the Constitution. Such term shall include any buildings, fixtures, or other improvements on such property or in such facilities.

(4) "Qualified municipality" means any new municipality located in a county and created by local Act which becomes law on or after January 1, 2008.

(b) A qualified municipality that succeeds to the control of local government services pursuant to Article IX, Section II, Paragraph III(a) of the Constitution may take control of and hold title to parks and fire stations as a trustee or agent for the public.

(c)(1) A qualified municipality located within a county which has a special district for the provision of fire services shall continue to be part of such special fire district where the local Act creating such qualified municipality so provides or where the governing authority of the qualified municipality elects by formal resolution to continue to be part of the special fire district and delivers a copy of such resolution to the governing authority of the county within 30 days after the date the resolution is adopted.

(2) If a qualified municipality initially elected to remain in a fire services special district, such municipality shall be removed from such fire services special district by adopting a resolution stating its intent to be removed from the district and the date of removal, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county. The fire services shall be discontinued by the county on the first day of the next fiscal year of the county that begins at least 180 days after the specified notice is received by the county.

(d) A qualified municipality located within a county that charges fees on a periodic basis for the provision of water or sewer services, or both, may elect to continue receiving such services for the same fees charged residents in the unincorporated area of the county. Such election may be set forth in the local Act creating such qualified municipality or be made by resolution of the governing authority of the qualified municipality provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county within 30 days after the date the resolution is adopted.

(e) The county shall not convey, otherwise encumber, move any fixtures or buildings, or enter into or renew any contractual obligations with respect to any park or fire station located in the qualified municipality. The governing authority of the county shall assign to the governing authority of the qualified municipality all of its right, title, and interest in any executory contract in effect on any park or fire

station that the qualified municipality elects to purchase as provided in this Code section. Such assignment shall be effective on the date the municipality assumes ownership of any such park or fire station or as otherwise may be agreed between the governing authority of the municipality and the governing authority of the county.

(f) A municipality may elect to purchase parks within the territory of the municipality from the county in which the municipality is located. Notwithstanding any other law to the contrary, whenever a municipality elects to purchase any such parks, the governing authority of the municipality shall provide written notice to the governing authority of the county specifying the parks to be purchased and the date or dates the municipality will assume ownership of such parks; the purchase price for such parks shall be $100.00 per acre. Such notice shall be provided for each such park no less than 30 days prior to the date the municipality intends to assume ownership.

(g) Upon the payment of the purchase price, all of the county's right, title, and interest in the parks that the municipality elects to purchase shall be transferred to the governing authority of the municipality. Such transfer shall be effective on the date the municipality intends to assume ownership of such parks and as stated in the notice given pursuant to subsection (f) of this Code section. The governing authority of the county shall transfer, execute, and deliver to the governing authority of the municipality such instruments as may be necessary to record the transfer of such right, title, and interest. Notwithstanding any provision in any property deed or law to the contrary, a municipality may purchase a park from the county without permission of the state and may use such park for all purposes for which the county was authorized under such deed or law.

(h) In the event a park is transferred by a county to a municipality under this Code section, the municipality shall be prohibited from imposing or collecting user fees from residents of the county in excess of the amount of such fees imposed or collected from residents of the municipality.

(i) Where residents of a municipality are required pursuant to Code Section 36-31-11 to continue to pay taxes for the purpose of retiring any special district debt created by the issuance of bonds by the county on behalf of the special district for the purpose of improving parks and the municipality elects to purchase any such park pursuant to this Code section, the county shall transfer to the municipality as an agent of the special district the portion of the bond proceeds that the county planned to spend on such park at the time of the referendum on the bonds, based upon any statements of intention or representations concerning use of the bond proceeds by the governing authority of the county. Such amount shall be determined based on county resolutions and any

attachments thereto, staff recommendations, or similar documents presented at the time of passage of a resolution, county records, and any public statements or representations made by county managers, representatives, officials, or their agents as to the amount that would be spent on such park in order to solicit voter support for the referendum; provided, however, that the amount to be transferred by the county to the municipality shall be reduced by any amount spent by the county to improve such park prior to the date of the municipality's notice of its election to purchase the park as provided in subsection (f) of this Code section. The transfer shall be due within 30 days after the municipality assumes ownership of any such park. The municipality shall be required to expend any such funds for and on behalf of the special district in a manner consistent with the purpose and intent of the issuance of the bonds.

(j) A qualified municipality may elect to purchase one or more fire stations from the county in which it is located. Notwithstanding any other law to the contrary, whenever a qualified municipality elects to purchase a fire station from the county, the governing authority of the qualified municipality shall provide written notice to the governing authority of the county specifying the fire station to be purchased and the date or dates the qualified municipality will assume ownership of such fire station. Such notice shall be provided with respect to each such property no less than 30 days prior to the date the qualified municipality intends to assume ownership of the fire station.

(k)(1) Except as otherwise provided in paragraph (2) of this subsection, if a qualified municipality elects to purchase a fire station that serves only territory wholly within the qualified municipality, the purchase price shall be $5,000.00 for each such fire station.

(2) If the county uses a fire station to serve an area located outside the qualified municipality, the purchase price for each such fire station shall be $5,000.00 plus an additional amount determined as provided in this paragraph. Such additional amount shall be the product of the fair market value of such fire station multiplied by the percentage of the total service area of such fire station which is located outside of the corporate limits of the qualified municipality. If the portion served outside the qualified municipality exceeds 20 percent of the total service area, then from the date the qualified municipality assumes ownership of such fire station, the qualified municipality shall be obligated to offer to lease the fire station back to the county for a period not to exceed two years for an amount of $10.00 for the lease period.

(l) If a county and municipality fail to reach an agreement on the amount to be paid or any related matter under this Code section, either the county or the municipality may petition the superior court to seek

resolution of the items in dispute. Such petition shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall conduct an evidentiary hearing or hearings as such judge deems necessary and render a decision with regard to the disputed items.

History.
Code 1981, § 36-31-11.1, enacted by Ga. L. 2010, p. 4, § 1/HB 203; Ga. L. 2012, p. 810, § 1/HB 990.
Editor's notes.
Ga. L. 2012, p. 810, § 3/HB 990, not codified by the General Assembly, provides: "This Act shall not be applied to impair any obligation of contract entered into prior to the date this Act becomes effective." The effective date of this Act is May 1, 2012.

36-31-11.2. Transition of services for certain municipalities incorporated by local Act on or after January 1, 2024.

(a) As used in this Code section, the term:

(1) "County" means a county with more than 15 municipalities wholly or partially located within its boundaries.

(2) "Qualified municipality" means any new municipality created by local Act which becomes law on or after January 1, 2024.

(3) "Transition period" means the period for the transition of governmental services from a county to a qualified municipality as provided for by this chapter or the local Act incorporating such qualified municipality.

(b) Notwithstanding any provision of law to the contrary:

(1)(A) When a qualified municipality is created within a county which has a special district consisting of both the unincorporated area and certain incorporated areas of the county for the provision of police or law enforcement services, the territory within the new qualified municipality shall remain in such special district until the qualified municipality notifies the county of its intention to leave such special district and assume full responsibility for the provision of police and law enforcement services. In no event shall a qualified municipality be required to provide more than one year's notice prior to exercising the option provided for in this paragraph to leave such special district if the county police department is staffed at less than 95 percent of its authorized number of certified peace officers.

(B)(i) During the period that a qualified municipality remains within a police or law enforcement special district as provided for in subparagraph (A) of this paragraph, the county shall continue

to provide police and law enforcement services within the boundaries of the qualified municipality in the same manner as other parts of the special district.

(ii) In the event that, at the end of a fiscal year for the special district, the actual special district ad valorem taxes collected within the boundaries of the qualified municipality are greater than the actual costs incurred by the county in providing police or law enforcement services within the boundaries of the qualified municipality, within 60 days of the final day of such fiscal year, the county shall deliver such excess funds to the qualified municipality.

(iii) For the purpose of complying with division (ii) of this subparagraph, the actual costs of providing police or law enforcement services within the qualified municipality shall be calculated based upon the actual time county police or law enforcement officers spend providing police or law enforcement services within the boundaries of the qualified municipality. The costs of such police and law enforcement services shall include the costs of county police or law enforcement officers:

(I) Patrolling and responding to dispatches or calls for service within the qualified municipality; and

(II) Investigating crimes originating within the qualified municipality regardless of the physical location where such investigative activities occur.

(iv) The fiscal authority for a special district for the provision of police or law enforcement services shall have the duty of tracking all information and making all calculations necessary to comply with the provisions of this paragraph.

(v) Nothing in the paragraph shall affect or be affected by the provision of law enforcement services by a county sheriff.

(2) A qualified municipality during the transition period shall assume ownership or control over any road rights of way located within the area incorporated and shall have the full power and authority to regulate the use of such rights of ways, including but not limited to the granting of franchises and collection of franchise fees related to the use of such rights of way. At the sole discretion of the qualified municipality, during any such transition period, the county shall continue to perform maintenance and care for such road rights of way in the same manner that the county maintains and cares for road rights of way owned and controlled by the county in the unincorporated parts of the county.

(3) A qualified municipality shall not take control of, maintain, be responsible for, or hold title to any infrastructure designed to tempo-

rarily retain 1,000 gallons or more of storm water or any dams or detention ponds located within the boundaries of such municipality that, prior to the creation of such municipality, were controlled, maintained, or the responsibility of the county unless such municipality explicitly agrees otherwise. Regardless of any transition period, the county shall continue to control, maintain, and be responsible for such infrastructure in the same manner and degree as it did prior to the incorporation of the qualified municipality until the qualified municipality and the county agree otherwise.

(4)(A) In the event that:

(i) A qualified municipality succeeds to the control of local government services pursuant to Article IX, Section II, Paragraph III(a) of the Constitution, this chapter, or the local Act incorporating the qualified municipality during the middle of a county's fiscal year;

(ii) The county, immediately prior to the qualified municipality succeed to the provision of such service, levied or collected any tax, fee, or other charge within territory that is then or subsequently within the boundaries of the qualified municipality; and

(iii) Such tax, fee, or charge is directly related to the provision of such service,

the county shall remit to the qualified municipality funds equal to a pro rata share of such collections based upon the amount of time during such fiscal year that the county verses the qualified municipality provide the service related to such tax, fee, or collection.

(B) This paragraph shall apply, but not be limited, to alcoholic beverage fees and taxes, business license fees, and occupation taxes collected within the qualified municipality, and shall not affect the validity of any permits or licences issued by the county upon the collection of such taxes, fees, or charges.

(5)(A) For the purposes of this paragraph, the term "permit or other official approval of activity" mean any permitting or application process related to licenses or permits related, but not limited to, alcoholic beverages, building, community development, land use and zoning, and regulated businesses or industries.

(B) In the event that a county, prior to a qualified municipality succeeding to the control of a local government services pursuant to Article IX, Section II, Paragraph III(a) of the Constitution, this chapter, or the local Act incorporating the qualified municipality, accepts any application and fee related to the issuance of a permit or other official approval of activity relating to a governmental service assumed by the qualified municipality, and the related

permitting or regulatory process is not fully completed by the county by the time the qualified municipality succeeds to the provision of such service, and such fees are not fully refunded to the applicant, the county shall transfer and remit to the qualified municipality the following percentage of such fees collected by the county:

(i) Ninety-five percent if no action beyond mere acceptance has been taken upon the application;

(ii) Seventy-five percent if the application has been processed but no required inspections have occurred; or

(iii) Fifty percent if the application or regulatory process has been completed but final approval or permits have not be issued.

(C) The county shall transfer all required funds to the qualified municipality within 30 days of being obligated to remit fees as required by subparagraph (B) of this paragraph.

(6) The incorporation of a qualified municipality shall not require the county or any municipalities located within such county to renegotiate any service delivery strategy agreement enacted pursuant to Chapter 72 of this title that is in place on the date that the qualified municipality is incorporated. In lieu of such agreement being renegotiated during any transition period, the qualified municipality may elect to have the county provide within the boundaries of the qualified municipality any service or services that the county is providing to either another municipality or the unincorporated areas of the county pursuant to the then-current service delivery strategy agreement. The county shall provide any such elected services to the qualified municipality under the same conditions and in the same manner as it provides to the other municipality or the unincorporated area of the county. Such elections shall occur within six months of either May 14, 2025 or the date of incorporation, whichever is later.

(7) A qualified municipality shall have no obligation to repay the costs of any special election conducted either to:

(A) Present a question to the voters on the incorporation of such municipality; or

(B) Elect the initial governing authority of such municipality.

(c)(1) In the event that:

(A) A county fails to comply with the transition provisions provided for in this Code section, a qualified municipality is forced to seek judicial remedies for such failure to comply, and the qualified municipality is ultimately successful in such legal action; or

(B) A qualified municipality is subject to a legal action initiated by a third party seeking to enforce its rights as a result of the qualified municipality's failure to meet a duty or obligation provided by law, and the qualified municipality's failure to meet such duty or obligation was the direct result of actions taken by a county relating to the transition of services between the county and qualified municipality,

then the county shall be responsible for reimbursing the qualified municipality for all legal expenses incurred by such qualified municipality in prosecuting or defending such action as well as any damages paid by the qualified municipality to such injured third party. The sovereign immunity of the county is waived to the extent necessary to effectuate this paragraph.

(2) In the event that a county is found by a court of competent jurisdiction to have violated any duty or obligation arising from this chapter, the sovereign immunity of such county and the governmental immunity of all local officials of such local governing body is waived in all matters arising during a period of one year from the date of such judicial finding.

History.
Code 1981, § 36-31-11.2, enacted by Ga. L. 2025, p. 732, § 1/SB 138, effective May 14, 2025.

Effective date.
This Code section became effective May 14, 2025.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2025, "May 14, 2025" was substituted for "the effective date of this Code section" in the last sentence of paragraph (b)(6).

36-31-12. Legislative findings; special districts divided into noncontiguous areas; information required in audits; informational summary.

(a) The General Assembly finds that:

(1) The purpose of a special district is to provide services to a given geographic area and to finance the provision of those services from taxes, fees, and assessments levied in the geographic area which benefits from the services;

(2) The creation of a municipal corporation within a county which has a special district for the unincorporated area of the county may result in the special district being divided into noncontiguous areas or in existing noncontiguous areas of such district being even more remote from each other; and

(3) The purpose of a special district is defeated if it becomes divided into noncontiguous areas which are remote from each other

and one or more of such noncontiguous areas is subsidizing the provision of services in other such noncontiguous areas.

(b)(1) When a municipal corporation is created by local Act within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county and following the creation of said municipal corporation the special district is divided into two or more noncontiguous areas, any special district taxes, fees, and assessments collected in such a noncontiguous area shall be spent to provide services in that noncontiguous area. Effective January 1, 2006, for the purposes of this Code section, a noncontiguous area located within ten miles of another noncontiguous area may be treated as the same noncontiguous area.

(2) If, on or after May 14, 2008:

(A) Excess proceeds derived from the collection of any special district taxes, fees, and assessments or from any earnings thereon remain following the expenditure required under paragraph (1) of this subsection; and

(B) All of the area within the special district shall have become incorporated within one or more municipalities,

then the excess proceeds shall be disbursed within 60 days to the governing authority of each municipality which has incorporated any portion of the area of the special district; and the county shall continue to make such disbursements for so long as such excess proceeds continue to be received. The amount of proceeds to be disbursed to each municipality shall be determined on a pro rata basis using as a denominator the total value of all tax parcels within the special district and as a numerator the total value of all tax parcels which were incorporated within each municipality.

(3) If, on or after May 14, 2008:

(A) Excess proceeds remain from the collection of any special district taxes, fees, and assessments or from any earnings thereon; and

(B) A new municipality shall have been created from within such special district such that the special district shall have been diminished in size but not all of the special district shall have been incorporated within one or more municipalities,

then the excess proceeds shall be disbursed within 60 days to the governing authority of each municipality which has incorporated any portion of the area of the special district; and the county shall continue to make such disbursements for so long as such excess proceeds continue to be received. The amount of proceeds to be

disbursed to each municipality shall be determined on a pro rata basis using as a denominator the total value of all tax parcels within the special district and as a numerator the total value of all tax parcels which were incorporated within each municipality.

(c) When a municipal corporation is created by local Act within a county subject to this Code section, the county shall for the fiscal year in which the municipal corporation is chartered and for each of the next two fiscal years have included in its annual audit detailed findings as to:

(1) The amount of any special district taxes, assessments, and fees collected in each noncontiguous area of the special district;

(2) The total amount of expenditures by the county for:

(A) The provision of services within each noncontiguous area of the special district, including only those services which are provided by the county only in the special district; and

(B) The construction and maintenance of facilities for the provision of services referred to in subparagraph (A) of this paragraph; and

(3) The amount by which expenditures stated in paragraph (2) of this subsection exceed or are less than the amount stated in paragraph (1) of this subsection.

(d) The party performing the audit required by subsection (c) of this Code section shall prepare as promptly as is practicable a brief informational summary of the audit findings required by that subsection. The informational summary shall also include a statement of the amount of proceeds collected by the county pursuant to any tax under Article 2 of Chapter 8 of Title 48 which would be allocated to each noncontiguous area of the special district if such area received an allocation equal on a per capita basis to the average per capita allocation to the cities in the county. After each year's summary becomes available, a copy of the summary shall be included with the next ad valorem tax bills mailed by the county to residents of the special district consisting of the unincorporated area of the county.

(e) For purposes of determining applicability of this Code section, a county shall be considered to have a special district for the provision of local government services when a county has created a special district for such purposes pursuant to Article IX, Section II, Paragraph VI of the Constitution or has created a similar district for the provision of services under any other provision of any past or present Constitution or law.

History.

Code 1981, § 36-31-12, enacted by Ga. L. 2005, p. 185, § 3/HB 36; Ga. L. 2006, p. 65, § 1/SB 399; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2008, p. 1019, § 2/SB 154; Ga. L. 2012, p. 810, § 2/HB 990.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2008, "May 14, 2008" was substituted for "the effective date of this paragraph" in paragraphs (b)(2) and (b)(3).

Editor's notes.

Ga. L. 2005, p. 185, § 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that the Act shall apply with respect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.

Ga. L. 2012, p. 810, § 3/HB 990, not codified by the General Assembly, provides: "This Act shall not be applied to impair any obligation of contract entered into prior to the date this Act becomes effective." The effective date of this Act is May 1, 2012.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 36-31-12(b) did not violate the Georgia Constitution by encroaching on a county's exclusive authority, derived from a local constitutional amendment (Ga. L. 1972, p. 1482, § 1), over the collection and expenditure of revenues collected within the county's special taxing and spending district; the amendment granted concurrent authority to the county and the General Assembly over these matters. Fulton County v. Perdue, 280 Ga. 807, 631 S.E.2d 362, 2006 Ga. LEXIS 399 (2006).

Applicability. — There is nothing in the language of O.C.G.A. § 36-31-12 indicating a legislative intent that the statute applies only to special taxing and spending districts with newly created noncontiguous areas. Fulton County v. Perdue, 280 Ga. 807, 631 S.E.2d 362, 2006 Ga. LEXIS 399 (2006).

CHAPTER 32

MUNICIPAL COURTS

Article 1

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36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; disposition of fines and bond forfeitures; transfer of cases; penalties.
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36-32-10.2. Trial upon citation, summons, or accusation.
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Article 2

Georgia Municipal Courts Training Council

36-32-20. Short title.
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36-32-23. Oath of office.
36-32-24. Election of chairman and vice-chairman; secretary; quorum; minutes; annual report.
36-32-25. Remuneration.
36-32-26. Functions, powers, and responsibilities.
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Article 3

Council of Municipal Court Judges

36-32-40. Creation of council; membership and organization; purpose; expenses; contracts; assistance to council; members not ineligible to hold office of judge; notifications.

Sec.
36-32-41. Savings plans and deferred compensation plans for council members.

Cross references.
City courts, § 15-8-1 et seq.
Law reviews.
For article, "The City Court of Atlanta and the 1983 Georgia Constitution: Is the Judicial Engine Souped Up or Blown Up?," see 15 Ga. St. U. L. Rev. 941 (1999).
For annual survey article, "'Garbage In, Garbage Out': The Litigation Implosion Over the Unconstitutional Organization and Jurisdiction of the City Court of Atlanta," see 52 Mercer L. Rev. 49 (2000).

ARTICLE 1

GENERAL PROVISIONS

36-32-1. Establishment of municipal court; punishments; selection, election, or appointment of mayor pro tempore or recorder pro tempore.

(a) Each municipal corporation of this state shall, unless otherwise provided in the local law relating to a particular municipal corporation, be authorized to establish and maintain a municipal court having jurisdiction over the violation of municipal ordinances and over such other matters as are by general law made subject to the jurisdiction of municipal courts. Any such court shall be styled as a municipal court. Any reference in this Code or in any local law to a corporate court, police court, recorder's court, mayor's court, or any such court known by any other name which has jurisdiction over the violation of municipal offenses shall be deemed to mean a municipal court. Except in this Code section and in the laws relating to the City Court of Atlanta, the terms "corporate court," "corporate courts," "police court," "police courts," "recorder's court," "recorders' courts," "mayor's court," and "mayors' courts," when such terms refer to a court of a municipal corporation, are stricken wherever they appear in any general or local law of this state and the term "municipal court" or "municipal courts," whichever is appropriate, is inserted in lieu thereof. The change in the name of any such court as provided for by Article VI, Section X, Paragraph I of the Constitution of the State of Georgia and by this Code section shall not affect the validity of any action or prosecution in such court.

(b) The provisions of this chapter shall apply equally to all municipal courts, whether heretofore styled as a municipal court, corporate court, police court, recorder's court, or mayor's court or called by some other name and whether established by the municipal corporation under authority granted to the municipal corporation or established by the local law relating to a particular municipal corporation.

(c) Each municipal court of this state, unless otherwise provided in the local law relating to a particular municipal court, shall be authorized to impose any punishment up to the maximums specified by general law, including the maximums specified in subparagraphs (a)(2)(B) and (a)(2)(C) of Code Section 36-35-6.

(d) The governing bodies of the municipal corporations of this state having a municipal court are authorized and empowered, either by ordinance or resolution, to select, elect, or appoint either a mayor pro tempore or a recorder pro tempore to hold and preside over such municipal court in the absence or disqualification of the mayor or recorder. While presiding in such corporate courts, the mayor pro tempore or recorder pro tempore shall have such power, authority, and jurisdiction as is given by the charter of the municipal corporation to its mayor or recorder.

(e) Subsection (d) of this Code section shall not affect any municipal corporation for which provision is made in the charter for the appointment or selection of a mayor pro tempore or a recorder pro tempore.

(f) Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty, as authorized by general law or municipal or county ordinance, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.

(g) Any municipal court operating within this state that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.

(h) Any municipality or municipal court may contract with the office of the circuit public defender of the judicial circuit in which such municipality is located as a means of complying with the municipality's or municipal court's legal obligation to provide defense counsel at no

cost to indigent persons appearing before the court in relation to violations of municipal ordinances, county ordinances, or state laws.

History.
Ga. L. 1922, p. 133, §§ 1, 2; Code 1933, §§ 69-702, 69-703; Ga. L. 1986, p. 784, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 2003, p. 191, § 9; Ga. L. 2015, p. 519, § 8-9/HB 328.

Cross references.
Constitutional provisions regarding courts with municipal jurisdiction, Ga. Const. 1983, Art. VI, Sec. X, Para. I.

Law reviews.
For note on the 2003 amendment to this Code section, see 20 Ga. St. U. L. Rev. 105 (2003).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Municipal court not a city court or court of record. — Municipal court established as part of the charter for a city was not a city court and was not a court of record authorized to grant new trials. City of Lawrenceville v. Davis, 233 Ga. App. 1, 502 S.E.2d 794, 1998 Ga. App. LEXIS 863 (1998), cert. denied, No. S98C1590, 1998 Ga. LEXIS 1026 (Ga. Oct. 23, 1998).

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. — While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore, a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-1.1. Municipal court judges; qualifications to serve.

Municipal court judges shall be licensed to practice law in the State of Georgia and an active member in good standing of the State Bar of Georgia; provided, however, that any judge serving on June 30, 2011, who does not meet the qualifications required by this Code section may serve as municipal court judge in any municipality so long as such judge is in compliance with Code Section 36-32-27. The provisions of this Code section shall expressly supersede any conflicting local law of this state.

History.
Code 1981, § 36-32-1.1, enacted by Ga. L. 2011, p. 398, § 1/SB 30.

OPINIONS OF THE ATTORNEY GENERAL

Member of General Assembly may not serve as municipal court judge. — While the separation of powers doctrine does not apply when the issues relate solely to municipal officials utilizing municipal powers, it does apply when it concerns a municipal court judge exercising state judicial powers. Because

of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore, a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

36-32-2. Appointment of judges.

(a)(1) Notwithstanding any other provision of this chapter or any general or local Act, the governing authority of each municipal corporation within this state having a municipal court, as provided by the Act incorporating the municipal corporation or any amendments thereto, is authorized to appoint a judge of such court. Any individual appointed as a judge under this Code section shall possess such qualifications as set forth in Code Section 36-32-1.1 and shall receive such compensation as shall be fixed by the governing authority of the municipal corporation. Notwithstanding the failure of the governing body of a municipal corporation to enter into a written agreement or enact an ordinance as provided for in this paragraph, any individual appointed as a judge under this Code section shall serve for a minimum term of two years from the date of appointment as reflected in the minutes of the municipal corporation, unless such municipal corporation's charter provides for a longer term, and until a successor is appointed or if the judge is removed from office as provided in Code Section 36-32-2.1. Such term shall be memorialized in a written agreement between such individual and the governing authority of the municipal corporation or in an ordinance or a charter. If such term is memorialized in a written agreement, such agreement shall not include any geographic limitation concerning a judge's eligibility to serve and shall not contain any provision that a judge serve in an at-will capacity.

(2) Except as otherwise provided for in Code Section 36-32-2.1, in the event of a vacancy occurring during the term of a judge appointed under this Code section, the governing authority of the municipal corporation is authorized to appoint an individual to serve for the remainder of the unexpired term created by such vacancy, provided that such individual is qualified by law to serve as a municipal court judge.

(b) This Code section shall not be construed to require the governing authority of any municipal corporation to appoint a judge; but such governing authority may appoint a judge if, acting in its sole discretion, the governing authority determines that such appointment would be in the best interest of the municipal corporation.

History.
Code 1933, § 69-704.1, enacted by Ga. L. 1973, p. 489, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1995, p. 712, § 1; Ga. L. 2016,

p. 367, § 1/HB 691; Ga. L. 2022, p. 822, § 1/HB 1275; Ga. L. 2024, p. 669, § 1/HB 456, effective July 1, 2024; Ga. L. 2025, p. 1029, § 36(5)/SB 153, effective July 1, 2025.

Amendments.

The 2024 amendment, effective July 1, 2024, in paragraph (a)(1), substituted "two years" for "one year" in the third sentence and added the last sentence. See Editor's notes for applicability.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "provided that such" for "provided such" in paragraph (a)(2).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2016, "Code Section 36-32-2.1" was substituted for "Code Section 36-32-2.2" in subsection (a) (now paragraph (a)(1)).

Editor's notes.

Ga. L. 2024, p. 669, § 3/HB 456, not codified by the General Assembly, makes the amendment to paragraph (a)(1) of this Code section applicable to written agreements entered into on or after July 1, 2024.

JUDICIAL DECISIONS

Separation of powers. — Because a municipal court is a municipal office discharging strictly municipal functions, O.C.G.A. § 36-32-2(a) does not violate the separation of powers doctrine of Ga. Const. 1983, Art. I, Sec. II, Para. III and the city was authorized to require the judge to reinstate the contract between the county and the private probation services company. Ward v. City of Cairo, 276 Ga. 391, 583 S.E.2d 821, 2003 Ga. LEXIS 305 (2003).

Judge was qualified to preside over case. — Municipal court judge was qualified to preside over the case although the judge was not a resident of the judicial circuit in which the court was located, when neither the mayor nor another member of the governing authority of the city served as a judge of the municipal court. Giles v. City of Locust Grove, 203 Ga. App. 164, 416 S.E.2d 758, 1992 Ga. App. LEXIS 458 (1992), cert. denied, No. S92C0752, 1992 Ga. LEXIS 347 (Ga. Apr. 24, 1992).

OPINIONS OF THE ATTORNEY GENERAL

Clerk of Superior Court may not serve as Judge of Mayor's Court. — Clerk of the Superior Court is prohibited by a common-law conflict of interest from simultaneously serving as the Judge of the Mayor's Court. 1984 Op. Att'y Gen. No. U84-22.

Member of General Assembly may not serve as municipal court judge. — While the separation of powers doctrine does not apply where the issues relate solely to municipal officials utilizing municipal powers, it does apply where it concerns a municipal court judge exercising state judicial powers. Because of that, the exercise of those state judicial powers by a legislator would be a violation of the constitutional prohibition against a member of one branch exercising the powers of another branch of government. Therefore, a member of the Georgia General Assembly may not serve as a municipal court judge. 2014 Op. Att'y Gen. No. U2014-2.

RESEARCH REFERENCES

Am. Jur. 2d.

46 Am. Jur. 2d, Judges, §§ 5, 7. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 202, 206.

C.J.S.

16 C.J.S., Constitutional Law, § 366 et seq. 48A C.J.S., Judges, § 23 et seq. 62 C.J.S., Municipal Corporations, §§ 394, 405 et seq., 434 et seq.

36-32-2.1. Removal of judges.

(a) As used in this Code section, the term "judge" means an individual serving as an appointed municipal court judge.

(b)(1) A judge may be removed during his or her term of office by a two-thirds' vote of the entire membership of the governing authority of the municipal corporation for:

(A) Willful misconduct in office;

(B) Willful and persistent failure to perform duties;

(C) Habitual intemperance;

(D) Conduct prejudicial to the administration of justice which brings the judicial office into disrepute; or

(E) Disability seriously interfering with the performance of duties, which is, or is likely to become, of a permanent character.

(2) A municipality may define in its charter further conduct that may lead to a judge's removal.

(3) Where a municipality has entered into a written agreement with an individual memorializing the terms and conditions of his or her appointment as judge, and the municipality alleges a breach of the agreement:

(A) Written notice of such breach shall be given to the judge;

(B) The judge shall have up to 30 days after receiving the notice to cure the alleged breach;

(C) Where a municipality seeks to remove a judge for breach of the agreement, such removal during a judge's term shall only occur in the event of a material breach; and

(D) Removal for a material breach may only be done subject to the provisions of this Code section.

(c)(1) Removal proceedings pursuant to subsection (b) of this Code section may be initiated only by written petition setting forth the grounds for removal of a judge signed by one or more members of the governing authority of the municipal corporation.

(2) A petition for removal shall state:

(A) The cause or causes for his or her termination in sufficient detail to enable him or her fairly to show any error that may exist therein;

(B) The names of the known witnesses and a concise summary of the evidence to be used against him or her, and the names of any new witnesses shall be provided as soon as practicable; and

(C) That the judge, upon request, shall be furnished with compulsory process or subpoena legally requiring the attendance of witnesses and the production of documents and other evidence as provided by law.

(3) Upon submission of the petition to remove the judge to such governing authority, the governing authority may consider the petition and determine if the petition relates to and adversely affects the administration of the office of the judge and the rights and interests of the public. If it is determined at a public meeting by a majority vote of the governing authority of the municipal corporation that there is an adverse impact, the judge may be suspended immediately and without further action for up to 60 days pending the final determination pursuant to subsection (e) of this Code section. A judge suspended pursuant to this subsection shall continue to receive the compensation from his or her office until the final determination on the petition or expiration of the suspension.

(d) If by the expiration of the suspension period no formal resolution of the petition has been made, the judge shall be reinstated.

(e)(1)(A) Removal proceedings shall consist of an open and public hearing held by the governing authority of the municipal corporation, provided that the judge against whom such charges have been brought shall be furnished notice of the time and place where the hearing will be held and a copy of the charges at least 20 days prior to the hearing.

(B) The notice required by subparagraph (A) of this paragraph shall be served by certified mail or statutory overnight delivery and shall be deemed to be perfected by certified mail when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope.

(C) The judge shall be entitled to be represented by counsel at his or her expense and, upon request, shall be entitled to have subpoenas or other compulsory process issued for the attendance of witnesses and the production of documents and other evidence. Such subpoenas and compulsory process shall be issued in the name of the governing authority of the municipal corporation and shall be signed by the chief elected official or chief executive officer of the municipal corporation. In all other respects, such subpoenas and other compulsory process shall be subject to Article 2 of Chapter 13 of Title 24.

(D) The hearing shall be recorded at the expense of the municipal corporation. Such recording should contain at least the audio and may contain video. The audio recording of the hearing shall be

transcribed at the judge's expense if he or she requests review by the superior court.

(E) The following oath or affirmation shall be administered to all witnesses by the presiding officer provided for in paragraph (2) of this subsection;

"You do solemnly swear or affirm that the testimony you give shall be the truth, the whole truth, and nothing but the truth. So help you God."

(F) All questions relating to the admissibility of evidence or other legal matters shall be decided by the presiding officer provided for in paragraph (2) of this subsection. The governing authority of the municipal corporation shall have the burden of proving by a preponderance of the evidence that removal is warranted pursuant to subsection (b) of this Code section, and such governing authority shall have the right to open and to conclude arguments. Except as otherwise provided in this Code section, hearings shall be governed by the same rules as govern the introduction of evidence in nonjury civil trials in the superior court.

(G) At the conclusion of the hearing, the governing authority of the municipal corporation shall determine whether or not to remove the judge from office. The governing authority of the municipal corporation shall state the basis for its decision to remove or not remove the judge from office. Said decision and its basis shall be rendered at the hearing and shall be in writing. The right to appeal a decision to remove a judge from office shall exist. The decision to remove a judge from office pursuant to this Code section shall be appealed by filing a petition for review in the superior court of the circuit in which the governing authority of the municipal corporation, or any portion of it, is situated. Such appeals shall be governed by Chapter 3 of Title 5.

(2) The chief judge of the superior court of the circuit in which the governing authority of the municipal corporation, or any portion of it, is situated shall appoint a senior superior court judge or a senior state court judge to act as the presiding officer at a hearing conducted pursuant to this subsection. If the municipal corporation lies in two superior court circuits, the most senior chief judge of the circuits shall appoint such presiding officer. The governing authority of the municipal corporation shall be responsible for compensating the presiding officer for his or her services at a rate not to exceed $500.00 per diem, plus reasonable and necessary expenses.

(f) This Code section shall not affect the power and authority of the Judicial Qualifications Commission to discipline, remove, or cause the involuntary retirement of judges.

(g) In the event that a vacancy in a judgeship is created by the removal of a judge pursuant to this Code section, the governing authority of the municipal corporation may fill such vacancy by appointing any individual qualified by law to serve as a municipal court judge for a period of not less than 30 days nor more than 60 days. If after the conclusion of the removal proceedings, including the appeal period, there is a vacancy for such judgeship, the governing authority of the municipal corporation may appoint a judge in the same manner as set forth in Code Section 36-32-2.

(h) The provisions of this Code section shall expressly supersede any conflicting local law of this state.

History.
Code 1981, § 36-32-2.1, enacted by Ga. L. 2016, p. 367, § 2/HB 691; Ga. L. 2022, p. 767, § 2-25/HB 916; Ga. L. 2022, p. 822, § 2/HB 1275; Ga. L. 2023, p. 728, § 4/HB 186, effective July 1, 2023; Ga. L. 2024, p. 669, § 2/HB 456, effective July 1, 2024; Ga. L. 2025, p. 1029, § 36(6)/SB 153, effective July 1, 2025.

Amendments.
The 2023 amendment, effective July 1, 2023, deleted "certiorari" following "if he or she requests" in the second sentence of subparagraph (e)(1)(D).

The 2024 amendment, effective July 1, 2024, added paragraph (b)(3). See Editor's notes for applicability.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "alleges" for "alleged" in paragraph (b)(3) and deleted "of subsection (c)" following "provisions of" in subparagraph (b)(3)(D).

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2016, Code Section 36-32-2.2, as enacted by Ga. L. 2016, p. 367, § 2/HB 691, was redesignated as Code Section 36-32-2.1.

Editor's notes.
Ga. L. 2022, p. 767, § 3-1/HB 916, not codified by the General Assembly, makes this Code section applicable to petitions for review filed in superior or state court on or after July 1, 2023.

Ga. L. 2023, p. 728, § 5/HB 186, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2023, and shall apply to petitions for review filed in superior or state court on or after such date."

Ga. L. 2024, p. 669, § 3/HB 456, not codified by the General Assembly, makes the amendment to paragraph (b)(3) of this Code section applicable to written agreements entered into on or after July 1, 2024.

36-32-3. Powers of judges.

All judges of all municipal courts in this state shall have and are given the same powers and authorities as magistrates in the matter of and pertaining to criminal cases of whatever nature in the several courts of this state.

History.
Ga. L. 1935, p. 458, § 1; Ga. L. 1983, p. 884, § 3-26; Ga. L. 1987, p. 3, § 36.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1880-81, p. 176, are included in the annotations for this Code section.

Officers ex officio justice. — Recorder

is ex officio a justice of the peace (now magistrate) for the purpose of committing the defendant for state offenses disclosed in investigations made in the police court. Smith v. City of Atlanta, 5 Ga. App. 492, 63 S.E. 569, 1909 Ga. App. LEXIS 38 (1909) (decided under Ga. L. 1880-81, p. 176).

OPINIONS OF THE ATTORNEY GENERAL

Mayor of a city has no right to try a case involving a state offense, when the defendant is caught within the city limits, in a county which has a superior court but does not have a city court. 1958-59 Ga. Op. Att'y Gen. 216.

Power to issue arrest warrants. — Under former Code 1933, § 27-102 (see now O.C.G.A. § 17-4-40), the power of ex officio justices of the peace (now magistrates) includes the authority to issue warrants for the arrest of offenders against the penal laws of this state. 1960-61 Ga. Op. Att'y Gen. 96.

36-32-4. Authority of municipal corporations to provide for forfeiture of appearance bonds.

Any municipal corporation shall have full power and authority to provide, by ordinance, for the forfeiture of bonds given by offenders for their appearance before municipal courts and to provide for the collection of the same from the principal and sureties on such bonds by judgment, execution, and sale.

History.

Ga. L. 1880-81, p. 176, § 1; Code 1933, § 69-206.

Law reviews.

For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

For note, "Bail in Georgia: Elimination of 'Double Bonding': A Partially Solved Problem," see 8 Ga. St. B. J. 220 (1971).

JUDICIAL DECISIONS

Liability of surety on criminal appearance bond. — City ordinance which seeks to hold the surety liable on a criminal appearance bond until the fine imposed is collected does not conflict with Georgia case law; is authorized by O.C.G.A. § 36-32-4, which authorizes municipal corporations to make provision by ordinance as to what constitutes the forfeiture of bonds given by offenders for their appearance before municipal courts; and does not conflict with O.C.G.A. § 17-6-31 (surrender on surety bonds); for these reasons, there has not been preemption by the state in this area of regulatory activity. Therefore, the ordinance is not unconstitutional under the special law — general law prohibition contained in Ga. Const. 1983, Art. III, Sec. VI, Para. IV. City of Macon v. Davis, 251 Ga. 332, 305 S.E.2d 116, 1983 Ga. LEXIS 786 (1983).

36-32-5. Sentences and fines which may be imposed.

All municipal courts having authority to try offenses against the laws of the municipal corporations in which such courts are located shall have the power and authority:

(1) To impose fines upon persons convicted of such offenses, with

the alternative of other punishment allowed by law, in the event that such fines are not paid;

(2) To sentence such person to community service work; or

(3) To impose a sentence consisting of any combination of the penalties provided for in this Code section.

History.

Ga. L. 1878-79, p. 153, § 1; Civil Code 1895, § 712; Civil Code 1910, § 857; Code 1933, § 69-704; Ga. L. 1985, p. 1391, § 1; Ga. L. 1987, p. 3, § 36.

Law reviews.

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

JUDICIAL DECISIONS

Mayor authorized to impose sentence consisting of fine, or in case of default, labor upon public streets. Leonard v. Mayor of Eatonton, 126 Ga. 63, 54 S.E. 963, 1906 Ga. LEXIS 318 (1906).

For contrary view, holding that mayor had no power in absence of express legislative authority to impose a sentence of labor, see Brieswick v. Brunswick, 51 Ga. 639, 1874 Ga. LEXIS 221 (1874); Carr v. City of Conyers, 84 Ga. 287, 10 S.E. 630, 1889 Ga. LEXIS 247 (1889); Williams v. Sewell, 121 Ga. 665, 49 S.E. 732, 1905 Ga. LEXIS 36 (1905).

Sentencing authority of recorder courts. — Enactment of O.C.G.A. § 36-32-5 did not evince a legislative intent to limit the authority of a recorder's court to the imposition of an alternative sentence consisting of either a fine or other punishment; the intent was merely to broaden the authority of a recorder's court so as to permit the imposition of such an alternative sentence in addition to the fine. City of LaGrange v. Hatfield, 175 Ga. App. 697, 334 S.E.2d 25, 1985 Ga. App. LEXIS 2141 (1985) (construing section as it existed prior to 1985 amendment).

Ordinances construed together. — When three ordinances of a city provide, among other things, that the judge of the municipal court may impose, under certain circumstances, a fine or confinement in the station house, or both, and upon the refusal of the defendant to pay the fine, the court may by order require the person so refusing to work on the streets or some public works, such ordinances, relative to the enforcement thereof by the imposition of a fine are to be construed together. Lyons v. Collier, 125 Ga. 231, 54 S.E. 183, 1906 Ga. LEXIS 100 (1906); Jones v. Lanford, 141 Ga. 646, 81 S.E. 885, 1914 Ga. LEXIS 93 (1914).

When one sentence is unauthorized. — Sentence imposing two penalties in the alternative, one of which is unauthorized, is not void, but may be enforced as to the penalty which is authorized. Brown v. City of Atlanta, 123 Ga. 497, 51 S.E. 507, 1905 Ga. LEXIS 504 (1905).

Alternative provisions. — When, under the charter and ordinances of a city, the mayor has authority to punish one convicted of violating the municipal ordinances by imprisonment or compulsory labor on public works, or by fine, a sentence directing "confinement on the streets" is not rendered unlawful merely because an alternative provision is added by which the defendant may be discharged at any time upon the payment of a fine. Shuler v. Willis, 126 Ga. 73, 54 S.E. 965, 1906 Ga. LEXIS 320 (1906).

Sentence held to be alternative. — When, upon the trial of one charged with the violation of a municipal ordinance, the court, on conviction of the accused, rendered judgment that the defendant pay a fine of $25.00 dollars, or, in default thereof, that the defendant be imprisoned in the calaboose 30 days, such judgment imposed an alternative sentence. Leonard v. Mayor of Eatonton, 126 Ga. 63, 54 S.E.

963, 1906 Ga. LEXIS 318 (1906); Hardy v. Mayor of Eatonton, 128 Ga. 27, 57 S.E. 99, 1907 Ga. LEXIS 10 (1907).

Review after execution. — Defendant who has paid a fine imposed by a police court, with the alternative of imprisonment, cannot, after paying such fine, prosecute a writ of error to review the judgment unless the fine was paid under protest and under duress. Brown v. City of Atlanta, 123 Ga. 497, 51 S.E. 507, 1905 Ga. LEXIS 504 (1905); White v. City of Tifton, 1 Ga. App. 569, 57 S.E. 1038, 1907 Ga. App. LEXIS 42 (1907); Kitchens v. State, 4 Ga. App. 440, 61 S.E. 736, 1908 Ga. App. LEXIS 327 (1908).

RESEARCH REFERENCES

Am. Jur. 2d.

21 Am. Jur. 2d, Courts, § 44.

C.J.S.

62 C.J.S., Municipal Corporations, § 311 et seq.

ALR.

Delegating authority to county or municipal corporation to make violation of ordinance crime or to provide criminal punishment, 174 A.L.R. 1343.

36-32-6. Jurisdiction in marijuana possession cases; disposition of fines and bond forfeitures; transfer of cases.

(a) The municipal court of any municipality is granted jurisdiction to try and dispose of cases where a person is charged with the possession of one ounce or less of marijuana if the offense occurred within the corporate limits of such municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with possession of an ounce or less of marijuana in a municipal court shall be entitled on request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter.

History.

Code 1981, § 36-32-6, enacted by Ga. L. 1983, p. 825, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1997, p. 1377, § 3; Ga. L. 2015, p. 693, § 3-32/HB 233.

Cross references.

Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana, § 16-13-30.

Editor's notes.

Ga. L. 1997, p. 1377, § 4, not codified by the General Assembly, provides: "it is the intent of the General Assembly to restore the law of this state to that which was generally understood to be the law prior to the decision of the Court of Appeals in *Williams v. State,* 222 Ga. App. 698, Case No. A96A1472, decided August 20, 1996, such that possession of one ounce or less of marijuana is a misdemeanor and the provisions of Code Section 36-32-6 are applicable to such offenses."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Discretionary nature of judge's decision. — Grant of writ of mandamus to the defendant was reversed because mandamus was not an allowable remedy since the opportunity for review via a writ of certiorari existed as to the municipal judge's decision as the municipal court's duty under O.C.G.A. § 36-32-6(c) as to the defendant's marijuana possession was a discretionary act allowing the opportunity for review via a writ. Schaeffer v. Kearney, 355 Ga. App. 449, 844 S.E.2d 515, 2020 Ga. App. LEXIS 332 (2020).

36-32-6.1. Jurisdiction in cases involving transactions in drug objects; disposition of fines; transfer of cases.

(a) The municipal court of any municipality shall be granted jurisdiction to try and dispose of cases where a person is charged with transactions in drug related objects in violation of Code Section 16-13-32 if the offense occurred within the corporate limits of such municipality. The jurisdiction of any such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with transactions in drug related objects in violation of Code Section 16-13-32 in a municipal court shall be entitled, upon request, to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county where the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter.

History.

Code 1981, § 36-32-6.1, enacted by Ga. L. 2012, p. 53, § 5/SB 352.

Cross references.

Prosecuting attorneys of municipal courts, § 15-18-90 et seq.

36-32-7. Jurisdiction in cases of operating motor vehicle without effective insurance; retention of fines and bond forfeitures; transfer of cases.

(a) The municipal court of each municipality is granted jurisdiction to try and dispose of cases where a person is charged with a misdemeanor under Code Section 40-6-10 of knowingly operating or knowingly authorizing the operation of a motor vehicle without effective insurance of such vehicle or without an approved plan of self-insurance as required by Chapter 34 of Title 33, the "Georgia Motor Vehicle Accident Reparations Act," if the offense occurred within the corporate limits of such municipality. The jurisdiction of each such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 40-6-10 in a municipal court shall be entitled on request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter.

History.

Ga. L. 1974, p. 113, § 14; Ga. L. 1978, p. 1369, § 1; Code 1981, § 36-32-7, enacted by Ga. L. 1985, p. 891, § 2; Ga. L. 1987, p. 3, § 36; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 2015, p. 693, § 3-32/HB 233.

Editor's notes.

The provisions of this Code section previously appeared in substantially similar form in subsections (b) through (d) of Code Section 33-34-12, which subsections were deleted by Ga. L. 1985, p. 891, § 1, effective April 4, 1985.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-8. Jurisdiction in cases of operating motor vehicle without certificate of emission inspection; disposition of fines and bond forfeitures; transfer of cases.

(a) The municipal court of each municipality of each county required to comply with Article 2 of Chapter 9 of Title 12, known as the "Georgia Motor Vehicle Emission Inspection and Maintenance Act," is granted

jurisdiction to try and dispose of such cases in which a person is charged with a misdemeanor under Code Section 12-9-55 of operating a responsible motor vehicle without a certificate of emission inspection, if the offense occurred within the corporate limits of such municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality.

(c) Any defendant charged with a misdemeanor under Code Section 12-9-55 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) Nothing in this Code section shall be construed to give any municipality the right to impose a fine in excess of the limits set forth in Code Section 12-9-55.

History.

Code 1981, § 36-32-8, enacted by Ga. L. 1985, p. 1390, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 918, § 4; Ga. L. 1993, p. 91, § 36; Ga. L. 2015, p. 693, § 3-32/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-9. Misdemeanor theft by shoplifting or misdemeanor refund fraud; transfer of cases; penalties; disposition of fines and bond forfeitures; reports.

(a) The municipal court is granted jurisdiction to try and dispose of cases in which a person is charged with a misdemeanor theft by shoplifting or misdemeanor refund fraud if the offense occurred within the corporate limits of the municipality. The jurisdiction of such court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any person charged in a municipal court with misdemeanor theft by shoplifting or misdemeanor refund fraud shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(c)(1) A person convicted in a municipal court of misdemeanor theft by shoplifting shall be punished as provided in paragraph (1) of

subsection (b) of Code Section 16-8-14, provided that nothing in this Code section or Code Section 16-8-14 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(2) A person convicted in a municipal court of misdemeanor refund fraud shall be punished as provided in the misdemeanor penalties set forth in Code Section 16-8-14.1, provided that nothing in this Code section or Code Section 16-8-14.1 shall be construed to give any municipality the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

(d) Any fines and bond forfeitures arising from the prosecution of such cases in such municipal court shall be retained by the municipality and shall be paid into the treasury of such municipality.

(e) It shall be the duty of the appropriate agencies of the municipality in which an offense under subsection (a) of this Code section is charged to make any reports to the Georgia Crime Information Center required under Article 2 of Chapter 3 of Title 35.

History.

Code 1981, § 36-32-9, enacted by Ga. L. 1987, p. 1153, § 1; Ga. L. 1998, p. 188, § 1; Ga. L. 1999, p. 831, § 1; Ga. L. 2012, p. 899, § 8-14/HB 1176; Ga. L. 2014, p. 404, § 2-3/SB 382; Ga. L. 2015, p. 693, § 3-32/HB 233.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, Code Section 36-32-9, as enacted by Ga. L. 1987, p. 1462, § 1, was redesignated as Code Section 36-32-10.

Editor's notes.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on or after such date."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Theft by shoplifting as fingerprintable offense. — O.C.G.A. § 36-23-9 does not require any modification in the designation of theft by

shoplifting as an offense for which persons charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of statutes establishing shoplifting or its equivalent as separate criminal offense, 64 A.L.R.4th 1088.

36-32-10. Jurisdiction in cases of furnishing alcoholic beverages to and purchase and possession of alcoholic beverages by underage persons; disposition of fines and bond forfeitures; transfer of cases; penalties.

(a) The municipal courts are granted jurisdiction to try and dispose of a first offense violation of Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a first offense violation of Code Section 3-3-23 in a municipal court shall be entitled upon request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted in a municipal court of a first offense violation of Code Section 3-3-23 shall be punished as provided in paragraph (1) of subsection (b) of Code Section 3-3-23.1, provided that nothing in this Code section or Code Section 3-3-23.1 shall be construed to give any municipal corporation the right to impose a fine or punishment in excess of the limits set forth in the charter of such municipal corporation.

(e) Nothing in this Code section shall affect the original and exclusive jurisdiction of the juvenile court as set forth in Code Section 15-11-10.

History.

Code 1981, § 36-32-10, enacted by Ga. L. 1987, p. 1462, § 1; Ga. L. 2000, p. 20, § 22; Ga. L. 2013, p. 294, § 4-46/HB 242; Ga. L. 2015, p. 693, § 3-32/HB 233.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, Code Section 36-32-9, as enacted by Ga. L. 1987, p. 1462, § 1, was redesignated as Code Section 36-32-10.

Editor's notes.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-10.1. Jurisdiction in counties without state court regarding criminal trespass; disposition of fines and bond forfeitures; transfer of cases; penalties.

(a) The municipal court of each municipal corporation in counties where there is no state court is granted jurisdiction to try and dispose of any violation of Code Section 16-7-21, relating to criminal trespass, if the offense occurred within the corporate limits of such municipal corporation. The jurisdiction of such municipal court shall be concurrent with the jurisdiction of any other court within the county having jurisdiction to try and dispose of such cases.

(b) Any fines and bond forfeitures arising from the prosecution of any such case in the municipal court shall be retained by the municipal corporation and shall be paid into the treasury of such municipal corporation.

(c) Any defendant charged with a violation of Code Section 16-7-21 in a municipal court shall be entitled upon request to have the case against him or her transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.

(d) A person convicted of a violation of Code Section 16-7-21 shall be punished as provided in such Code section, provided that nothing in this Code section or in Code Section 16-7-21 shall be construed to give any municipal court the right to impose a fine or punishment by imprisonment in excess of the limits as set forth in the municipality's charter.

History.

Code 1981, § 36-32-10.1, enacted by Ga. L. 1992, p. 1281, § 1; Ga. L. 2015, p. 693, § 3-32/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective

on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

36-32-10.2. Trial upon citation, summons, or accusation.

Notwithstanding any other contrary provision of law, in municipal courts which have jurisdiction over misdemeanor offenses or ordinance violations, such offenses or violations may be tried upon a uniform traffic citation, summons, citation, or an accusation.

History.

Code 1981, § 36-32-10.2, enacted by Ga. L. 2002, p. 627, § 1.

Law reviews.

For article, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic Misdemeanor Offenses?," see 22 Ga. St. U.L. Rev. 313 (2005).

36-32-10.3. Jurisdiction over littering offenses.

(a) Subject to the provisions of subsection (b) of this Code section, in addition to any other jurisdiction vested in the municipal courts, such courts shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for violating any provision of Part 2, Part 3, or Part 3A of Article 2 of Chapter 7 of Title 16 or Code Section 32-6-51 or 40-6-248.1 that is punishable for its violation as a misdemeanor. Such jurisdiction shall be concurrent with other courts having jurisdiction over such violations.

(b) A municipal court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if reasonable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History.

Code 1981, § 36-32-10.3, enacted by Ga. L. 2006, p. 275, § 3-11/HB 1320.

Editor's notes.

Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

36-32-11. Required training for judges.

(a) All judges of the municipal courts, and all judges of courts exercising municipal court jurisdiction, shall periodically satisfactorily complete a training course as provided in Article 2 of this chapter.

(b) The Georgia Municipal Courts Training Council shall keep records of training completed by municipal judges and judges of courts exercising municipal court jurisdiction.

(c) If any municipal judge, or any judge of a court exercising municipal court jurisdiction, does not satisfactorily complete the required training in any year, the Georgia Municipal Courts Training Council shall promptly notify the Judicial Qualifications Commission, which may remove the judge from office unless the Judicial Qualifications Commission finds that the failure was caused by facts beyond the control of the judge.

(d) The reasonable costs and expenses of such training shall be paid by the governing authority of the jurisdiction where the judge presides.

(e) This Code section shall not apply to any magistrate judge, probate judge, or any judge of a court of record who presides in a court exercising municipal court jurisdiction.

History. Code 1981, § 36-32-11, enacted by Ga. L. 1990, p. 882, § 1; Ga. L. 2012, p. 1096, § 1/SB 351.

36-32-12. Municipal court held outside municipality.

Notwithstanding any other contrary provision of law, local or general, sessions of a municipal court may be held outside the municipality for which the municipal court is established if such sessions are held within a county in which the municipality is located or has its legal situs. Nothing in this Code section shall be construed to restrict the judge of a municipal court from having authority to engage in any judicial act which he or she is lawfully entitled to perform, regardless of where the judge is located when the act is performed.

History. Code 1981, § 36-32-12, enacted by Ga. L. 2001, p. 1025, § 1; Ga. L. 2021, p. 423, § 1-9/HB 635; Ga. L. 2022, p. 352, § 36/HB 1428.

36-32-13. Municipal court clerks; role of Municipal Courts Training Council.

(a) As used in this Code section, the term:

(1) "Municipal court" shall have the same meaning as described in subsection (a) of Code Section 36-32-1.

(2) "Municipal court clerk" shall mean the primary person most directly responsible for the administration of a municipal court other than a judge of the municipal court.

(b)(1) Any person who is hired or appointed as a municipal court clerk on or after July 1, 2006, shall satisfactorily complete a minimum of 16 hours of training related to the operation of municipal court as prescribed by the Georgia Municipal Courts Training Council within his or her first year of service as a municipal court clerk.

(2) Each municipal court clerk, regardless of when he or she was hired or appointed, shall complete a minimum of eight hours of training related to the operation of municipal court as prescribed by the Georgia Municipal Courts Training Council on an annual basis. The training required by this paragraph shall be satisfied by completing the training provided for in paragraph (1) of this subsection in the municipal court clerk's first year of service.

(3) The reasonable costs and expense of training required by this Code section shall be paid by the governing authority of the municipality from municipal funds.

(c) The Georgia Municipal Courts Training Council shall keep records of training completed by municipal court clerks.

(d) In any year that any municipal court clerk does not satisfactorily complete the required training, the Georgia Municipal Courts Training Council shall promptly notify the governing authority of the applicable municipality as well as the chief municipal court judge of the applicable municipality.

History.

Code 1981, § 36-32-13, enacted by Ga. L. 2006, p. 658, § 1/HB 1288; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2025, p. 1029, § 36(7)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" in subsection (a).

ARTICLE 2

GEORGIA MUNICIPAL COURTS TRAINING COUNCIL

36-32-20. Short title.

This article shall be known and may be cited as "The Georgia Municipal Courts Training Council Act."

History.
Code 1981, § 36-32-20, enacted by Ga. L. 1990, p. 882, § 2.

36-32-21. Definitions.

As used in this article, the term:

(1) "Certified municipal judge" means a municipal judge who has the appropriate required certificate of training issued by the council and on file with the council.

(2) "Council" means the Georgia Municipal Courts Training Council.

(3) "Municipal court" means and includes any municipal court as defined in subsection (a) of Code Section 36-32-1.

(4) "Municipal judge" means a judge of a municipal court.

(5) "School" means any school, college, university, academy, or training program approved by the council and the Judicial Council of Georgia which offers basic, in-service, advanced, specialized, or continuing judicial training or a combination thereof, and includes within its meaning a combination of course curriculum, instructors, and facilities which meet the standards required by the council.

History.
Code 1981, § 36-32-21, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 1991, p. 326, § 1.

36-32-22. Establishment of Georgia Municipal Courts Training Council; membership.

(a) There is established a council which shall be known and designated as the "Georgia Municipal Courts Training Council" and which shall be composed of the director of the administrative office of the courts or the director's designee, which member shall not be a voting member, and five municipal judges who shall be appointed by the Council of Municipal Court Judges of Georgia. The initial terms for two members shall expire on December 31, 1991. The initial terms for three members shall expire on December 31, 1992. Following the expiration of these initial terms, their successors shall be appointed for terms of two years.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the council, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) Membership on the council does not constitute public office and no member shall be disqualified from holding office by reason of his membership.

History.
Code 1981, § 36-32-22, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 1998, p. 184, § 1.

36-32-23. Oath of office.

Immediately and before entering upon the duties of office, the members of the Georgia Municipal Courts Training Council shall take the oath of office and shall file the same in the office of the Judicial Council of Georgia, which, upon receiving the oath of office, shall issue to each member a certificate of appointment.

History.
Code 1981, § 36-32-23, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 1993, p. 91, § 36.

36-32-24. Election of chairman and vice-chairman; secretary; quorum; minutes; annual report.

(a) A chairman and vice-chairman shall be elected at the first meeting of each calendar year.

(b) The director of the Administrative Office of the Courts or his designee shall serve as secretary to the council.

(c) A simple majority of the members of the council shall constitute a quorum for the transaction of business.

(d) The council shall maintain minutes of its meetings and such other records as it deems necessary.

(e) The council shall report at least annually to the Governor and to the General Assembly as to its activities.

History.
Code 1981, § 36-32-24, enacted by Ga. L. 1990, p. 882, § 2.

36-32-25. Remuneration.

The members of the council shall receive no salary but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their functions; provided, however, that such expenses shall not exceed those allowed to members of the General Assembly.

History.
Code 1981, § 36-32-25, enacted by Ga. L. 1990, p. 882, § 2.

36-32-26. Functions, powers, and responsibilities.

The council is vested with the following functions, powers, and responsibilities:

(1) To make all the necessary rules and regulations to carry out this article;

(2) To cooperate with and secure the cooperation of every department, agency, or instrumentality of the state government or its political subdivisions in furtherance of the purposes of this article;

(3) To approve schools and to prescribe minimum qualifications for instructors at approved schools;

(4) To issue a certification to any municipal court judge satisfactorily complying with an approved training program established;

(5) To do any and all things necessary or convenient to enable it wholly and adequately to perform its duties and to exercise the power granted to it; and

(6) To prescribe, by rules and regulations, the minimum requirements for curricula and standards composing the initial in-service, advanced, specialized, and continuing training courses for certification.

History.
Code 1981, § 36-32-26, enacted by Ga. L. 1990, p. 882, § 2.

36-32-27. Training requirements.

(a) Any person who becomes a municipal judge on or after January 1, 1991, shall satisfactorily complete 20 hours of training in the performance of his or her duties within one year after the date of his or her election or appointment in order to become certified under this article. Any person serving as a municipal judge prior to January 1, 1991, shall be exempt from completing these 20 hours of training.

(b) Except as provided in subsection (d) of this Code section, any person who becomes a judge of a court exercising municipal court jurisdiction on or after July 1, 2012, who is not subject to subsection (a) of this Code section, shall satisfactorily complete 20 hours of training in the performance of his or her duties within one year after the date of his or her election or appointment in order to become certified under this article. Any person serving as a judge of a court exercising municipal court jurisdiction prior to July 1, 2012, who is not subject to subsection (a) of this Code section, shall be exempt from completing these 20 hours of training.

(c) Except as provided in subsection (d) of this Code section, in order to maintain the status of a certified municipal judge or a certified judge of a court exercising municipal court jurisdiction, he or she shall complete 12 hours of additional training per annum during each calendar year after the year of his or her initial certification in which he

or she serves as municipal judge or as judge of a court exercising municipal court jurisdiction.

(d) This Code section shall not apply to any magistrate judge, probate judge, or any judge of a court of record who presides in a court exercising municipal court jurisdiction.

(e) If a municipal court judge completes training hours in excess of the number of hours required by this Code section in a calendar year, credit for such excess hours, not to exceed six hours, shall, upon the request of the municipal court judge, be carried over and applied to the number of hours required for the next calendar year.

History.
Code 1981, § 36-32-27, enacted by Ga. L. 1990, p. 882, § 2; Ga. L. 2012, p. 1096, § 2/SB 351; Ga. L. 2019, p. 722, § 1/HB 92.

ARTICLE 3

COUNCIL OF MUNICIPAL COURT JUDGES

36-32-40. Creation of council; membership and organization; purpose; expenses; contracts; assistance to council; members not ineligible to hold office of judge; notifications.

(a) There is created a council of municipal court judges to be known as the "Council of Municipal Court Judges of Georgia." The council shall be composed of the judges of the municipal courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws. The officers of said council shall consist of a president, a first vice president, a second vice president, a secretary, a treasurer, and such other officers as the council shall deem necessary. The council shall have an executive committee composed of two representatives from each judicial administrative district.

(b) It shall be the purpose of the council to effectuate the constitutional and statutory responsibilities conferred upon it by law, to further the improvement of the municipal courts and the administration of justice, to assist the judges of the municipal courts throughout the state in the execution of their duties, and to promote and assist in the training of such judges.

(c) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for that purpose, or from private funds available to the council, and from other appropriate sources.

(d) The council through its officers may contract with a person or firm including any member of the council for the production of educa-

tional material and compensate said member for producing such material, provided that funds are available to the council at the time of execution of the contract or will be available at the time of the completion of the contract and provided that the terms of the contract are disclosed to the full council and made available to the general public and news media. At the request of the council, the Administrative Office of the Courts shall be authorized to act as the agent of the council for the purpose of supervising and implementing the contract.

(e) The Administrative Office of the Courts shall provide technical services to the council and shall assist the council in complying with all its legal requirements.

(f) Notwithstanding any other law, a councilmember shall not be ineligible to hold the office of judge of a municipal court by virtue of his or her position as a member of the council and membership in the council shall not constitute the holding of a public office.

(g) Any person elected or appointed as a municipal court judge shall provide written notification to the council of such within 30 days of the date of the election or appointment. Any municipal court judge who resigns, retires, or is removed from office shall provide written notification to the council of such within 30 days of the date on which he or she resigns, retires, or is removed from office.

(h) The council shall notify the Administrative Office of the Courts of any notification received pursuant to subsection (g) of this Code section within 30 days of receipt of such notification.

History.
Code 1981, § 36-32-40, enacted by Ga. L. 1994, p. 1923, § 4; Ga. L. 2000, p. 136, § 36; Ga. L. 2024, p. 733, § 7/SB 508, effective July 1, 2025.

Amendments.
The 2024 amendment, effective July 1, 2025, added subsections (g) and (h).

36-32-41. Savings plans and deferred compensation plans for council members.

(a) The Council of Municipal Court Judges of Georgia is authorized to create and oversee savings plans and deferred compensation plans for its members in good standing.

(b) Participation in such plans shall be optional for members of the council in good standing.

(c) Such plans shall be funded solely by the individual contributions of the members of the council who choose to participate in the plan.

(d) No money or other funds collected through a municipal court shall be used to fund such plans.

(e) The creation and oversight of such plans by the council shall not create a debt or other financial obligation for this state or any political subdivision of this state.

(f) The creation and oversight of such plans by the council shall not create any fiduciary liability on the part of the council.

History.
Code 1981, § 36-32-41, enacted by Ga. L. 2017, p. 470, § 1/HB 370.

CHAPTER 33

LIABILITY OF MUNICIPAL CORPORATIONS FOR ACTS OR OMISSIONS

Sec.		Sec.	
36-33-1.	Immunity from liability for damages; waiver of immunity by purchase of liability insurance; liability for acts or omissions generally.	36-33-5.	Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations; statement of specific amount of monetary damages sought; service of claim on city officials.
36-33-2.	Liability for failure to perform discretionary act.		
36-33-3.	Liability for torts of police or other officers.		
36-33-4.	Personal liability of councilmembers and other municipal officers.	36-33-6.	Exemption of municipal property from levy and sale.

Law reviews.

For article, "Revisionist Municipal Liability," see 52 Ga. L. Rev. 375 (2018).

For note, "Shoot at Me Once: Shame on You! Shoot at Me Twice: Qualified Immunity. Qualified Immunity Applies Where Police Target Innocent Bystanders," see 71 Mercer L. Rev. 1171 (2020).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Governmental Entity's Liability for Failure to Prevent Crime, 30 POF2d 429.

Negligent Vehicular Police Chase, 41 POF2d 79.

Police Misconduct as Municipal Policy or Custom, 13 POF3d 1.

Qualified Immunity Defense in Civil Rights Actions against Law Enforcement Officers, 59 POF3d 291.

ALR.

Liability of governmental unit for intentional assault by employee other than police officer, 17 A.L.R.4th 881.

Liability of governmental unit for injuries caused by driver of third vehicle to person whose vehicle had been stopped by police car, 17 A.L.R.4th 897.

Governmental liability for compensation or damages to advertiser arising from obstruction of public view of sign or billboard on account of growth of vegetation in public way, 21 A.L.R.4th 1309.

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit, 43 A.L.R.4th 19.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer, 48 A.L.R.4th 320.

Liability to one struck by golf ball, 53 A.L.R.4th 282.

Governmental tort liability as to highway median barriers, 58 A.L.R.4th 559.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects, 58 A.L.R.4th 1197.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Legal aspects of speed bumps, 60 A.L.R.4th 1249.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 A.L.R.4th 204.

36-33-1. Immunity from liability for damages; waiver of immunity by purchase of liability insurance; liability for acts or omissions generally.

(a) Pursuant to Article IX, Section II, Paragraph IX of the Constitution of the State of Georgia, the General Assembly, except as provided in this Code section and in Chapter 92 of this title, declares it is the public policy of the State of Georgia that there is no waiver of the sovereign immunity of municipal corporations of the state and such municipal corporations shall be immune from liability for damages. A municipal corporation shall not waive its immunity by the purchase of liability insurance, except as provided in Code Section 33-24-51 or 36-92-2, or unless the policy of insurance issued covers an occurrence for which the defense of sovereign immunity is available, and then only to the extent of the limits of such insurance policy. This subsection shall not be construed to affect any litigation pending on July 1, 1986.

(b) Municipal corporations shall not be liable for failure to perform or for errors in performing their legislative or judicial powers. For neglect to perform or improper or unskillful performance of their ministerial duties, they shall be liable.

History.

Civil Code 1895, § 748; Civil Code 1910, § 897; Code 1933, § 69-301; Ga. L. 1986, p. 1312, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 2002, p. 579, § 2.

History of Code section.

This Code section is derived from the decisions in Rivers v. City Council, 65 Ga. 376 (1880) and Collins v. Mayor of Macon, 69 Ga. 542 (1882).

Cross references.

Liability of municipalities for defects in public roads, § 32-4-93.

Limited waiver of governmental immunity by purchase of motor vehicle liability insurance, § 33-24-51.

Law reviews.

For comment criticizing City of Atlanta v. Hurley, see 14 Ga. B. J. 80 (1951).

For comment on City of Atlanta v. Hurley, 83 Ga. App. 879, 65 S.E.2d 44 (1951), see 3 Mercer L. Rev. 218 (1951).

For comment on Caroway v. City of Atlanta, 85 Ga. App. 792, 70 S.E.2d 126 (1952), see 15 Ga. B. J. 79 (1952).

For article, "The Tort Liability of Municipalities in Georgia," see 17 Ga. B. J. 456 (1955).

For comment on Knowles v. Housing Auth., 212 Ga. 729, 95 S.E.2d 659 (1957), holding that the Act giving the housing authority unqualified power to sue and be sued under § 49-2-6 waived any immunity the authority otherwise might have claimed under the state's privilege of governmental immunity, see 20 Ga. B. J. 258 (1957).

For article, "Actions for Wrongful Death in Georgia: Parts Three and Four," see 21 Ga. B. J. 339 (1959).

For comment on Ethridge v. Lavonia, 101 Ga. App. 190, 112 S.E.2d 822 (1960), see 23 Ga. B. J. 129 (1960).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B. J. 494 (1969).

For note, "Adverse Possession of Municipal and County Property Held for Proprietary Purposes: The Unique Georgia Development," see 7 Ga. St. B. J. 482 (1971).

For comment on City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599 (1970), as to municipal corporation's negligence liability for injuries sustained at municipal golf courses, see 22 Mercer L. Rev. 608 (1971).

For article surveying tort liability insurance in Georgia local government law, see 24 Mercer L. Rev. 651 (1973).

For article, "Personal Liability of State Officials Under State and Federal Law," see 9 Ga. L. Rev. 821 (1975).

For article discussing Georgia's practice of exposing municipalities to tort liability through the use of nuisance law, see 12 Ga. St. B. J. 11 (1975).

For article discussing municipal tort liability and the defense of extraterritorial operation, see 12 Ga. L. Rev. 1 (1977).

For note analyzing sovereign immunity in this state and proposing implementation of a waiver scheme and creation of a court of claims, see 27 Emory L.J. 717 (1978).

For article discussing sovereign immunity and the State Court of Claims, see 14 Ga. St. B. J. 152 (1978).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For article discussing origin and construction of municipal tort liability law in Georgia, see 14 Ga. L. Rev. 239 (1980).

For article, "Georgia Local Government Tort Liability: The 'Crisis' Conundrum," see 2 Ga. St. U. L. Rev. 19 (1986).

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

For article, "'Sue and Be Sued' in Georgia Local Government Law: A Vignette of Vicissitudes," see 41 Mercer L. Rev. 13 (1989).

For annual survey on law of torts, see 43 Mercer L. Rev. 395 (1991).

For article, "Local Government Tort Liability: The Summer of '92," see 9 Ga. St. U.L. Rev. 405 (1993).

For article, "Georgia's Public Duty Doctrine: The Supreme Court Held Hostage," see 51 Mercer L. Rev. 73 (1999).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 243 (2002).

For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

For annual survey of construction law, see 56 Mercer L. Rev. 109 (2004).

For article, "Police Pursuits: A Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law," see 57 Mercer L. Rev. 511 (2006).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

For article with annual survey on insurance law, see 73 Mercer L. Rev. 119 (2021).

JUDICIAL DECISIONS

Analysis

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General Consideration

Legislature has unfortunately codified the doctrine of municipal immunity into statutory law to the extent that the judicial branch of government has been preempted from effectively destroying that which the judiciary created. City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599, 1970 Ga. App. LEXIS 1283 (1970).

Violation of duty to act. — When the

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city knows or ought to know of a defect, in time to repair or give warning of the defect, the city is liable for injuries sustained because of the defect regardless of the defect's cause. City of Rome v. Brinkley, 54 Ga. App. 391, 187 S.E. 911, 1936 Ga. App. LEXIS 592 (1936).

If a municipality did not perform an act creating a dangerous condition, the failure of the municipality to rectify the dangerous condition must be in violation of a duty to act. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224, 1978 Ga. LEXIS 1237 (1978).

In action to recover overcharges for electricity, defendant-municipality has legal duty to disclose existence of more favorable demand meter rate. City of Commerce v. Duncan & Godfrey, Inc., 157 Ga. App. 337, 277 S.E.2d 266, 1981 Ga. App. LEXIS 1812 (1981).

No distinction between negligent and intentional torts. — Former Code 1933, §§ 69-301 and 69-307 (see now O.C.G.A. §§ 36-33-1 and 36-33-3) did not distinguish between torts of nonfeasance or misfeasance committed by negligence, and other torts committed corruptly, maliciously, willfully, or wantonly. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78, 1935 Ga. App. LEXIS 113 (1935).

Applicability to federal actions. — State cannot impose conditions precedent to the right of a party to proceed under 42 U.S.C. § 1983. Williams v. Posey, 475 F. Supp. 133, 1979 U.S. Dist. LEXIS 10216 (M.D. Ga. 1979).

Applicability to diversity actions. — In a diversity action against a Georgia city arising out of an accident in South Carolina involving a city garbage truck, even though the city would not be entitled to sovereign immunity under South Carolina law, immunity enjoyed by the city under Georgia law would be extended as a matter of comity. Davis v. City of Augusta, 942 F. Supp. 577, 1996 U.S. Dist. LEXIS 14699 (S.D. Ga. 1996).

Inapplicable when waiver of immunity undisputed. — O.C.G.A. § 36-33-1 does not create a duty on the part of cities to perform all acts properly and skillfully; the statute simply creates an exception from sovereign immunity for cities' negligence in proprietary or nongovernmental matters and did not apply in a case where defendants' waiver of sovereign immunity was undisputed. City of Buford v. Ward, 212 Ga. App. 752, 443 S.E.2d 279, 1994 Ga. App. LEXIS 385 (1994), cert. denied, No. S94C1167, 1994 Ga. LEXIS 851 (Ga. July 7, 1994).

Effect of demand statute. — Before the enactment of former Code 1933, § 69-308 (see now O.C.G.A. § 36-33-5), requiring a demand, the liability of every municipal corporation in Georgia, under former Code 1933, § 69-301 (see now O.C.G.A. § 36-33-1), was unqualified and unconditional; by the enactment of the law requiring a demand this unqualified liability of each municipal corporation became conditional upon the demand required by the statute. City of Atlanta v. Hudgins, 193 Ga. 618, 19 S.E.2d 508, 1942 Ga. LEXIS 451 (1942).

Notice requirement. — Notice must be given to hold liable a municipality for negligent ministerial acts. Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163, 1971 U.S. Dist. LEXIS 10329 (N.D. Ga. 1971).

Establishment of waiver. — Sovereign immunity is not an affirmative defense that must be established by the party seeking its protection; waiver of immunity must be established by the party seeking to benefit from the waiver. City of Lawrenceville v. Macko, 211 Ga. App. 312, 439 S.E.2d 95, 1993 Ga. App. LEXIS 1537 (1993), overruled in part, Clive v. Gregory, 280 Ga. App. 836, 635 S.E.2d 188, 2006 Ga. App. LEXIS 880 (2006).

Sovereign immunity waived only by legislative act. — Relying on the plain language of O.C.G.A. § 36-33-1(a), the Georgia Supreme Court concluded that sovereign immunity could be waived only by an act of the legislature and, therefore, the indemnification agreement between the city and a corporation was void as an ultra vires contract; however, the case was remanded to the federal district court for consideration of whether,

pursuant to O.C.G.A. § 36-33-1(a), the city waived the city's sovereign immunity as to the corporation's cause of action by purchasing insurance. CSX Transp., Inc. v. City of Garden City, 355 F.3d 1295, 2004 U.S. App. LEXIS 290 (11th Cir. 2004).

Purchase of liability insurance no waiver of immunity. — Absent statutory authority limiting the application of the provisions of this chapter, the procurement of liability insurance by the city does not constitute a waiver of the defense of sovereign immunity insofar as this defense bars recovery for damages caused by the performance of a governmental function in a negligent manner. Winston v. City of Austell, 123 Ga. App. 183, 179 S.E.2d 665, 1971 Ga. App. LEXIS 1151 (1971).

Evidence did not show that the city waived the city's governmental immunity by purchasing liability insurance; thus, the city had governmental immunity on the individual's claims against the city arising out of the police officer's arrest of the individual for criminal trespass. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584, 2003 Ga. App. LEXIS 765 (2003).

Court of appeals incorrectly ruled that the city's insurance policy increased the sovereign immunity waiver notwithstanding the immunity endorsements, which expressly precluded coverage when a sovereign immunity defense applied, as the insurance contract between the city and its insurer did not provide more than $700,000 of coverage for the plaintiffs' claims because, while the statutory defenses of sovereign and governmental immunity were clearly not applicable to losses from the plaintiffs' claims up to $700,000, pursuant to the endorsements, the insurance that the city purchased did not cover claims for damages to which the defenses of sovereign and governmental immunity did apply. Atlantic Specialty Ins. Co. v. City of College Park, 313 Ga. 294, 869 S.E.2d 492, 2022 Ga. LEXIS 22 (2022).

Waiver by purchase of liability insurance. — Even if spraying for mosquito eradication is a governmental function, if as provided for in Ga. L. 1960, p. 289, § 1 (see now O.C.G.A. § 33-24-51), the city secures insurance to cover liability for damages arising by reason of ownership, maintenance, operation, or use of any motor vehicle by the municipal corporation, under the municipality's management, control or supervision, whether in a governmental undertaking or not, the municipality's governmental immunity shall be waived to the extent of the amount of insurance so purchased. Mitchell v. City of St. Marys, 155 Ga. App. 642, 271 S.E.2d 895, 1980 Ga. App. LEXIS 2716 (1980).

In a tort action for personal injuries and property damage arising from an auto collision filed against a city and the city's police officer, the trial court erred in granting a city summary judgment as: (1) O.C.G.A. § 40-6-6(d)(2) did not apply; and (2) the city waived the city's sovereign immunity to the extent that the city purchased liability coverage to cover the officer's actions in operating that officer's police car. But, the trial court properly granted summary judgment to the officer, given that the officer was engaged in a discretionary function of responding to an emergency situation at the time the accident at issue occurred. Weaver v. City of Statesboro, 288 Ga. App. 32, 653 S.E.2d 765, 2007 Ga. App. LEXIS 1133 (2007), cert. denied, No. S08C0421, 2008 Ga. LEXIS 221 (Ga. Feb. 25, 2008).

In a negligence action against a city by plaintiffs injured in a collision with an on-duty police officer, the city's purchase of a general liability insurance policy covering claims in excess of $250,000 waived the city's sovereign immunity to the limits of the policy; since the city did not have a self-insurance plan, participate in any sort of insurance fund or pool, or set aside funds for the payment of liability claims, plaintiffs could recover only damages exceeding the $250,000 threshold. McLemore v. City Council, 212 Ga. App. 862, 443 S.E.2d 505, 1994 Ga. App. LEXIS 412 (1994).

City was not entitled to sovereign immunity because the city's "Public Officials Errors and Omissions" insurance policy covered the wrongful termination claims brought by city employees; therefore, consistent with O.C.G.A. § 36-33-1(a), the city was deemed to have waived sovereign

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immunity to the extent of the limits of the city's insurance policy covering those claims. Owens v. City of Greenville, 290 Ga. 557, 722 S.E.2d 755, 2012 Ga. LEXIS 191 (2012).

Unpublished decision: Although a fact issue existed as to whether a city had waived the city's sovereign immunity by purchasing insurance that covered an arrestee's claims arising from an arrest for burglary, the claims for slander, fraud, false imprisonment, and racketeering failed because there was probable cause to make the arrest. Gray v. Ector, 541 Fed. Appx. 920, 2013 U.S. App. LEXIS 19261 (11th Cir. 2013).

Insufficient proof of liability insurance. — Because there was no evidence of record that a city maintained liability insurance that would cover the occurrences forming the basis of the developers' claims, there was no waiver of the city's sovereign immunity pursuant to O.C.G.A. § 36-33-1(a); thus, sovereign immunity was a viable defense as to the city and the city officials acting in their official capacities. Wendelken v. JENK LLC, 291 Ga. App. 30, 661 S.E.2d 152, 2008 Ga. App. LEXIS 316 (2008).

Charter provision constitutional. — A 1983 amendment to the charter of the consolidated local government of Columbus which provided that the tort liability of the consolidated government would be the tort liability applicable to counties was valid and constitutional. Bowen v. City of Columbus, 256 Ga. 462, 349 S.E.2d 740, 1986 Ga. LEXIS 907 (1986).

Waiver by municipality. — According to the Georgia Supreme Court, Georgia municipalities may never waive a municipality's sovereign immunity by, for example, contracting to indemnify third parties without either express legislative authority or satisfying the requirements of O.C.G.A. § 36-33-1(a). CSX Transp., Inc. v. City of Garden City, 355 F.3d 1295, 2004 U.S. App. LEXIS 290 (11th Cir. 2004).

Unified city/county government was not a municipality for purposes of the waiver of sovereign immunity by operation of O.C.G.A. § 36-33-1 because the charter creating the unified government expressly provided that the government's tort and nuisance liability would follow the law and rules of tort liability applicable to counties in Georgia. Athens-Clarke County v. Torres, 246 Ga. App. 215, 540 S.E.2d 225, 2000 Ga. App. LEXIS 1195 (2000).

No immunity for breach of contract. — Municipal immunity is not a valid defense to an action for breach of contract. Precise v. City of Rossville, 261 Ga. 210, 403 S.E.2d 47, 1991 Ga. LEXIS 171 (1991).

Insufficient proof of insurance. — Resident who brought a negligence and nuisance suit against a city had not shown that the city waived sovereign immunity under O.C.G.A. § 36-33-1 because a letter from a firm stating that the firm administered the city's insurance program did not suffice to show that the city had insurance. Gilbert v. City of Jackson, 287 Ga. App. 326, 651 S.E.2d 461, 2007 Ga. App. LEXIS 957 (2007).

Liability for contract and non-sovereign immunity torts. — Contract that included indemnification provision was void because a city could not waive the city's sovereign immunity under O.C.G.A. § 36-33-1; although it was not clear whether the city could waive non-sovereign immunity torts and contract claims, because a train track and train owner confined itself to a sovereign immunity tort recovery theory while proceeding on only a contract claim without seeking leave to amend under Fed. R. Civ. P. 15(a), the plaintiffs' entire case against the city failed as a matter of law. CSX Transp., Inc. v. City of Garden City, 418 F. Supp. 2d 1366, 2006 U.S. Dist. LEXIS 7089 (S.D. Ga. 2006), aff'd, 258 Fed. Appx. 287, 2007 U.S. App. LEXIS 28793 (11th Cir. 2007).

Court must apply proper analysis. — Judgment of the appellate court affirming the trial court's grant of summary judgment to a city based on sovereign immunity was vacated because the appellate court, like the trial court's ruling on the city's motion, gave no consideration to whether the alleged negligence by the city occurred in the

performance of a governmental function and did not acknowledge or apply the definitions of governmental and ministerial functions as those terms relate to the city's sovereign immunity. Primas v. City of Milledgeville, 296 Ga. 584, 769 S.E.2d 326, 2015 Ga. LEXIS 130 (2015).

No contractual agreement established with city through statutes or ordinances. — In a suit brought by taxi cab companies, the trial court properly granted the city's motion to dismiss because the taxi cab companies failed to establish that the statutes permitting the issuance of Certificates of Public Necessity and Convenience (CPNC), or the city's ordinances, created a clear and unequivocal intent by the city to create a contractual or franchise agreement that prevented the city allowing personal transportation network companies to operate in the city. Atlanta Metro Leasing, Inc. v. City of Atlanta, 353 Ga. App. 785, 839 S.E.2d 278, 2020 Ga. App. LEXIS 81 (2020), cert. denied, No. S2000994, 2020 Ga. LEXIS 845 (Ga. Sept. 28, 2020).

Summary judgment not available in case involving suicide by inmate held in county detention. — Georgia has no bright line rule under which the doctrines of assumption of the risk and comparative negligence always bar recovery in cases of suicide; to the contrary, determining a person's assumption of the risk when that person has killed himself or herself can be a fact-intensive inquiry appropriate for a jury. Brantley v. Jones, 363 Ga. App. 466, 871 S.E.2d 87, 2022 Ga. App. LEXIS 146 (2022).

Nonliability for Governmental Functions

Policy of section. — Municipality performs governmental functions in the exercise of certain of the municipality's corporate powers, because such powers are exercised by the municipality for the benefit of the public generally, and in their exercise it represents and is an arm of the state, such as the municipality's exercise of powers pertaining to the public health and to the maintenance of charitable, penal, reformatory, and similar public institutions. However, when the municipality exercises only such powers and privileges as are peculiarly for the municipality's own benefit, or the benefit of the municipality's own citizens, or those of the municipality's immediate locality, the municipality is acting in a strictly corporate capacity. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934); Watkins v. City of Toccoa, 54 Ga. App. 8, 189 S.E.2d 270 (1936).

Judicial functions. — No action, in any form, can be maintained against a municipal corporation for an error in judgment when exercising judicial functions. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389, 1972 U.S. Dist. LEXIS 15272 (M.D. Ga. 1972), aff'd, 482 F.2d 280, 1973 U.S. App. LEXIS 8695 (5th Cir. 1973).

City was immune from liability under O.C.G.A. § 36-33-1(b) because the issuance of an arrest warrant was a judicial act performed by a judicial officer. Griffin v. City of Brunswick, No. CV204-146, 2005 U.S. Dist. LEXIS 34922 (S.D. Ga. Nov. 30, 2005).

Rule of nonliability while performing delegated duties. — When a municipality undertakes to perform for the state duties which the state itself might perform, but which have been delegated to the municipality, and in the exercise of such function a private citizen is injured by the negligence of servants while engaged in such work, no cause of action arises against the municipality. Mayor of Savannah v. Jordon, 142 Ga. 409, 83 S.E. 109, 1914 Ga. LEXIS 728 (1914).

Rule of nonliability generally. — For acts done in the illegal performance of purely governmental functions, that is for failure to perform or errors in performing the government's legislative or judicial powers, as distinguished from neglect to perform or improper or unskillful performance of the government's ministerial duties, however illegally the authority may be exercised, a municipality is not liable. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78, 1935 Ga. App. LEXIS 113 (1935); Foster v.

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Mayor of Savannah, 77 Ga. App. 346, 48 S.E.2d 686, 1948 Ga. App. LEXIS 552 (1948); City of Thomson v. Davis, 92 Ga. App. 216, 88 S.E.2d 300, 1955 Ga. App. LEXIS 558 (1955); Bagwell v. City of Gainesville, 106 Ga. App. 367, 126 S.E.2d 906, 1962 Ga. App. LEXIS 708 (1962); Turk v. City of Rome, 133 Ga. App. 886, 212 S.E.2d 459, 1975 Ga. App. LEXIS 2323, aff'd, 235 Ga. 223, 219 S.E.2d 97, 1975 Ga. LEXIS 835 (1975).

Municipalities are not legally compellable or liable to pay claims arising by reason of negligence in the performance of the municipalities' governmental functions unless the legislature has delegated to the municipalities the power and authority to waive immunity from suit on claims arising because of negligence in the performance of such governmental functions. Koehler v. Massell, 229 Ga. 359, 191 S.E.2d 830, 1972 Ga. LEXIS 615 (1972).

When a homeowner claimed that the negligent repair of a sewer system caused a water main near a house to rupture, damaging the owner's home, the owner could not hold the city liable for the damage because the maintenance and repair of a sewer system was a governmental function, and, under O.C.G.A. § 36-33-1(a), the city could not be held liable for negligent acts of the city's employee in the performance of purely governmental functions. Goode v. City of Atlanta, 274 Ga. App. 233, 617 S.E.2d 210, 2005 Ga. App. LEXIS 714 (2005).

Distinction between governmental and ministerial duties. — Between a municipality and the public, the question of liability depends on whether at the time of the injury sued for the municipality was engaged in a governmental or ministerial duty. Roberts v. Mayor of Savannah, 54 Ga. App. 375, 188 S.E. 39, 1936 Ga. App. LEXIS 586 (1936).

When duty is of purely public nature, intended for benefit of public at large, without pretense of private gain to the municipality, no liability will attach. Cornelisen v. City of Atlanta, 146 Ga. 416, 91 S.E. 415, 1917 Ga. LEXIS 326 (1917); Harrison Co. v. City of Atlanta, 26 Ga. App. 727, 107 S.E. 83, 1921 Ga. App. LEXIS 616 (1921).

Applicability to negligence of driver of garbage cart for board of health. Love v. City of Atlanta, 95 Ga. 129, 22 S.E. 29, 1894 Ga. LEXIS 453 (1894).

Applicability to negligence of driver of ambulance for city hospital. Watson v. City of Atlanta, 136 Ga. 370, 71 S.E. 664, 1911 Ga. LEXIS 543 (1911).

Applicability to negligence of firefighter. Rogers v. City of Atlanta, 143 Ga. 153, 84 S.E. 555, 1915 Ga. LEXIS 329 (1915).

City's decision not to revoke an occupational tax certificate. — City was entitled to sovereign immunity against a claim by a decedent's survivors that the city allowed a known nuisance in the form of an unauthorized and unlicensed nightclub to continue attracting drugs and crime, resulting in the decedent's shooting death outside the nightclub; the city was exercising a governmental function when the city opted not to revoke the nightclub's occupational tax certificate and, therefore, was protected by immunity under O.C.G.A. § 36-33-1(b). City of Albany v. Stanford, 347 Ga. App. 95, 815 S.E.2d 322, 2018 Ga. App. LEXIS 459 (2018), cert. denied, No. S19C0053, 2019 Ga. LEXIS 294 (Ga. Apr. 29, 2019).

Acts of mayor in fixing bond. — Municipal corporation is not liable for the act of the mayor in requiring the plaintiff to give a larger bond than the law authorized. In fixing the amount of the bond, the mayor acted in a judicial capacity, and for an error committed in the exercise of judicial authority a municipal corporation is not liable. Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792, 1900 Ga. LEXIS 543 (1900).

Traffic signals. — Trial court properly granted summary judgment to a city on a parent's negligence claim against the city stemming from a child's serious automobile accident at a known dangerous intersection that was inappropriately signaled because the city was immune from suit as the issue of whether to install a traffic signal at the intersection was a discretionary act,

entitling the city to sovereign immunity; further, a successful tax referendum to fund a new traffic light did not create a duty to install a traffic light at the intersection before completing other projects. Riggins v. City of St. Marys, 264 Ga. App. 95, 589 S.E.2d 691, 2003 Ga. App. LEXIS 1393 (2003), cert. denied, No. S04C0571, 2004 Ga. LEXIS 206 (Ga. Mar. 1, 2004).

Officer acting in official capacity applying sovereign immunity. — Trial court erred in denying a city and the city's police officers summary judgment as to an arrestee's claims against the city and the officers in the officers' official capacities because the claim against one of the officers in the officer's official capacity was, in reality, a suit against a governmental entity and subject to a claim of sovereign immunity, and no genuine issue of fact remained as to whether the city waived the city's sovereign immunity pursuant to O.C.G.A. § 33-24-51; the alleged negligence was unrelated to the use of a motor vehicle. Campbell v. Goode, 304 Ga. App. 47, 695 S.E.2d 44, 2010 Ga. App. LEXIS 324 (2010).

City immune in action alleging negligence and maintenance of nuisance. — In an action alleging negligence and maintenance of a nuisance against the city, the trial court did not err in granting summary judgment to the city on the nuisance claim because the actions challenged, including disregarding alcohol violations, involved a governmental function to which sovereign immunity applied and because the insurance policy did not cover the claims, there was no legislative waiver of sovereign immunity. Gatto v. City of Statesboro, 353 Ga. App. 178, 834 S.E.2d 623, 2019 Ga. App. LEXIS 673 (2019), aff'd, 312 Ga. 164, 860 S.E.2d 713, 2021 Ga. LEXIS 488 (2021).

Liability for Ministerial Functions

Second sentence of subsection (b) waives immunity whenever a municipality undertakes a proprietary function. Miree v. United States, 526 F.2d 679, 1976 U.S. App. LEXIS 11980 (5th Cir. 1976).

Corporate capacity defined. — When a municipality exercises only such powers and privileges as are peculiarly for the municipality's own benefit, or the benefit of the municipality's own citizens, or those of the municipality's immediate locality, the municipality is acting in a strictly corporate capacity. Watkins v. City of Toccoa, 54 Ga. App. 8, 189 S.E.2d 270 (1936).

Rule of liability generally. — Municipal corporation in the exercise of the municipality's corporate functions performs two classes of service: (1) governmental duties; and (2) private, corporate, or ministerial, duties. It seems well settled in this state that in the negligent performance of a municipality's governmental duties a municipal corporation is not liable in damages to one who is injured while the municipality is engaged in the performance of such duties. But a different rule obtains if in the exercise or neglect of the municipality's ministerial duties one is negligently injured by a municipal corporation. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934); Watkins v. City of Toccoa, 54 Ga. App. 8, 189 S.E.2d 270 (1936); Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265, 1961 Ga. App. LEXIS 744 (1961); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163, 1971 U.S. Dist. LEXIS 10329 (N.D. Ga. 1971).

Municipality is immune from suit for acts the municipality performs which are authorized by law and executed in accordance with the judgment or conclusion reached by the municipal authority in the exercise of a governmental function. However, a municipality is liable when there is negligence or error in the execution of plans or specifications, adopted or prescribed by a municipality, that is, for negligence or error in the exercise of a ministerial duty, a municipal government is not liable for negligence in the exercise of a governmental function. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224, 1978 Ga. LEXIS 1237 (1978).

Trial court's dismissal of the plaintiff's negligence claim was affirmed because any alleged error by the trial court in finding that the plaintiff did not carry the burden to prove a waiver of municipal immunity by the purchase of insurance

Liability for Ministerial Functions (Cont'd)

was due to the plaintiff's own conduct, and the plaintiff could not complain on appeal about a result that the plaintiff's own conduct brought about. City of Alpharetta v. Vlass, 360 Ga. App. 432, 861 S.E.2d 249, 2021 Ga. App. LEXIS 365 (2021).

Payment of salary to government employees is a perfunctory administrative duty not included under the category of government functions and is not barred by any statutory immunity. Smith v. City of Atlanta, 167 Ga. App. 458, 306 S.E.2d 720, 1983 Ga. App. LEXIS 2522 (1983).

To bar a municipal employee from recovering pay for services the employee performed by allowing the municipality to claim statutory immunity would violate the prohibition against the impairment of a contract which is found in both the state and federal constitutions. Smith v. City of Atlanta, 167 Ga. App. 458, 306 S.E.2d 720, 1983 Ga. App. LEXIS 2522 (1983).

Waiver of liability for ministerial duties does not apply to counties. — Waiver of sovereign immunity for claims alleging the negligent performance of ministerial duties only applies to cities and does not apply to counties. O.C.G.A. § 36-33-1(b) provides that for neglect to perform or improper or unskillful performance of their ministerial duties, municipal corporations shall be liable. O.C.G.A. § 36-1-4 sets out the sovereign immunity of counties and contains no such waiver for ministerial duties. Klingensmith v. Long County, 352 Ga. App. 21, 833 S.E.2d 608, 2019 Ga. App. LEXIS 521 (2019).

Facility designed to maximize revenues. — Municipality may be liable for failure to safely maintain a public facility, even though the municipality is not expressly given the power to operate the facility primarily as a source of revenue, if the facility is in fact designed to "maximize" revenues rather than to be operated primarily for the general good of the public; the duty of proper maintenance would, in such a case, be ministerial. Cleghorn v. City of Albany, 184 Ga. App. 732, 362 S.E.2d 386, 1987 Ga. App. LEXIS 2373 (1987).

When city maintained a market house the city is under a duty to keep the market house in a safe condition, the market house being property of the city and used for the city's revenues. The city's duty is ministerial and the city is liable for injuries sustained by the plaintiff by stepping through a hole in the floor. Mayor of Savannah v. Cullens, 38 Ga. 334, 1868 Ga. LEXIS 101 (1868).

Improvement of streets by city. — Defense of sovereign immunity was not available to the city, when the city's management of the project included hiring the contractor and placing the city's on-site construction inspector on the property to actively oversee the construction work on a daily basis. Consequently, the city was performing a ministerial function in improving the streets and sidewalks. City of Atlanta v. Atlantic Realty Co., 205 Ga. App. 1, 421 S.E.2d 113, 1992 Ga. App. LEXIS 1052 (1992).

Applicability to neglect of duty of city officer in maintaining waterworks. City Council v. Mackey, 113 Ga. 64, 38 S.E. 339, 1901 Ga. LEXIS 152 (1901).

Applicability to failure of duty of officer in maintaining city electric light wires and plant. Sedlmeyr v. City of Fitzgerald, 140 Ga. 614, 79 S.E. 469, 1913 Ga. LEXIS 200 (1913).

Operation of stone quarry. — Operation by the city of a stone quarry which the city owns is purely ministerial. City Council v. Owens, 111 Ga. 464, 36 S.E. 830, 1900 Ga. LEXIS 668 (1900).

Payment to a corporation for work performed under a written contract with a city is a ministerial duty not included under the category of government functions and not barred by any statutory immunity. McCrary Eng'g Corp. v. City of Bowdon, 170 Ga. App. 462, 317 S.E.2d 308, 1984 Ga. App. LEXIS 1925 (1984).

Failure to provide medical care to inmate. — In a negligence action filed by an inmate based on the city's and the police chief's failure to provide medical care to the inmate, because the provision of medical care to inmates in the city's and the police chief's custody was a ministerial act, as the duty was imposed

by statute, and medical care was a fundamental right of inmates in custody, sovereign or governmental immunity was not applicable, and the trial court did not err by denying the city's and the police chief's motion to dismiss for failure to state a claim based on sovereign immunity. City of Atlanta v. Mitcham, 2013 Ga. App. LEXIS 963.

The care of inmates in the custody of a municipal corporation is a governmental function for which sovereign immunity has not been waived. City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320, 2015 Ga. LEXIS 135 (2015).

Inmate precluded from pursuing negligence claim. — Appellate court erred by affirming a trial court's denial of a city's motion to dismiss an inmate's complaint because the care of inmates in the custody of a municipal corporation is a governmental function for which sovereign immunity has not been waived; therefore, the inmate was precluded from pursuing negligence claims. City of Atlanta v. Mitcham, 296 Ga. 576, 769 S.E.2d 320, 2015 Ga. LEXIS 135 (2015).

Claims arising from improper detention. — In a detainee's suit against a sheriff, county, and city arising out of the detainee's improper detention, the defendants' motion to dismiss was denied as to the sheriff's individual liability for violations of federal law, and for failure to update the detainee's criminal record as required by O.C.G.A. § 42-4-7 and bring the detainee before a judicial officer; however, claims against the city and county were dismissed based on immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and Ga. Const. 1983, Art. IX, Sec. II, Para. IX. Purvis v. City of Atlanta, 142 F. Supp. 3d 1337, 2015 U.S. Dist. LEXIS 151530 (N.D. Ga. 2015).

Nuisances

Liability for personal injury from continuing nuisance. — A line of cases hold municipalities liable for personal injuries resulting from a continuing nuisance despite this section must be read to be a common-law exception to the general statutory rule that municipalities are immune. Miree v. United States, 526 F.2d 679, 1976 U.S. App. LEXIS 11980 (5th Cir. 1976).

Rule of nonliability is not to be confused with nuisance. Cannon v. City of Macon, 81 Ga. App. 310, 58 S.E.2d 563, 1950 Ga. App. LEXIS 887 (1950).

To be held liable for maintenance of a nuisance, a municipality must be chargeable with performing a continuous or regularly repetitious act, or creating a continuous or regularly repetitious condition which causes the hurt, inconvenience, or injury; the municipality must have knowledge or be chargeable with notice of the dangerous condition. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224, 1978 Ga. LEXIS 1237 (1978).

What is nuisance. — That which the law authorizes to be done, if done as the law authorizes, cannot be a nuisance. Thus, if the act is lawful in itself, the act becomes a nuisance only when conducted in an illegal manner to the hurt, inconvenience, or damage of another. Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224, 1978 Ga. LEXIS 1237 (1978).

Negligence not essential ingredient in action against municipality. — When a municipality in the exercise of the municipality's functions, both governmental and ministerial, creates a nuisance which is specially injurious to an individual, such individual may have a cause of action for damages, and negligence is not an essential ingredient of the action. Foster v. Mayor of Savannah, 77 Ga. App. 346, 48 S.E.2d 686, 1948 Ga. App. LEXIS 552 (1948); Ingram v. City of Acworth, 90 Ga. App. 719, 84 S.E.2d 99, 1954 Ga. App. LEXIS 794 (1954); City of Thomson v. Davis, 92 Ga. App. 216, 88 S.E.2d 300, 1955 Ga. App. LEXIS 558 (1955); Stanley v. City of Macon, 95 Ga. App. 108, 97 S.E.2d 330, 1957 Ga. App. LEXIS 728 (1957); Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224, 1978 Ga. LEXIS 1237 (1978); Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235, 1978 Ga. LEXIS 1241 (1978); Porter v. City of Gainesville, 147 Ga. App. 274, 248 S.E.2d 501, 1978 Ga. App. LEXIS 2651 (1978); City of Columbus v. Myszka, 246 Ga. 571, 272 S.E.2d 302, 1980 Ga. LEXIS 1201 (1980).

Sovereign immunity for negligence but not nuisance. — Trial court erred in not granting a city's motion to dismiss the

Nuisances (Cont'd)

negligence claims against the city because the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172, 2013 Ga. App. LEXIS 885 (2013).

No right to create and maintain nuisance. — While municipal corporations do have certain sovereign governmental powers which cannot be superintended by the courts, in the exercise of such powers municipal corporations have no right to create and maintain a nuisance hurtful to private citizens. Cannon v. City of Macon, 81 Ga. App. 310, 58 S.E.2d 563, 1950 Ga. App. LEXIS 887 (1950).

Training of police officers. — Plaintiff's claims against the city that training of the city's police in the operation of police cars created a nuisance failed as a one-time occurrence of a car collision was insufficient evidence to prove a specific failure or specific negligence in training. Banks v. Mayor of Savannah, 210 Ga. App. 62, 435 S.E.2d 68, 1993 Ga. App. LEXIS 1034 (1993).

Municipality may be liable for trespass in execution of governmental function only if such trespass constitutes a nuisance or constitutes the taking or damaging of private property for public use without just and adequate compensation first being paid. City of Atlanta v. Minder, 83 Ga. App. 295, 63 S.E.2d 420, 1951 Ga. App. LEXIS 854 (1951).

Adjoining landowners. — Municipality, as owner of real estate, owes the same duties to the owners of neighboring lands, with respect to the use of the municipality's own, as are owed by a private owner of land, and hence a municipality is liable to other landowners when it makes such use of the municipality's land as to constitute a nuisance, regardless of whether the municipality is engaged in performing a governmental or private function. This rule is equally applicable whether the actual injury is personal or property damage. Stanley v. City of Macon, 95 Ga. App. 108, 97 S.E.2d 330, 1957 Ga. App. LEXIS 728 (1957).

Increased noise and odors. — Term property comprehends not only the thing possessed, but also, in strict legal parlance, means the rights of the owner in relation to land or a thing; the right of a person to possess, use, enjoy, and dispose of the land or thing, and the corresponding right to exclude others from the use. Therefore, no physical invasion damaging to the property need be shown, only an unlawful interference with the right of the owner to enjoy the owner's possession. Thus, increased noise and odors may result in an inverse condemnation of property by interfering with the use and enjoyment of land and endangering health. Duffield v. DeKalb County, 242 Ga. 432, 249 S.E.2d 235, 1978 Ga. LEXIS 1241 (1978).

Overflowing water. — When a municipality, in constructing a public improvement, obstructs the natural flow of surface water so as to cause the water to pond upon the land of an abutting owner, and the city provides no means of outlet for such water, the city becomes liable to the property owner for any damages occasioned to the landowner's property thereby. If the ponding of such water on private property constitutes a nuisance, which the city fails to abate, the municipality may be held liable. City of Rome v. Brown, 54 Ga. App. 6, 186 S.E. 708, 1936 Ga. App. LEXIS 443 (1936), aff'd, 184 Ga. 34, 190 S.E. 787, 1937 Ga. LEXIS 484 (1937).

Sewage. — When the city knowingly allowed human sewage from the city's sewerage system to flow across appellee's property for many months, the case was one of nuisance for which the city was liable and not a case of discretionary nonfeasance. City of Columbus v. Myszka, 246 Ga. 571, 272 S.E.2d 302, 1980 Ga. LEXIS 1201 (1980).

Failure to provide holding cell. — Mere failure to provide a holding cell at a police station is not a nuisance for which a municipality may be liable to one allegedly injured thereby. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, 1992 Ga. App. LEXIS 939 (1992), cert.

denied, No. S92C1268, 1992 Ga. LEXIS 728 (Ga. Sept. 11, 1992).

Municipality not liable for failure to abate nuisance. — As a general rule, the duty imposed upon municipalities to abate nuisances existing upon private property within the municipality's limits is a duty which is judicial in the municipality's nature, and for failure to perform this duty, or for errors in the performance of the duty, the municipality is not liable in damages. Mayor of Dalton v. Wilson, 118 Ga. 100, 44 S.E. 830, 1903 Ga. LEXIS 465 (1903).

When nuisance is in or near public street, the municipality is liable to one who suffers special damage from the failure of the city to abate such nuisance. Parker v. Mayor of Macon, 39 Ga. 725, 1869 Ga. LEXIS 270 (1869); Mayor of Dalton v. Wilson, 118 Ga. 100, 44 S.E. 830, 1903 Ga. LEXIS 465 (1903).

Officers and Employees

Statute should be construed together in connection with the section's cognate sections, and as intending to declare that municipal liability should attach only for neglect to perform, or for improper or unskillful performance of "ministerial duties." This construction would leave intact the common-law doctrine, frequently applied in this state before and since adoption of the Code, of nonliability for conduct of officers, agents, and servants of municipal corporations in respect to duties devolving upon the officers, agents, and servants in virtue of the sovereign or governmental functions of the municipality. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934).

Rule of nonliability for governmental functions. — When an injury sustained is inflicted because of the misfeasance of an agent of a corporation while engaged in the exercise of what are termed "governmental functions of a corporation," the city is not liable. When injuries are inflicted by the agent of a corporation acting for the corporation in the discharge of a duty when the corporation is engaged in the exercise of some private franchise, or some franchise conferred upon the corporation by law which the corporation may exercise for the private profit or convenience of the corporation or for the convenience of the corporation's citizens alone, in which the general public has no interest, a right of recovery lies against the city. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934); Roberts v. Mayor of Savannah, 54 Ga. App. 375, 188 S.E. 39, 1936 Ga. App. LEXIS 586 (1936); City of Atlanta v. Garner, 56 Ga. App. 435, 192 S.E. 841, 1937 Ga. App. LEXIS 388 (1937); Banks v. City of Albany, 83 Ga. App. 640, 64 S.E.2d 93, 1951 Ga. App. LEXIS 927 (1951).

Police pursuit of stolen vehicle. — Summary judgment for city on ground of sovereign immunity was proper in case of decedent who was killed when struck by a stolen car which was being chased by city police officers since the death did not arise from the use, maintenance, or operation of the city's motor vehicle but was due to the negligence or wilful misconduct of a fleeing felon in running a red light. Peeples v. City of Atlanta, 189 Ga. App. 888, 377 S.E.2d 889, 1989 Ga. App. LEXIS 44 (1989).

Liability for acts of officers contrary to law. — When an act is done by the officers and agents of a municipal corporation, which is within the corporate power and might have been lawfully accomplished had the municipal authorities proceeded according to law, the corporation will be liable for the consequences of an act of such officers or agents proceeding contrary to law or in an irregular manner. It is otherwise when the act complained of lies wholly outside of the general or special powers of the corporation. Langley v. City Council, 118 Ga. 590, 45 S.E. 486, 1903 Ga. LEXIS 629 (1903); McDonald v. Butler, 10 Ga. App. 845, 74 S.E. 573, 1912 Ga. App. LEXIS 729 (1912).

Failure to provide police protection. — When failure to provide police protection is alleged, there can be no liability based on a municipality's duty to protect the general public. However, when there is a special relationship between the individual and the municipality which sets the individual apart from the general public and

Officers and Employees (Cont'd)

engenders a special duty owed to that individual, the municipality may be subject to liability for the nonfeasance of the municipality's police department. City of Rome v. Jordan, 263 Ga. 26, 426 S.E.2d 861, 1993 Ga. LEXIS 307 (1993).

Deputy sheriff was not liable to the widow of a motorist killed in a collision with a drunk driver whom the deputy had failed to arrest or otherwise restrain from driving; although the deputy may have been present at the scene of the crime in that the deputy observed an intoxicated driver, the deputy's duty to enforce drunk driving laws was to the public in general, not specifically to the motorist who was killed hours later in a collision with the intoxicated driver at another location. Landis v. Rockdale County, 212 Ga. App. 700, 445 S.E.2d 264, 1994 Ga. App. LEXIS 402 (1994), cert. denied, No. S94C1107, 1994 Ga. LEXIS 791 (Ga. June 27, 1994).

Arrest. — In an action arising out of an arrest, despite the way the arrestee was treated, the trial court properly dismissed a complaint against a county and granted summary judgment on the same complaint against a city on sovereign immunity grounds since the arrestee failed to show that the immunity had been waived. Scott v. City of Valdosta, 280 Ga. App. 481, 634 S.E.2d 472, 2006 Ga. App. LEXIS 877 (2006).

In an arrestee's state law claims, a city was not liable for actions of the city's police officers because the officers engaged in protected ministerial functions. Lavassani v. City of Canton, 760 F. Supp. 2d 1346, 2010 U.S. Dist. LEXIS 139378 (N.D. Ga. 2010).

Municipalities are liable for the acts of the municipalities' officers, agents, and servants only: (a) in the performance of any function if a statute specifically provides for such liability; (b) for neglect to perform, or improper or unskillful performance of ministerial duties; (c) for the performance of governmental functions when the function amounts to the taking or damaging of private property for public purposes without first making adequate compensation therefor, or the creation of a nuisance dangerous to the life and health of persons because of its proximity to people in the enjoyment of their property. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866, 1948 Ga. App. LEXIS 717 (1948).

Employee's personal liability. — Government employee who commits a wrongful or tortious act violates a duty the employee owes to the one who is injured and is personally liable, even though the municipal employer may be exempt from liability under the doctrine of governmental immunity. Foster v. Crowder, 117 Ga. App. 568, 161 S.E.2d 364, 1968 Ga. App. LEXIS 1141 (1968).

Trespass of officers. — Municipal corporation is not liable in damages for a trespass committed by the municipality's officers in wrongfully disinterring and removing the remains of a person buried in a cemetery owned and controlled by the city, unless the act was performed in pursuance of and to effectuate some corporate power conferred by the municipal charter. McDonald v. Butler, 10 Ga. App. 845, 74 S.E. 573, 1912 Ga. App. LEXIS 729 (1912).

Government immune from liability based on officer's actions. — Doctrine of governmental immunity protected the city from liability for the actions of the city's employees, including the police officer who arrested the individual for criminal trespass in the discharge of the officer's lawful duties, and, thus, the city was protected by that immunity from the arrested individual's claims against the city. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584, 2003 Ga. App. LEXIS 765 (2003).

Notice of change of group health insurance carrier. — City's duty to give reasonable notice to government employees that the city intended to change group health insurance carriers was a perfunctory administrative duty not included under the category of government functions and not barred by any statutory immunity. City of Brunswick v. Carney, 187 Ga. App. 634, 371 S.E.2d 201, 1988 Ga. App. LEXIS 851 (1988).

Summary judgment based on sovereign immunity improper. — Trial court erred in granting a police officer and

a city summary judgment on the ground that the officer was performing a discretionary duty and the city was protected by sovereign immunity in an arrestee's action to recover damages for injuries sustained when the officer ran over the arrestee's foot with a patrol car during the arrest. A jury could find that the officer did not act intentionally, but rather, negligently came too close to the arrestee. Moreover, there was an issue of fact on whether the arrestee assumed the risk of injury when the arrestee had not threatened the officer with deadly force. Davis v. Batchelor, 300 Ga. App. 662, 686 S.E.2d 314, 2009 Ga. App. LEXIS 1239 (2009).

Parks and Recreation

Park as governmental function. — When a city maintains a park primarily for the use of the public, intended as a place of resort for pleasure and promotion of health of the public at large, the city's operation is by virtue of the governmental powers of the municipality, and no municipal liability would attach to the nonperformance or improper performance of the duties of the officers, agents, or servants of the city in respect to keeping the park safe for use by members of the general public. Cornelisen v. City of Atlanta, 146 Ga. 416, 91 S.E. 415, 1917 Ga. LEXIS 326 (1917); Harvey v. Mayor of Savannah, 59 Ga. App. 12, 199 S.E. 653, 1938 Ga. App. LEXIS 440 (1938); Porter v. City of Gainesville, 147 Ga. App. 274, 248 S.E.2d 501, 1978 Ga. App. LEXIS 2651 (1978); City Council v. Lee, 153 Ga. App. 94, 264 S.E.2d 683, 1980 Ga. App. LEXIS 1692 (1980).

In the absence of charter authority to the contrary, the maintenance of a park by a municipality is a governmental function, and the municipality is not liable for the nonperformance or improper performance of the municipality's officers, agents, or servants in connection therewith. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866, 1948 Ga. App. LEXIS 717 (1948).

Parks distinguished from streets. — Legislative act placing city squares under the exclusive control and management of the park and tree commission of the city as to "all matters and things relating to the care, preservation, improvement, good order, and regulation generally" of the squares, fixed their status as parks, the control and management of which were in the exercise of a government function. Consequently, no liability attached to the city when, as alleged in the petition in the present case, the plaintiff was injured on a sidewalk in a square because of the alleged negligence of the city in the city's maintenance thereof, and the court properly sustained the general demurrer (now motion to dismiss) to the petition. Harvey v. Mayor of Savannah, 59 Ga. App. 12, 199 S.E. 653, 1938 Ga. App. LEXIS 440 (1938).

Operation of public recreational swimming facilities, primarily for public benefit rather than for revenue production, is a governmental function, so cities are shielded from negligence claims by the doctrine of governmental immunity. Robinson v. City of Decatur, 253 Ga. 779, 325 S.E.2d 752, 1985 Ga. LEXIS 787 (1985), overruled, Martin v. Georgia Dep't of Public Safety, 257 Ga. 300, 357 S.E.2d 569, 1987 Ga. LEXIS 840 (1987); Gooden v. City of Atlanta, 242 Ga. App. 786, 531 S.E.2d 364, 2000 Ga. App. LEXIS 341 (2000).

Insurance policy did not waive sovereign immunity following drowning. — In a suit brought after the drowning death of the plaintiff's husband, the trial court judgment dismissing the complaint was upheld because the city's purchase of an insurance policy did not amount to a waiver of sovereign immunity as the policy as a whole was clearly intended to preserve the city's right to use the defense of sovereign immunity. Sharma v. City of Alpharetta, 361 Ga. App. 692, 865 S.E.2d 287, 2021 Ga. App. LEXIS 536 (2021).

Auditorium as governmental function. — Municipality is not liable to one injured by the negligence of the municipality's employees in the operation of a city auditorium, when, at the time of the injury, the municipality, through the municipality's governing officials had permitted the use of the auditorium for public purposes and discussion of matters connected with rehabilitation loans to be

Parks and Recreation (Cont'd)

made by the federal government, in that the city was engaged in the exercise of a purely governmental function in the maintenance and operation of the auditorium. The fact that the auditorium might be used for profit on other occasions would not render the city liable to one injured at the time the auditorium was being used strictly for governmental purposes. Roberts v. Mayor of Savannah, 54 Ga. App. 375, 188 S.E. 39, 1936 Ga. App. LEXIS 586 (1936).

When it is alleged that in operating a city auditorium the municipal corporation derived profit by renting or leasing the auditorium from time to time for private purposes, in the absence of an allegation that the city had charter authority to rent or lease such public building primarily as a source of revenue, no liability attaches to the city when one is injured because of the negligence of the city's agents while at work in repairing such building. City of Atlanta v. Garner, 56 Ga. App. 435, 192 S.E. 841, 1937 Ga. App. LEXIS 388 (1937); Granat v. Mayor of Savannah, 59 Ga. App. 276, 200 S.E. 311, 1938 Ga. App. LEXIS 488 (1938).

Golf course. — City has governmental immunity from tort liability in the operation of a golf course. City of Atlanta v. Mapel, 121 Ga. App. 567, 174 S.E.2d 599, 1970 Ga. App. LEXIS 1283 (1970).

Paving of a walkway along the outer edge of a city park, but within the park, by the municipality in connection with the installation of automobile parking meters so as to leave a water meter projecting above the surface of the paved walkway in a manner dangerous to pedestrians using the walkway amounts to a governmental function in connection with the construction and maintenance of a city park. The fact that the area is also used in connection with parking meters providing revenue for the city does not make the function ministerial, this function also being governmental. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866, 1948 Ga. App. LEXIS 717 (1948).

Playground equipment. — Operation and maintenance of playground equipment so designed as to be dangerous to life or health is a nuisance for which an action against a municipality may be maintained. Porter v. City of Gainesville, 147 Ga. App. 274, 248 S.E.2d 501, 1978 Ga. App. LEXIS 2651 (1978).

Public bathing beach. — Municipality is not liable for the negligent performance, or for the failure to perform the municipality's duty in the maintenance of a public bathing beach and appurtenances thereto, for whatever duty exists to maintain the beach and the beach's appurtenances is in virtue of the municipality's governmental powers and no municipal liability would attach on account of the municipality's negligent or unskillful performance of these duties. Tarver v. Savannah Beach, 96 Ga. App. 491, 100 S.E.2d 616, 1957 Ga. App. LEXIS 615 (1957).

Dog show in city auditorium. — Maintenance by the city of a dog show in the city auditorium, as would be the maintenance by the city of a menagerie in one of the city's public parks, or the maintenance of any other show for the pleasure and entertainment of the public and not for pecuniary gain or profit, is the performance of a governmental power. Granat v. Mayor of Savannah, 59 Ga. App. 276, 200 S.E. 311, 1938 Ga. App. LEXIS 488 (1938).

Sufficiency of petition. — In a suit against a municipality for wrongful death of plaintiff's husband while hauling lumber for construction of dog kennels in aid of a dog show which was being put on by his employer in the city's auditorium, petition failed to allege under what conditions the dog show was being put on, whether the show was being put on or maintained by the authority of the city in the performance of the city's governmental function, or whether the city in transporting lumber was engaged in a purely ministerial duty; thus, the petition failed to set out a cause of action. Granat v. Mayor of Savannah, 59 Ga. App. 276, 200 S.E. 311, 1938 Ga. App. LEXIS 488 (1938).

Roads and Bridges

General rule of law is that municipal corporation is bound to keep the municipality's streets and sidewalks in reason-

ably safe condition for travel in ordinary modes, by night as well as by day; and if the municipality fails to do so the municipality is liable in damages for injuries sustained in consequence. City of Rome v. Brinkley, 54 Ga. App. 391, 187 S.E. 911, 1936 Ga. App. LEXIS 592 (1936); Mayor of Buford v. Medley, 58 Ga. App. 48, 197 S.E. 494, 1938 Ga. App. LEXIS 183 (1938); McKay v. City of Atlanta, 80 Ga. App. 797, 57 S.E.2d 432, 1950 Ga. App. LEXIS 784 (1950).

Duty to keep sidewalks safe. — Law places upon municipality duty of keeping sidewalks safe for travel in ordinary manner. Bailey v. Wohl Shoe Co., 128 Ga. App. 372, 196 S.E.2d 677, 1973 Ga. App. LEXIS 1483 (1973).

If city has notice of dangerous defect in sidewalk, it is the city's duty to exercise ordinary care in remedying the sidewalk or in placing safeguard about the sidewalk. City of Rome v. Brinkley, 54 Ga. App. 391, 187 S.E. 911, 1936 Ga. App. LEXIS 592 (1936).

Actual notice unnecessary when defect of long duration. — When a defect in a street has existed for such a length of time that the city in the exercise of ordinary diligence ought to have discovered and remedied the defect, actual notice is unnecessary. Mayor of Buford v. Medley, 58 Ga. App. 48, 197 S.E. 494, 1938 Ga. App. LEXIS 183 (1938).

City is liable in damages for injuries sustained by the city's failure to act, and this is true regardless of the cause of the defect, if the city knew or should have known of the defect in time to repair the defect or give warning of the defect's existence. This notice may be presumed if the defect has existed for such length of time that by reasonable diligence in the performance of their duties the proper municipal authorities could have discovered the defect, and in such event proof of actual notice is unnecessary. McKay v. City of Atlanta, 80 Ga. App. 797, 57 S.E.2d 432, 1950 Ga. App. LEXIS 784 (1950).

Even though the defendant city would not be liable for failure to erect signs and a barricade at an intersection (the exercise of a governmental function as charged by the court), nevertheless, it would be liable for defects in the city's streets existing for a sufficient period of time so that in the exercise of ordinary care the municipal corporation should have reasonably become aware of the defect's existence. City of Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909, 1980 Ga. App. LEXIS 2588 (1980).

Adoption by municipality of plan to grade streets a quasi-judicial act. — Adoption by a municipal corporation of a plan for grading the streets and sidewalks of a city is a quasi-judicial act, and if the plan adopted is erroneous, the city cannot be held liable to a private person who is injured thereby. If the execution of this plan — the construction of the pavement — is unskillful or negligent, the city is liable for the construction as a ministerial duty. Rogers v. City of Atlanta, 61 Ga. App. 444, 6 S.E.2d 144, 1939 Ga. App. LEXIS 315 (1939).

Laying out and construction of streets a governmental function. — While it is the duty of a city to keep the city's streets and sidewalks in a safe condition for travel in the ordinary modes, by night as well as by day, the laying out and construction of city streets is a governmental function, and a city will not be liable for an injury upon the theory merely that the city had constructed and was maintaining a dangerous intersection at a place where one street entered at right angles without extending beyond another street. Lundy v. City Council, 51 Ga. App. 655, 181 S.E. 237, 1935 Ga. App. LEXIS 433 (1935).

Governmental immunity not in issue when defect in public road alleged. — When a bus passenger is injured when the passenger's arm, which is propped in an open bus window, is wedged between the bus window frame and a power pole installed by an electric company under a franchise agreement with a city, and the city asserts that the city granted the franchise in exercise of the city's legislative powers for which the city cannot be held liable under O.C.G.A. § 36-33-1, the city's claim of governmental immunity is not the issue; the issue instead is the liability of the city under O.C.G.A. § 32-4-93 for the alleged defect in a public road in the city's municipal street system. Kicklighter v.

Roads and Bridges (Cont'd)

Savannah Transit Auth., 167 Ga. App. 528, 307 S.E.2d 47, 1983 Ga. App. LEXIS 2536 (1983).

Deciding whether to erect traffic control sign or to maintain the sign after installation is an exercise of a governmental function by a municipality and it is not liable for any negligent performance of this function. Christensen v. Floyd County, 158 Ga. App. 274, 279 S.E.2d 723, 1981 Ga. App. LEXIS 2159 (1981).

Operation and maintenance of traffic lights and other traffic control devices is a governmental function conducted on behalf of the public safety and for the negligent performance of which municipal corporations are not liable. Such functions are not related to maintenance of the streets as such, and liability of a municipality for the negligent failure to maintain a stop sign after the sign is once erected cannot be predicated on the theory that it is a part of street maintenance. Arthur v. City of Albany, 98 Ga. App. 746, 106 S.E.2d 347, 1958 Ga. App. LEXIS 673 (1958); Cyr v. Mayor of Savannah, 188 Ga. App. 261, 372 S.E.2d 659, 1988 Ga. App. LEXIS 947 (1988).

Operation of a traffic light conducted on behalf of the public safety is a governmental function for the negligent performance of which the city is not liable. City of Rome v. Potts, 45 Ga. App. 406, 165 S.E. 131, 1932 Ga. App. LEXIS 343 (1932).

Stop sign. — Driver's allegations of negligence against a city for negligent maintenance of a stop sign, which was allegedly obscured by foliage, were subject to summary judgment based on the city's sovereign immunity pursuant to O.C.G.A. § 36-33-1(b). The driver's nuisance claim was barred because the driver failed to show the city's awareness of a problem with the stop sign. Albertson v. City of Jesup, 312 Ga. App. 246, 718 S.E.2d 4, 2011 Ga. App. LEXIS 804 (2011), cert. denied, No. S12C0398, 2012 Ga. LEXIS 245 (Ga. Feb. 27, 2012).

Placement of utility pole near roadway. — City and electrical membership corporation carried the city's and corporation's burden of showing that a driver's own negligence was the sole proximate cause of the driver's collision with a utility pole located more than nine feet from the roadway; therefore, summary judgment for the city and corporation was proper. Kecskes v. City of Mt. Zion, 300 Ga. App. 348, 685 S.E.2d 329, 2009 Ga. App. LEXIS 1131 (2009), cert. dismissed, No. S10C0445, 2010 Ga. LEXIS 353 (Ga. Apr. 19, 2010).

Setting speed limit. — Governing body of municipality, which set the speed limit challenged by an accident victim, could not be held liable for any error in judgment that body may have made in so doing. Reid v. City of Hogansville, 202 Ga. App. 131, 413 S.E.2d 457, 1991 Ga. App. LEXIS 1711, modified, No. A91A0833 (Ga. Ct. App. 1991).

Cleaning of streets and removal of garbage therefrom and from residences abutting on streets and sidewalks are governmental functions in the performance of which the municipality incurs no liability for the acts of the municipality's officers and employees. City of Brunswick v. Volpain, 67 Ga. App. 654, 21 S.E.2d 442, 1942 Ga. App. LEXIS 493 (1942).

Removal of debris from streets. — City is in exercise of governmental function in removing "sweepings" from streets for the reason that such act is conducive to the good health of the community and the public at large. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934).

Operation of toll bridge is ministerial function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934).

Fire hose lying on street part of performance of governmental function. — When city's fire department was engaged in extinguishing a fire when plaintiff motorcyclist was injured by running into a fire hose lying on the street, the employees and agents of the defendant city were engaged in a governmental function to the extent that the defendant is not liable in damages for the fire department's negligent acts. Clay v. City of Rome, 74 Ga. App. 754, 41 S.E.2d 337, 1947 Ga. App. LEXIS 692 (1947).

Inconsistent charter provision of no use as defense. — Insofar as charter provisions relieved a city from liability for

negligence in the maintenance of the city's streets, such provision was inconsistent with general law of force and effect in the state, and the inhibition contained in the state Constitution against the passage of special laws in conflict with existing general law precluded raising of such charter provisions as a defense to personal injury action against the city. City of Macon v. Harrison, 98 Ga. App. 769, 106 S.E.2d 833, 1958 Ga. App. LEXIS 680 (1958).

Relief of abutting property owner from liability. — Placing of responsibility upon municipalities relieves an abutting property owner of liability unless the owner caused or actively participated in causing the obstruction or defect in the street or sidewalk. Reed v. Batson-Cook Co., 122 Ga. App. 803, 178 S.E.2d 728, 1970 Ga. App. LEXIS 1042 (1970).

Tree limb crashing on pedestrian. — City was not entitled to summary judgment on the pedestrian's claims for injuries suffered when a tree limb crashed on the pedestrian as the pedestrian walked on a city street because maintenance of the streets was a ministerial duty, O.C.G.A. § 36-33-1(b), required by O.C.G.A. § 32-4-93(a), and there was evidence that the tree was visibly decayed or dying. City of Fitzgerald v. Caruthers, 332 Ga. App. 731, 774 S.E.2d 777, 2015 Ga. App. LEXIS 391 (2015).

City could be liable for dock collapse, but had no notice of any defect. — Although a city could be liable under O.C.G.A. § 32-4-93(a) for failure to maintain a dock that collapsed, injuring the plaintiffs, because the dock fell within the definition of "public road" in O.C.G.A. § 32-1-3, there was no evidence that the city had notice of any defect in the dock, and the plaintiffs' expert affidavit did not identify any defect. Therefore, the city was properly granted summary judgment on immunity grounds. Chatham Area Transit Auth. v. Brantley, 353 Ga. App. 197, 834 S.E.2d 593, 2019 Ga. App. LEXIS 675 (2019).

Defect is question for jury. — Whether a defect or hole in a city street was such as to give a right of action to a person injured thereby is ordinarily a question for the jury, since it is a complicated question of fact involving the depth of the hole or defect, the hole's appearance to travelers on the street, and the danger which might have been anticipated and guarded against by the city in the exercise of reasonable forethought. Mayor of Buford v. Medley, 58 Ga. App. 48, 197 S.E. 494, 1938 Ga. App. LEXIS 183 (1938).

Whether by the existence of a defect in a street or sidewalk such street or sidewalk was not in a reasonably safe condition, and whether the city knew or ought to have known of the defect in time to repair the defect, or give warning of the defect's existence, are ordinarily questions for determination by a jury. McKay v. City of Atlanta, 80 Ga. App. 797, 57 S.E.2d 432, 1950 Ga. App. LEXIS 784 (1950).

Sewers

Collection and disposition of sewerage is a governmental function, and there is accordingly no cause of action for the improper erection and maintenance of a sewer on the theory of negligence alone, because damage resulting from the exercise of a governmental function in a negligent manner would constitute damnum absque injuria. Ingram v. City of Acworth, 90 Ga. App. 719, 84 S.E.2d 99, 1954 Ga. App. LEXIS 794 (1954).

Sewers as governmental function. — Duties of municipal authorities in adopting a general plan of drainage, and in determining when, where, and of what size, and at what level drains or sewers shall be built, are of a quasi-judicial nature, involving the exercise of deliberate judgment and wide discretion; and the municipality is not liable for an error of judgment on the part of the authorities in locating or planning such improvements. City of Atlanta v. Trussell, 21 Ga. App. 340, 94 S.E. 649, 1917 Ga. App. LEXIS 591 (1917); Harrison Co. v. City of Atlanta, 26 Ga. App. 727, 107 S.E. 83, 1921 Ga. App. LEXIS 616 (1921); Rogers v. City of Atlanta, 61 Ga. App. 444, 6 S.E.2d 144, 1939 Ga. App. LEXIS 315 (1939).

Construction, installation, and maintenance of a sewer-drainage system (includ-

Sewers (Cont'd)

ing that for surface water) is a governmental function. Foster v. Crowder, 117 Ga. App. 568, 161 S.E.2d 364, 1968 Ga. App. LEXIS 1141 (1968); Turk v. City of Rome, 133 Ga. App. 886, 212 S.E.2d 459, 1975 Ga. App. LEXIS 2323, aff'd, 235 Ga. 223, 219 S.E.2d 97, 1975 Ga. LEXIS 835 (1975); Pair Dev. Co. v. City of Atlanta, 144 Ga. App. 239, 240 S.E.2d 897, 1977 Ga. App. LEXIS 2655 (1977); City of E. Point v. Terhune, 144 Ga. App. 865, 242 S.E.2d 728, 1978 Ga. App. LEXIS 1825 (1978).

Construction and maintenance of sewers is a ministerial duty. Mayor of Savannah v. Spears, 66 Ga. 304, 1881 Ga. LEXIS 11 (1881); Smith v. City of Atlanta, 75 Ga. 110, 1885 Ga. LEXIS 78 (1885); City of Atlanta v. Trussell, 21 Ga. App. 340, 94 S.E. 649, 1917 Ga. App. LEXIS 591 (1917).

Nuisance theory liability. — Power to construct a system of sewers and drains does not authorize the municipal corporation to create a nuisance. In such a case the city cannot escape liability on the ground that the city is engaged in the performance of a governmental function. Cannon v. City of Macon, 81 Ga. App. 310, 58 S.E.2d 563, 1950 Ga. App. LEXIS 887 (1950); Ingram v. City of Acworth, 90 Ga. App. 719, 84 S.E.2d 99, 1954 Ga. App. LEXIS 794 (1954).

Even though the construction, installation, and maintenance of a sewer-drainage system, including that for surface water, is a governmental function, a municipal corporation can nevertheless be held liable with respect to these activities on the theory of nuisance and on the theory of taking or damaging for public purposes without just and adequate compensation being first paid. Turk v. City of Rome, 133 Ga. App. 886, 212 S.E.2d 459, 1975 Ga. App. LEXIS 2323, aff'd, 235 Ga. 223, 219 S.E.2d 97, 1975 Ga. LEXIS 835 (1975).

Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721, 2013 Ga. App. LEXIS 543 (2013).

Sufficiency of petition. — When the gist of the action was negligence and not nuisance, and the only act of negligence alleged in the petition was that the opening in the sewerage system of the city was too small, and the petition did not allege any negligent construction or negligent failure to keep in repair or maintain the sewer or the sewer's inlet, or negligence in allowing the sewer to become obstructed, this was merely alleging an error in the planning of a drainage system and that this act caused the injury. No actionable negligence was alleged, and the municipality was not liable for the judgment on the part of the authorities in locating or planning a general plan of drainage sewers for the city. Rogers v. City of Atlanta, 61 Ga. App. 444, 6 S.E.2d 144, 1939 Ga. App. LEXIS 315 (1939).

Transportation

Airport as park. — Airport of the City of Savannah, under the statutes (both local and general) authorizing the airport's establishment and maintenance, was a governmental institution in the nature of a "park," and the city was not liable in damages to a party sustaining personal injuries by reason of a dangerous defect in the pavement of a roadway inside the "park," notwithstanding receipt by the city of some incidental revenue from lessees or licensees of certain privileges therein, it not appearing that the airport was operated primarily as a source of revenue. Mayor of Savannah v. Lyons, 54 Ga. App. 661, 189 S.E. 63, 1936 Ga. App. LEXIS 723 (1936).

Operation of a municipal airport when portions are leased for "substantial revenue" is a ministerial or proprietary function of the city. Hence, a municipality is not immune from liability resulting from the municipality's negligence in the maintenance and operation thereof. Caroway v. City of Atlanta, 85 Ga. App. 792, 70 S.E.2d 126, 1952 Ga. App. LEXIS 831 (1952); Taylor v. King, 104 Ga.

App. 589, 122 S.E.2d 265, 1961 Ga. App. LEXIS 744 (1961) (For comment on Caroway v. City of Atlanta, see 5 Ga. St. B. J. 474 (1969)).

Use of motor vehicles. — Governmental immunity from liability extends to the use of motor vehicles in connection with the performance or accomplishment of the governmental function. Foster v. Crowder, 117 Ga. App. 568, 161 S.E.2d 364, 1968 Ga. App. LEXIS 1141 (1968).

Bus system. — In operating a system of buses for the transportation of passengers for hire, a city functions in a corporate, as distinguished from a governmental capacity, and may be held liable for injuries sustained through the negligent operation of a bus. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872, 1974 Ga. App. LEXIS 1196 (1974).

City is liable as a common carrier with respect to passengers, and is required to exercise a high degree of care for passenger safety, not only while being transported, but also when entering the vehicle, or alighting therefrom. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872, 1974 Ga. App. LEXIS 1196 (1974).

Need to prove negligence caused injury to passengers. — Recovery against the city will be denied if the evidence is insufficient to prove negligence on the part of a bus driver. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872, 1974 Ga. App. LEXIS 1196 (1974).

Municipality is not an insurer of the safety of the municipality's passengers, and ordinarily is not liable for damages resulting from sudden stops, or jerks or jolts of the vehicle, nor for unusual conditions on streets or sidewalks, unless municipal negligence is established. As to persons other than passengers, such as pedestrians, or motorists, ordinary care is required in the operation of buses. Columbus v. Hadley, 130 Ga. App. 599, 203 S.E.2d 872, 1974 Ga. App. LEXIS 1196 (1974).

Liability to police officer for defective motorcycle. — Defendant municipality is not liable for the negligence of the municipality's chief of police in failing to furnish a police officer with a good motorcycle since at the time of the injury the municipality was in the exercise of a governmental function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934).

Other Duties

Preservation of public health is a governmental function and involves the removal of those causes which are calculated to produce disease. Mitchell v. City of St. Marys, 155 Ga. App. 642, 271 S.E.2d 895, 1980 Ga. App. LEXIS 2716 (1980).

Violation by city of own ordinance. — Court did not err in charging that the violation by a city of the city's own ordinance calling for safety shut-off devices on gas appliances would constitute negligence per se since the city was engaged in supplying gas and had undertaken to convert customers' appliances to the use of propane. City of Albany v. Burt, 88 Ga. App. 144, 76 S.E.2d 413, 1953 Ga. App. LEXIS 1033 (1953).

Wall abutting on or nearby a public street may be torn down by the municipality if the wall is dangerous to the public, but if this be done summarily, it is at the peril of the city. If the wall is not in fact dangerous, the city will be liable. McWilliams v. City of Rome, 142 Ga. 848, 83 S.E. 945, 1914 Ga. LEXIS 571 (1914).

Collection and transportation of garbage by a city employee is a governmental function. Boone v. City of Columbus, 87 Ga. App. 701, 75 S.E.2d 338, 1953 Ga. App. LEXIS 832 (1953).

Removal of garbage from residences, the transportation thereof to a point of disposal and the disposal, when performed by a municipality, or an agency thereof, is a governmental function in the performance of which a city incurs no liability for the negligent acts of the city's officers and employees. Ethridge v. City of Lavonia, 101 Ga. App. 190, 112 S.E.2d 822, 1960 Ga. App. LEXIS 822 (1960) (For comment, see 23 Ga. B. J. 129 (1960)).

Generally, removal of garbage and trash and other health and sanitation measures protecting the health and welfare of the public are considered governmental functions, but cleaning up the street in a

Other Duties (Cont'd)

"cleanup campaign" might include both health and sanitation, as well as maintaining streets and sidewalks to keep the streets and sidewalks safe for travel, which is a ministerial function. City of Atlanta v. Whatley, 161 Ga. App. 705, 289 S.E.2d 541, 1982 Ga. App. LEXIS 1985 (1982).

When city admitted that the city was remunerated for sanitation and trash pick-up and could have used a portion of the revenues derived from such a source to finance in part other city operations, the pick-up activity may have become a quasi-public business, a ministerial function, by becoming a "source of revenue" instead of "a purely incidental profit." City of Atlanta v. Whatley, 161 Ga. App. 705, 289 S.E.2d 541, 1982 Ga. App. LEXIS 1985 (1982).

Garbage as nuisance. — Although municipal authorities may have plenary power in the matter of collection, removal, and disposition of garbage, yet the municipal authorities cannot lawfully create, in connection therewith, a nuisance dangerous to health or life; and when such a nuisance is created, and the effect is specially injurious to an individual by reason of the nuisance's proximity to an individual's home, the individual has a cause of action for damages. City of Atlanta v. Due, 42 Ga. App. 797, 157 S.E. 256, 1931 Ga. App. LEXIS 143 (1931).

Housing authority created under statutory authorization was business enterprise, and hence municipality was liable in tort to tenant. Knowles v. Housing Auth., 212 Ga. 729, 95 S.E.2d 659, 1956 Ga. LEXIS 510 (1956), overruled in part as stated in Pass v. Athens Housing Authority, 368 Ga. App. 445, 890 S.E.2d 342, 2023 Ga. App. LEXIS 331 (2023), overruled in part as stated in Files v. Hous. Auth. of City of Douglas, 368 Ga. App. 455, 890 S.E.2d 356, 2023 Ga. App. LEXIS 326 (2023), overruled in part as stated in Guy v. Hous. Auth. of Augusta, No. S24G1346, 2025 Ga. LEXIS 141 (Ga. June 24, 2025) (For comment, see 20 Ga. B. J. 258 (1957)).

Premises liability for housing authority. — Trial court did not err by granting the Housing Authority of the City of Augusta, Georgia (Authority), summary judgment in a premises liability action filed by a resident of a low-income housing unit operated by the Authority because the Authority was entitled to sovereign immunity. Because the Authority was performing an essential public and governmental function on behalf of the city in its operation and management of low-income housing, the Autority was acting as an instrumentality of the city. Guy v. Housing Auth. of Augusta, 372 Ga. App. 325, 904 S.E.2d 375, 2024 Ga. App. LEXIS 296 (2024), vacated, No. S24G1346, 2025 Ga. LEXIS 141 (Ga. June 24, 2025).

Wrongful refusal of bail. — City was not liable in damages because mayor, as judge of city's court for the trial of ordinance violations, wrongfully refused to allow bail to an alleged offender, and wrongfully directed a police officer to commit the offender to jail, where the offender was imprisoned until released by a habeas corpus proceeding, nor did the appearance of the mayor or an attorney for the municipality in resistance of the habeas corpus constitute a ratification by the municipality of these alleged illegal acts by the municipality's officers so as to render the municipality liable therefore. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78, 1935 Ga. App. LEXIS 113 (1935).

City cemetery. — When none but those who pay for easements in city-owned cemetery are permitted to use the cemetery as such (that is, those who buy lots therein), the sphere of the cemetery's operation is so contracted as to exclude the general public from the use of the cemetery for cemetery purposes, and thus, even if a few paupers are buried there without paying therefor, the city is engaged in the performance of a ministerial function and not a governmental function, and is liable for negligence in connection therewith. City of Atlanta v. Rich, 64 Ga. App. 193, 12 S.E.2d 436, 1940 Ga. App. LEXIS 155 (1940).

Wastepaper box. — Maintenance by a municipality of a large wastepaper wooden box as a receptacle for trash and

wastepaper and the removal of the box's contents is an act by a municipality in the performance of the municipality's governmental functions. Mayor of Savannah v. Jones, 149 Ga. 139, 99 S.E. 294, 1919 Ga. LEXIS 164 (1919).

Uninsulated live wire. — In suit by telephone cable repairer, against telephone company and city, for injuries sustained by coming into contact with uninsulated live wire of city, strung in close proximity to pole of defendant telephone company, while repairing cable on that pole, the petition set out no cause of action where it appeared that the plaintiff could have avoided injury by the exercise of ordinary care. Elder v. City of Quitman, 56 Ga. App. 460, 193 S.E. 82, 1937 Ga. App. LEXIS 128 (1937).

Manufacture and installation of sanitary toilets by a municipality for the municipality's citizens is an act tending to promote the health and general welfare of the municipality's citizens, and is in its nature a governmental function. Watkins v. City of Toccoa, 55 Ga. App. 8, 189 S.E. 270, 1936 Ga. App. LEXIS 418 (1936).

When an airport security officer employed by the city had the powers of a police officer and fire fighter and was involved in an automobile accident while performing those duties, the city is immune from liability. City of Macon v. Powell, 133 Ga. App. 907, 213 S.E.2d 63, 1975 Ga. App. LEXIS 2330 (1975).

Fire department. — Operation and maintenance of fire departments and apparatus therein is a governmental function of the municipality and, therefore, the municipality is not liable for negligence of the municipality's officers or agents incident to such function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934); Banks v. City of Albany, 83 Ga. App. 640, 64 S.E.2d 93, 1951 Ga. App. LEXIS 927 (1951).

Injuries to fire fighter. — When a municipal corporation maintains a firehouse and on the second floor of the building maintains sleeping quarters for attending fire fighters, and when the municipality maintains in the building a pole extending from the fire fighter's quarters to the first floor which is used in responding to fire alarms, the municipality is engaged in the exercise of a governmental power in maintaining such pole and the floor on which the pole rests, and is not liable in damages to a fire fighter for injuries while using the pole for the purpose for which the pole was intended, on account of negligence in the maintenance of the pole and floor. Miller v. City of Macon, 152 Ga. 648, 110 S.E. 873, 1920 Ga. LEXIS 1 (1920).

Fact that a police officer was patrolling property operated by the municipality for private gain and profit would not affect the character of the police officer's act and the consequent liability of the city. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934).

Municipality not liable for negligence of leader of work gang when prisoner injured as a result. City of Atlanta v. Hurley, 83 Ga. App. 879, 65 S.E.2d 44, 1951 Ga. App. LEXIS 987 (1951), cert. denied, 343 U.S. 917, 72 S. Ct. 650, 96 L. Ed. 1331, 1952 U.S. LEXIS 2279 (1952) (For comment, see 3 Mercer L. Rev. 218 (1951) and 14 Ga. B. J. 80 (1951)).

Erection and maintenance of a city prison by a municipal corporation is a governmental function. Brannan v. City of Brunswick, 49 Ga. App. 62, 174 S.E. 186, 1934 Ga. App. LEXIS 259 (1934).

In erecting and maintaining a city prison for a police station, a municipal corporation is exercising a purely governmental function and is, therefore, not liable in damages to a person arrested and imprisoned therein by the municipality's police officers for injuries sustained by the person while so confined by reason of the improper construction or negligent maintenance of such prison or station. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, 1992 Ga. App. LEXIS 939 (1992), cert. denied, No. S92C1268, 1992 Ga. LEXIS 728 (Ga. Sept. 11, 1992).

Maintenance of a jail by a municipality is a governmental function, and the municipality is not liable for injury to a prisoner resulting entirely from the negligent maintenance and keeping of the prison. Archer v. City of Austell, 68 Ga. App. 493, 23 S.E.2d 512, 1942 Ga. App. LEXIS 156 (1942).

Other Duties (Cont'd)

Jail conditions. — Because a city was immune from suit in performing the governmental function of maintaining the city jail, it could not be concluded as a matter of law, in a federal civil rights action against the city and the city's police officers, alleging that the physical conditions in the jail deprived the defendant of due process, that "adequate state remedies" existed. Lambert v. McFarland, 612 F. Supp. 1252, 1984 U.S. Dist. LEXIS 22707 (N.D. Ga. 1984).

Operation of a system of waterworks is not such a governmental function that a city is not liable for injuries resulting through negligence in the maintenance thereof. Huey v. City of Atlanta, 8 Ga. App. 597, 70 S.E. 71, 1911 Ga. App. LEXIS 72 (1911).

City maintenance of drainage culverts. — In a father's suit alleging that a city was negligent in maintenance of a drainage culvert in which the father's son drowned, the father's argument that the city waived the city's sovereign immunity under O.C.G.A. § 36-33-1(a) was treated as abandoned on the city's motion for summary judgment because the father did not address the city's sovereign immunity claim in the brief in opposition to the motion. Walden v. City of Hawkinsville, No. 5:03-CV-0398, 2005 U.S. Dist. LEXIS 21694 (M.D. Ga. Sept. 21, 2005).

City immune for operation of a fountain. — City was entitled to sovereign immunity under O.C.G.A. § 32-4-93 in a pedestrian's claim against the city for negligent maintenance of a fountain, which the pedestrian argued resulted in ice forming on a sidewalk where the pedestrian slipped and fell. The pedestrian failed to point to specific evidence of the city's actual or constructive notice of any defect in the fountain. Naraine v. City of Atlanta, 306 Ga. App. 561, 703 S.E.2d 31, 2010 Ga. App. LEXIS 988 (2010).

Operation of parking meters on the streets of a municipality with charter powers sufficiently broad to invest it with the general supervision and control over its street is a governmental function. Stubbs v. City of Macon, 78 Ga. App. 237, 50 S.E.2d 866, 1948 Ga. App. LEXIS 717 (1948).

Operation of electric power plant a ministerial function. — Under O.C.G.A. § 36-33-1, a municipal corporation is liable for improper performance of the municipality's ministerial duties, but not for errors in exercising the municipality's judicial or governmental powers, and the operation of an electric power plant for profit is a ministerial function. City of Douglas v. Johnson, 157 Ga. App. 618, 278 S.E.2d 160, 1981 Ga. App. LEXIS 1938 (1981).

Licensing power. — When a municipal or other governmental body grants a license it is an adjudication that the applicant has satisfactorily complied with the prescribed standards for the award of that license. Similarly the denial of a license is based on an adjudication that the applicant has not satisfied those qualifications and requirements. On the other hand, the prescription of standards which must be met to obtain a license is legislation, since these standards are authoritative guides for future conduct derived from an assessment of the needs of the community. A governmental agency entrusted with the licensing power, therefore, functions as a legislature when the agency prescribes these standards, but the same agency acts as a judicial body when the agency makes a determination that a specific applicant has or has not satisfied the requirements. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389, 1972 U.S. Dist. LEXIS 15272 (M.D. Ga. 1972), aff'd, 482 F.2d 280, 1973 U.S. App. LEXIS 8695 (5th Cir. 1973).

Requirements of due process applicable to licensing power. — Since licensing consists in the determination of factual issues and the application of legal criteria to the licensing — a judicial act — the fundamental requirements of due process are applicable to it. 106 Forsyth Corp. v. Bishop, 362 F. Supp. 1389, 1972 U.S. Dist. LEXIS 15272 (M.D. Ga. 1972), aff'd, 482 F.2d 280, 1973 U.S. App. LEXIS 8695 (5th Cir. 1973).

City immune for clerk's action of issuing a business license. — Suit by parents against a city alleging that the

city negligently issued a day care business license to a day care, which left their child in a hot car, resulting in the child's death, was barred by sovereign immunity because the issuance of a license was a government function. Calloway v. City of Warner Robins, 336 Ga. App. 714, 783 S.E.2d 175, 2016 Ga. App. LEXIS 154 (2016).

Waiver in 1983 pursuant to state constitution. — Despite the language limiting O.C.G.A. § 36-33-1(a)'s effect to litigation pending after July 1, 1986, a municipality's defense of sovereign immunity is automatically waived to the extent of any applicable general liability insurance coverage carried by the municipality for actions filed as of the effective date in 1983 of Ga. Const., 1983, Art. I, Sec. II, Para. IX. Brockman v. Burnette, 184 Ga. App. 66, 360 S.E.2d 655, 1987 Ga. App. LEXIS 2145 (1987).

When plaintiff failed to furnish an insurance policy which was allegedly purchased by the city, it could not have been determined whether the policy covered an occurrence for which the defense of sovereign immunity was available, and whether the city waived the city's immunity for any tort which may have been committed by one of the city's officers. Hancock v. Hobbs, 967 F.2d 462, 1992 U.S. App. LEXIS 15966 (11th Cir. 1992), overruled in part as stated in, Hope for Families & Cmty. Serv. v. Warren, No. 3:06-CV-1113-WKW, 2009 U.S. Dist. LEXIS 154762 (M.D. Ala. Feb. 4, 2009).

Indemnification agreement with railroad. — When the city entered into agreements with the railroad to utilize a right-of-way for water and sewer lines, and an accident later subjected the railroad to damages, and claims by third parties, because nothing in O.C.G.A. § 36-33-1 could be construed to permit a municipality to waive its sovereign immunity by contracting to indemnify a third party, the indemnification agreement between the city and the railroad was void as an ultra vires contract. Under O.C.G.A. § 36-33-1(a), it was the purchase of insurance that effectuated the waiver of sovereign immunity; thus, it was irrelevant that the invalid indemnification agreement covered occurrences to which sovereign immunity both did and did not apply. CSX Transp., Inc. v. City of Garden City, 277 Ga. 248, 588 S.E.2d 688, 2003 Ga. LEXIS 895 (2003).

Unpublished decision: In an action by a rail corporation for indemnification resulting from a collision between a train and a truck operated by a city's construction contractor, the rail corporation could not use an insurance provision in a contract with the city permitting use of the railroad's right-of-way to bootstrap an unpleaded tort claim when, under O.C.G.A. § 36-33-1, the city had waived the city's sovereign immunity to the extent that the city had purchased liability insurance so that the indemnification provision had no effect and the railroads had abandoned the railroad's contract claim. CSX Transp., Inc. v. City of Garden City, 258 Fed. Appx. 287, 2007 U.S. App. LEXIS 28793 (11th Cir. 2007).

Indemnification contracts. — City was entitled to summary judgment on plaintiffs' contract claim against the city since the indemnification contract between the city and the plaintiffs was ultra vires. CSX Transp., Inc. v. City of Garden City, 196 F. Supp. 2d 1288, 2002 U.S. Dist. LEXIS 6106 (S.D. Ga. 2002).

Surety sued a city after the cash bond the surety posted was forfeited. As the traffic court was operating in the court's judicial capacity when the court ordered the forfeiture of the bond, the court's actions were immune from liability under O.C.G.A. § 36-33-1(b). Watts v. City of Dillard, 294 Ga. App. 861, 670 S.E.2d 442, 2008 Ga. App. LEXIS 1166 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Generally, counties have a broader immunity from suits than do municipalities. 1975 Op. Att'y Gen. No. 75-32.

Keeping of prisoners by a city is ordinarily a governmental function, and for simple negligence in such a function a city is not liable. 1973 Op. Att'y Gen. No. U73-25.

Municipality's potential liability for acts of a probationer working on a community service project will have to be determined from the facts in each case, which will show whether the injury is the result of a nuisance as defined in former Code 1933, § 72-101 (see now O.C.G.A. § 41-1-1), or negligence as stated in former Code 1933, § 69-301 (see now O.C.G.A. § 36-33-1). 1975 Op. Att'y Gen. No. 75-32.

School athletic activities. — Local school district is not liable in tort under the law of Georgia for injuries sustained by a pupil engaged in school athletic activities. 1957 Ga. Op. Att'y Gen. 100.

Board not liable for accident while transporting pupil to athletic event. — Use of a school bus for transporting a school band and school pupils of an independent school system to athletic contests participated in by the schools of the district would be a governmental operation and a city board of education is not liable for an injury received by a pupil in a school bus accident. 1945-47 Ga. Op. Att'y Gen. 220.

RESEARCH REFERENCES

C.J.S.

63 C.J.S., Municipal Corporations, § 871.

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Suit against railroad owned by or in which interest is held by United States or state, 8 A.L.R. 995.

Liability of town or municipality for libel or slander, 9 A.L.R. 351.

Liability of water or power company for interruption of pressure during progress of fire, 27 A.L.R. 1273.

Statutory requirement of adequate service and facilities by public utility as affecting liability for loss of private property through inadequate supply of water to extinguish fire, 27 A.L.R. 1279.

Liability of municipal corporation for tort of officer or employee of water department, 28 A.L.R. 822; 54 A.L.R. 1497.

Liability of municipal corporations for injuries due to conditions in parks, 29 A.L.R. 863; 42 A.L.R. 263; 99 A.L.R. 686; 142 A.L.R. 1340.

Commission and other modern forms of municipal government as affecting liability of municipality for torts, 30 A.L.R. 473.

Liability of municipality for tort in construction or operation of municipally owned railroad or street railway, 31 A.L.R. 1306.

Liability in respect of taxes derived from territory improperly annexed to municipal or political division, 35 A.L.R. 477.

Validity of contract exempting municipality from liability for negligence, 41 A.L.R. 1358.

Liability of municipality as affected by license issued by municipal officer, 42 A.L.R. 1208.

Liability of municipality for damages or compensation for abating as a nuisance what is not in fact such, 46 A.L.R. 362.

Liability of municipality in respect of municipal bathhouses, bathing beaches, and swimming pools, 51 A.L.R. 370; 57 A.L.R. 406.

Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from the property benefited, 51 A.L.R. 973; 172 A.L.R. 1030.

Liability of municipal corporations and their licensees for the torts of independent contractors, 52 A.L.R. 1012.

Liability of municipality in damages for wrongful revocation of permit or license, 55 A.L.R. 434.

Rule of municipal immunity from liability for torts pertaining to governmental functions as affected by constitutional guaranty of remedy for all injuries and wrongs, 57 A.L.R. 419.

Rule of municipal immunity from liability for torts pertaining to exercise of governmental functions as available to municipal lessee or concessioner, 57 A.L.R. 560.

Liability of county or municipality for tortious injury in or about building which is used for both governmental and proprietary functions, 64 A.L.R. 1545.

Liability of municipality where sewer originally of ample size has become inad-

equate by growth or development of territory, 70 A.L.R. 1347.

Liability of municipality for injury due to defective catch-basin covers, and the like, maintained in street in connection with drainage or sewer system, 71 A.L.R. 753.

Res ipsa loquitur as applicable in action against municipality for injuries from dangerous condition in parks, streets, or highways, 74 A.L.R. 1226.

Rule of municipal immunity from liability for acts in performance of governmental functions as applicable in case of personal injury or death as result of a nuisance, 75 A.L.R. 1196; 56 A.L.R.2d 1415.

Fire department as pertaining to the governmental or the proprietary branch of municipality, 84 A.L.R. 514.

Constitutionality or validity of statute or ordinance requiring a bond to discharge liability for damage as a condition of use of, or operations on, real property, 86 A.L.R. 803.

Applicability to federal courts of state constitutional or statutory provisions regarding liability of county or other political subdivision to suit, 86 A.L.R. 1019.

Power of legislature to impose, or municipality to assume, liability for acts of officials or employees pertaining to governmental functions, 89 A.L.R. 394.

Right to and remedy in respect of damages due to negligent or delayed prosecution of condemnation proceedings, 92 A.L.R. 379.

Liability of municipality for injury by or incident to fireworks display, 93 A.L.R. 1356.

Liability of municipal corporation for its own misfeasance or nonfeasance, as distinguished from misfeasance or nonfeasance of officer or employee, 102 A.L.R. 656.

Power of city, town, or county or its officials to compromise claim, 105 A.L.R. 170; 15 A.L.R.2d 1359.

Liability of municipality because of misappropriation, diversion, or withholding of funds collected by or paid to it on account of special assessment against property for improvements, 107 A.L.R. 1354.

When statute of limitation commences to run against an action based on breach of duty by recording officer, 110 A.L.R. 1067.

Use of municipal automobile as a corporate or as a governmental function, 110 A.L.R. 1117; 156 A.L.R. 714.

Liability of municipality for damage to person or property due to hydrant, 113 A.L.R. 661.

Municipal corporation or other governmental unit as within term "corporation," "person," or other term employed in death statute descriptive of parties against whom the action may be maintained, 115 A.L.R. 1287.

Liability of public officer in respect of public money paid out in reliance upon unconstitutional statute, 118 A.L.R. 787.

Liability of municipality for enforcement of an unconstitutional or void ordinance, 118 A.L.R. 1054.

Municipal immunity from liability for torts, 120 A.L.R. 1376; 60 A.L.R.2d 1198.

Constitutionality of statute which relieves municipality from liability for torts, 124 A.L.R. 350.

Lease by municipality of property intended for use and benefit of public as affecting its duty and responsibility in respect of the manner and conditions of operation and maintenance of the property by the lessee, 129 A.L.R. 1163.

Tort liability of municipality or other governmental subdivision in connection with poor relief activities, 134 A.L.R. 762.

Liability for injury to person or damage to property as result of "blackout," 136 A.L.R. 1327; 147 A.L.R. 1442; 148 A.L.R. 1401; 150 A.L.R. 1448; 153 A.L.R. 1433; 154 A.L.R. 1459; 155 A.L.R. 1458; 158 A.L.R. 1463.

Immunity of municipality from liability for torts in exercise of governmental functions as applicable to torts outside municipal limits, 140 A.L.R. 1058.

Collection and disposal of garbage and rubbish as governmental or private function as regards municipal immunity from liability for tort, 156 A.L.R. 714.

Abrogation of state's immunity from liability or suit as affecting immunity of municipality or other governmental unit, 161 A.L.R. 367.

Remedy available against invalid judgment in favor of United States, state, or other governmental unit immune to suit, 163 A.L.R. 244.

Liability of municipality for fire loss due to its failure to provide or maintain adequate water supply or pressure, 163 A.L.R. 348.

Municipal liability for injury to voter in consequence of condition of polling place, 164 A.L.R. 472.

Effect of statute permitting state to be sued upon the question of its liability for negligence or tort, 169 A.L.R. 105.

Liability of municipal corporation for damage to property resulting from inadequacy of drains and sewers due to defects in plan, 173 A.L.R. 1031.

Tortious breach of contract as within consent to suit against United States or state on contract, 1 A.L.R.2d 864.

Liability of municipality or other governmental subdivision in connection with flood-protection measures, 5 A.L.R.2d 57.

Municipality's duty and liability with respect to excavation made by abutting owner to connect his property with service mains in street, 13 A.L.R.2d 922.

Liability of municipality for damage caused by fall of tree or limb, 14 A.L.R.2d 186.

Liability of municipality for injury or damage from explosion or burning of substance stored by third person under municipal permit, 17 A.L.R.2d 683.

Recovery of interest on claim against a governmental unit in absence of provision in contract or express statutory provision, 24 A.L.R.2d 928.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital, 25 A.L.R.2d 203; 18 A.L.R.4th 858.

Tort liability of governmental unit for injury or damage resulting from insecticide and vermin eradication operations, 25 A.L.R.2d 1057.

Operation of garage for maintenance and repair of municipal vehicles as governmental function, 26 A.L.R.2d 944.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like, 34 A.L.R.2d 1210.

Liability of municipality in damages for its refusal to grant permit, license, or franchise, 37 A.L.R.2d 694.

State's immunity from tort liability as dependent on governmental or proprietary nature of function, 40 A.L.R.2d 927.

Maintenance of auditorium, community recreational center building, or the like, by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

Liability of municipality for injuries resulting from fall or slipping on debris or litter on outdoor stairway, 47 A.L.R.2d 1086.

Death action against municipal corporation as subject to statute of limitations governing wrongful death actions or that governing actions against a municipality for injury to person or property, 53 A.L.R.2d 1068.

Municipal operation of bathing beach or swimming pool as governmental or proprietary function, for purposes of tort liability, 55 A.L.R.2d 1434.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability, 57 A.L.R.2d 1336.

Municipality's liability for damage resulting from obstruction or clogging of drains or sewers, 59 A.L.R.2d 281.

Municipality's liability arising from negligence or other wrongful act in carrying out construction or repair of sewers and drains, 61 A.L.R.2d 874.

Suability, and liability, for torts, of public housing authority, 61 A.L.R.2d 1246.

Liability of municipality for torts in connection with airport, 66 A.L.R.2d 634.

Civil liability of school officials for malicious prosecution, 66 A.L.R.2d 749.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability, 68 A.L.R.2d 1437.

Waiver of, or estoppel to rely upon, contractual limitation of time for bringing action against municipality or other political subdivision, 81 A.L.R.2d 1039.

Liability of municipality for injuries resulting from falling or slipping on defective outdoor stairway or steps, 92 A.L.R.2d 469.

Snow removal operations as within doctrine of governmental immunity from tort liability, 92 A.L.R.2d 796.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability, 9 A.L.R.3d 382.

Modern status of doctrine of sovereign immunity as applied to public schools and

institutions of higher learning, 33 A.L.R.3d 703.

Liability of municipality on quasi contract for value of property or work furnished without compliance with bidding requirements, 33 A.L.R.3d 1164.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events, 35 A.L.R.3d 725.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork, and manual or vocational training, 35 A.L.R.3d 758.

Liability of prison authorities for injury to prisoner directly caused by assault by other prisoner, 41 A.L.R.3d 1021.

Liability of municipality or other governmental unit for failure to provide police protection, 46 A.L.R.3d 1084.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 55 A.L.R.3d 930.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding, 62 A.L.R.3d 514.

Municipal corporation's safety rules or regulations as admissible in evidence in action by private party against municipal corporation or its officers or employees for negligent operation of vehicle, 82 A.L.R.3d 1285.

State or municipal liability for invasion of privacy, 87 A.L.R.3d 145.

Governmental tort liability for social service agency's negligence in placement, or supervision after placement, of children, 90 A.L.R.3d 1214.

Governmental liability from operation of zoo, 92 A.L.R.3d 832.

Recovery of exemplary or punitive damages from municipal corporation, 1 A.L.R.4th 448.

Liability of governmental unit or its officers for injury to innocent occupant of moving vehicle, or for damage to such vehicle, as result of police chase, 4 A.L.R.4th 865.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity, 7 A.L.R.4th 1129.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody, 12 A.L.R.4th 722.

Liability for wrongful autopsy, 18 A.L.R.4th 858.

Liability of governmental entity to builder or developer for negligent issuance of building permit subsequently suspended or revoked, 41 A.L.R.4th 99.

Right of insured, precluded from recovering against owner or operator of uninsured motor vehicle because of governmental immunity, to recover uninsured motorist benefits, 55 A.L.R.4th 806.

Municipal liability for negligent performance of building inspector's duties, 24 A.L.R.5th 200.

Liability of school or school personnel for injury to student resulting from cheerleader activities, 25 A.L.R.5th 784.

Waiver of Liability for Personal Injury or Death in Cases Involving Interscholastic, Intramural Sports or Curricular Activities of Public and Private Schools and Institutions of Higher Learning, 89 A.L.R.7th 6.

What Constitutes Custom or Policy in Determining Local Government Liability Under 42 U.S.C.A. § 1983, 84 A.L.R. Fed. 3d Art. 1.

36-33-2. Liability for failure to perform discretionary act.

Where municipal corporations are not required by statute to perform an act, they may not be held liable for exercising their discretion in failing to perform the act.

History.

Civil Code 1895, § 747; Civil Code 1910, § 896; Code 1933, § 69-302.

History of Code section.

This Code section is derived from the decision in Gaskins v. City of Atlanta, 73 Ga. 746 (1883).

Cross references.

Immunity of municipalities and officers or employees thereof for damages resulting from inspections or other actions taken or not taken pursuant to fire protection laws, § 25-2-38.1.

Liability of municipalities for defects in public roads, § 32-4-93.

Law reviews.

For note, "Adverse Possession of Municipal and County Property Held for Proprietary Purposes: The Unique Georgia Development," see 7 Ga. St. B. J. 482 (1971).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Municipal corporation cannot be held liable for failure to perform duty when duty of performance has not been imposed upon the corporation by law, and which the corporation has no power to perform, for lack of authority to raise revenue for that purpose. Mayor of Montezuma v. Law, 1 Ga. App. 579, 57 S.E. 1025, 1907 Ga. App. LEXIS 45 (1907).

Clear line is drawn between a discretionary nonfeasance and the negligent maintenance of something erected by the city in the city's discretion in such manner as to create a dangerous nuisance, and which amounts to misfeasance. In a case of discretionary nonfeasance on the part of the defendant city, the defendant city is not liable. Tamas v. City of Columbus, 244 Ga. 200, 259 S.E.2d 457, 1979 Ga. LEXIS 1179 (1979).

School crossing guard. — O.C.G.A. § 36-33-2 may not be applicable when a city fails to provide a substitute school crossing guard at an intersection which was normally attended by a crossing guard, even though the city was not required by statute to provide a crossing guard. Whiddon v. O'Neal, 171 Ga. App. 636, 320 S.E.2d 601, 1984 Ga. App. LEXIS 2304 (1984).

Whether a city will open a street is discretionary with the city, and the exercise of the city's discretion, one way or the other, gives no right of action to anyone who may have miscalculated the final action of the city. Pittman v. City of Jesup, 232 Ga. 635, 208 S.E.2d 456, 1974 Ga. LEXIS 1038 (1974).

Failure to identify school safety crossings. — City did not create a nuisance by failing to identify school safety crossings across a public roadway in front of a school. McLaughlin v. City of Roswell, 161 Ga. App. 759, 289 S.E.2d 18, 1982 Ga. App. LEXIS 2035 (1982).

Failure to erect traffic light. — In the absence of a law or ordinance requiring the defendant to erect a traffic light at an intersection as a result of which the plaintiff was allegedly injured, the erection and maintenance of such a signal is discretionary, and a city or county cannot be held liable for mere failure to perform such an act. McLaughlin v. City of Roswell, 161 Ga. App. 759, 289 S.E.2d 18, 1982 Ga. App. LEXIS 2035 (1982).

Trial court properly granted summary judgment to a city on a parent's negligence claim against the city stemming from a child's serious automobile accident at a known dangerous intersection that was inappropriately signaled because the city was immune from suit as the issue of whether to install a traffic signal at the intersection was a discretionary act, entitling the city to sovereign immunity; further, a successful tax referendum to fund a new traffic light did not create a duty to install a traffic light at the intersection before completing other projects. Riggins v. City of St. Marys, 264 Ga. App. 95, 589 S.E.2d 691, 2003 Ga. App. LEXIS 1393 (2003), cert. denied, No. S04C0571, 2004 Ga. LEXIS 206 (Ga. Mar. 1, 2004).

Failure to maintain stop sign in a visible condition. — Driver's allegations of negligence against a city for negligent maintenance of a stop sign, which was

allegedly obscured by foliage, were subject to summary judgment based on the city's sovereign immunity pursuant to O.C.G.A. § 36-33-1(b). The driver's nuisance claim was barred because the driver failed to show the city's awareness of a problem with the stop sign. Albertson v. City of Jesup, 312 Ga. App. 246, 718 S.E.2d 4, 2011 Ga. App. LEXIS 804 (2011), cert. denied, No. S12C0398, 2012 Ga. LEXIS 245 (Ga. Feb. 27, 2012).

Failure to maintain drainage culvert. — Summary judgment was granted in favor of a city upon a father's claim of negligence under O.C.G.A. § 32-4-93(a) because: (1) there was no showing that the city had a legal duty to expand the culvert pipe in which the father's son drowned, to widen the shoulder of the street, or to erect a guardrail as no statute required the city to take these actions, and the city's construction code did not impose a duty with regard to the culvert; (2) there was no evidence that the city negligently maintained the culvert; and (3) the city had no actual or constructive notice of flooding problems near the culvert or of defects in the culvert. Walden v. City of Hawkinsville, No. 5:03-CV-0398, 2005 U.S. Dist. LEXIS 21694 (M.D. Ga. Sept. 21, 2005).

No discretionary nonfeasance on the part of the city. — Grant of summary judgment in favor of the city in a wrongful-death action was improper because there was evidence that the decedent had to walk in the same direction as the truck that struck the decedent was traveling; thus, there was an inference of causation. That specification of negligence was an act of misfeasance, for which the city might have been held liable, rather than discretionary nonfeasance, for which the city could not have been held liable pursuant to O.C.G.A. § 36-33-2. Butler v. Carlisle, 299 Ga. App. 815, 683 S.E.2d 882, 2009 Ga. App. LEXIS 981 (2009), cert. denied, No. S10C0087, 2010 Ga. LEXIS 162 (Ga. Feb. 8, 2010), cert. denied, No. S10C0052, 2010 Ga. LEXIS 155 (Ga. Feb. 8, 2010), overruled in part, Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

County was under no duty to build bridge across creek which under normal circumstances was safe to ford and therefore not liable for death of car occupants who drowned when creek flooded over ford as car was passing over the ford. Dollar v. Haralson County, 704 F.2d 1540, 1983 U.S. App. LEXIS 27548 (11th Cir.), cert. denied, 464 U.S. 963, 104 S. Ct. 399, 78 L. Ed. 2d 341, 1983 U.S. LEXIS 2295 (1983).

Sewage back up. — Trial court erred by granting summary judgment to a city on a property owner's nuisance claim because evidence existed that the property had been subjected to repeated flooding and that the city had notice of the problem, creating a jury issue as to whether the city had created a nuisance by failing to install a back flow preventer as the city had done for other properties. J. N. Legacy Group v. City of Dallas, 322 Ga. App. 475, 745 S.E.2d 721, 2013 Ga. App. LEXIS 543 (2013).

Failure to construct barrier on top of retaining wall. — In a case in which the plaintiff fell over an 18-foot retaining wall, which had no barrier on top, the trial court erred in denying the city's motion for a directed verdict because no statute or ordinance required the city to construct such a barrier. City of Alpharetta v. Hamby, 352 Ga. App. 511, 835 S.E.2d 366, 2019 Ga. App. LEXIS 597 (2019), cert. denied, No. S20C0480, 2020 Ga. LEXIS 371 (Ga. May 18, 2020).

Demolition of abandoned house. — Trial court erred in not granting a city's motion to dismiss the negligence claims against the city because the city was exercising a governmental function when the city demolished an abandoned house which was claimed to be a nuisance; therefore, the city was entitled to sovereign immunity on those claims. City of Atlanta v. Durham, 324 Ga. App. 563, 751 S.E.2d 172, 2013 Ga. App. LEXIS 885 (2013).

RESEARCH REFERENCES

Am. Jur. 2d.

57 Am. Jur. 2d, Municipal, County, School, and State Tort Liability, § 56 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 25. 63 C.J.S., Municipal Corporations, §§ 871, 877.

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Liability of municipal corporation for tort of officer or employee of water department, 28 A.L.R. 822; 54 A.L.R. 1497.

Commission and other modern forms of municipal government as affecting liability of municipality for torts, 30 A.L.R. 473.

Liability of municipality as affected by license issued by municipal officer, 42 A.L.R. 1208.

Rule of municipal immunity from liability for torts pertaining to exercise of governmental functions as available to municipal lessee or concessioner, 57 A.L.R. 560.

Liability of municipality where sewer originally of ample size has become inadequate by growth or development of territory, 70 A.L.R. 1347.

Liability of municipality for injury due to defective catch-basin covers, and the like, maintained in street in connection with drainage or sewer system, 71 A.L.R. 753.

Applicability to federal courts of state constitutional or statutory provisions regarding liability of county or other political subdivision to suit, 86 A.L.R. 1019.

Power of legislature to impose, or municipality to assume, liability for acts of officials or employees pertaining to governmental functions, 89 A.L.R. 394.

Liability of municipal corporation for its own misfeasance or nonfeasance, as distinguished from misfeasance or nonfeasance of officer or employee, 102 A.L.R. 656.

Liability of municipality because of misappropriation, diversion, or withholding of funds collected by or paid to it on account of special assessment against property for improvements, 107 A.L.R. 1354.

Liability of municipality for damage to person or property due to hydrant, 113 A.L.R. 661.

Responsibility for injury or damage by or to W.P.A. worker or other workman employed as a means of reducing unemployment, 120 A.L.R. 1148.

Municipal immunity from liability for torts, 120 A.L.R. 1376; 60 A.L.R.2d 1198.

Constitutionality of statute which relieves municipality from liability for torts, 124 A.L.R. 350.

Lease by municipality of property intended for use and benefit of public as affecting its duty and responsibility in respect of the manner and conditions of operation and maintenance of the property by the lessee, 129 A.L.R. 1163.

Liability of municipal corporations for injuries due to conditions in parks, 142 A.L.R. 1340.

Remedy available against invalid judgment in favor of United States, state, or other governmental unit immune to suit, 163 A.L.R. 244.

Liability of municipality for fire loss due to its failure to provide or maintain adequate water supply or pressure, 163 A.L.R. 348.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle or licensing of operation, 163 A.L.R. 1375.

Liability of municipality or other governmental subdivision in connection with flood-protection measures, 5 A.L.R.2d 57.

Liability of municipality for damage caused by fall of tree or limb, 14 A.L.R.2d 186.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like, 34 A.L.R.2d 1210.

Liability of municipality for injuries resulting from fall or slipping on debris or litter on outdoor stairway, 47 A.L.R.2d 1086.

Municipal immunity from liability for torts, 60 A.L.R.2d 1198.

Municipality's liability arising from negligence or other wrongful act in carrying out construction or repair of sewers and drains, 61 A.L.R.2d 874.

Suability, and liability, for torts, of public housing authority, 61 A.L.R.2d 1246.

Liability of municipality for injuries resulting from falling or slipping on defective outdoor stairway or steps, 92 A.L.R.2d 469.

Municipal liability for personal injury or death under mob violence or antilynching statutes, 26 A.L.R.3d 1142.

Municipal liability for property damage under mob violence statutes, 26 A.L.R.3d 1198.

Liability of municipality or other governmental body on implied or quasi contract for value of property or work, 33 A.L.R.3d 1164.

Liability of public officer or body for harm done by prisoner permitted to escape, 44 A.L.R.3d 899.

Liability of municipality or other governmental unit for failure to provide police protection, 46 A.L.R.3d 1084.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding, 62 A.L.R.3d 514.

Governmental liability from operation of zoo, 92 A.L.R.3d 832.

36-33-3. Liability for torts of police or other officers.

A municipal corporation shall not be liable for the torts of policemen or other officers engaged in the discharge of the duties imposed on them by law.

History.

Civil Code 1895, § 744; Civil Code 1910, § 893; Code 1933, § 69-307.

History of Code section.

This Code section is derived from the decisions in Cook v. Mayor of Macon, 54 Ga. 468 (1875) and Wilson v. Mayor of Macon, 88 Ga. 455, 14 S.E. 710 (1892).

Cross references.

Liability of officers, agents, and others of counties, municipalities, for acts performed while fighting fires or performing duties at scene of emergencies, § 51-1-30.

Law reviews.

For article, "Personal Liability of State Officials Under State and Federal Law," see 9 Ga. L. Rev. 821 (1975).

For article discussing origin and construction of Georgia statute concerning municipal liability for conduct of its officers, see 14 Ga. L. Rev. 239 (1980).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Rule of nonliability generally. — Municipal corporation is not liable for the negligence of the municipality's officers and employees when acting in a governmental function. Banks v. City of Albany, 83 Ga. App. 640, 64 S.E.2d 93, 1951 Ga. App. LEXIS 927 (1951); Bagwell v. City of Gainesville, 106 Ga. App. 367, 126 S.E.2d 906, 1962 Ga. App. LEXIS 708 (1962).

No distinction between negligent and intentional torts. — Former Code 1933, §§ 69-301 and 69-307 (see now O.C.G.A. §§ 36-33-1 and 36-33-3) did not suggest any intention to distinguish between torts of nonfeasance or misfeasance committed by negligence, and other torts committed corruptly, maliciously, willfully, or wantonly. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78, 1935 Ga. App. LEXIS 113 (1935).

When liability arises. — Municipalities are liable for the acts of a municipalities' officers, agents, and servants only in instances as follows: (a) in the performance of any function when a statute specifically provides for such liability; (b) for neglect to perform or improper or unskillful performance of the municipalities' ministerial duties; and (c) for the performance of the municipalities' governmental functions when the same amounts to the taking or damaging of private property for public purposes without first making adequate

compensation therefor, or the creation of a nuisance dangerous to the life and health of persons because of its proximity to the people in the enjoyment of the people's property. Greenway v. Thompson, 368 F. Supp. 387, 1973 U.S. Dist. LEXIS 10429 (N.D. Ga. 1973).

This rule cannot be avoided or circumvented by allegations in the nature of conclusions seeking to assert as the basis for municipal liability the act of its placing the active tortfeasor in the position to commit the tort, nor by alleging that in employing the tortfeasor and retaining the tortfeasor on the payroll the municipality was guilty of maintaining a nuisance when the facts otherwise alleged affirmatively show that the real asserted basis of liability is on the theory of respondeat superior. City of Cumming v. Chastain, 97 Ga. App. 13, 102 S.E.2d 97, 1958 Ga. App. LEXIS 691 (1958).

Applicability of waiver of immunity provisions. — O.C.G.A. § 36-33-3 provides immunity only to governmental entities; consequently, it is a governmental immunity statute and is subject to the waiver of immunity provision of O.C.G.A. § 33-24-51(b). Ekarika v. City of East Point, 204 Ga. App. 731, 420 S.E.2d 391, 1992 Ga. App. LEXIS 912 (1992).

Municipality can waive governmental immunity. — In a negligence action against a city by plaintiffs injured in a collision with an on-duty police officer, the city's purchase of a general liability insurance policy covering claims in excess of $250,000 waived the city's sovereign immunity to the limits of the policy; since the city did not have a self-insurance plan, participate in any sort of insurance fund or pool, or set aside funds for the payment of liability claims, plaintiffs could recover only damages exceeding the $250,000 threshold. McLemore v. City Council, 212 Ga. App. 862, 443 S.E.2d 505, 1994 Ga. App. LEXIS 412 (1994).

In the absence of waiver of the immunity afforded by O.C.G.A. § 36-33-3, there can be no municipal liability for a claim based on allegedly reckless conduct by police. Williams v. Solomon, 242 Ga. App. 807, 531 S.E.2d 734, 2000 Ga. App. LEXIS 367 (2000), aff'd, 274 Ga. 122, 549 S.E.2d 341, 2001 Ga. LEXIS 523 (2001).

Notice of powers implied. — In dealing with public agents, every person must take notice of the extent of their power at the person's peril. Laing v. Mayor of Americus, 86 Ga. 756, 13 S.E. 107, 1891 Ga. LEXIS 56 (1891).

City cannot ratify. — Municipality cannot ratify the unlawful acts of the municipality's subordinate officials done in the pursuance of the municipality's governmental functions. Davis v. City of Rome, 23 Ga. App. 188, 98 S.E. 231, 1919 Ga. App. LEXIS 31 (1919).

Federal civil rights actions. — Supremacy clause of U.S. Const. prevents state court from construing federal rule to permit state immunity defense to claim made under 42 U.S.C. § 1983, the Civil Rights Act of 1871. Davis v. City of Roswell, 250 Ga. 8, 295 S.E.2d 317, 1982 Ga. LEXIS 1214 (1982).

When a governing body has worked constitutional deprivation of a citizen pursuant to an impermissible or corrupt policy which is intentional and deliberate, a cause of action is accrued under the federal Civil Rights Act in spite of the doctrine of sovereign immunity. City of Cave Spring v. Mason, 252 Ga. 3, 310 S.E.2d 892, 1984 Ga. LEXIS 564 (1984).

Acts of mayor in setting bond. — City is not liable in damages because the city's mayor required of a person charged with a violation of a city ordinance, a larger bond for the person's appearance than the law authorized, even if the failure of such person to give bond and the person's consequent confinement were occasioned thereby. Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792, 1900 Ga. LEXIS 543 (1900).

Wrongful refusal of bail. — City was not liable in damages because mayor, as judge of city's court for the trial of ordinance violations, wrongfully refused to allow bail to an alleged offender and wrongfully directed a police officer to commit the offender to jail, since the offender was imprisoned until released by a habeas corpus proceeding, nor did the appearance of the mayor or an attorney for the municipality in resistance of the habeas corpus constitute a ratification by

the municipality of these alleged illegal acts by the municipality's officers, so as to render the municipality liable therefore. Brown v. City of Union Point, 52 Ga. App. 212, 183 S.E. 78, 1935 Ga. App. LEXIS 113 (1935).

Failure to provide police protection. — When a failure to provide police protection is alleged, there can only be no liability based on a municipality's duty to protect the general public. However, when there is a special relationship between the individual and the municipality which sets the individual apart from the general public and engenders a special duty owed to that individual, the municipality may be subject to liability for the nonfeasance of the municipality's police department. Benning Constr. Co. v. Dykes Paving & Constr. Co., Inc., 263 Ga. 16, 426 S.E.2d 564, 1993 Ga. LEXIS 274 (1993).

Acts of police officers. — When a police officer was acting as an officer of the city at the time of a homicide, the city would not be liable for the reason that the police officer was in the discharge of a governmental function, and in such case recovery cannot be had against the city. Pounds v. Central of Ga. Ry., 142 Ga. 415, 83 S.E. 96, 1914 Ga. LEXIS 729 (1914).

Doctrine of governmental immunity protected the city from liability for the actions of the city's employees, including the police officer who arrested the individual for criminal trespass in the discharge of the officer's lawful duties, and, thus, the city was protected by that immunity from the arrested individual's claims against the city. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584, 2003 Ga. App. LEXIS 765 (2003).

In a tort action for personal injuries and property damage arising from an auto collision filed against a city and the city's police officer, the trial court erred in granting a city summary judgment as: (1) O.C.G.A. § 40-6-6(d)(2) did not apply; and (2) the city waived the city's sovereign immunity to the extent that the city purchased liability coverage to cover the officer's actions in operating that officer's police car. But, the trial court properly granted summary judgment to the officer, given that the officer was engaged in a discretionary function of responding to an emergency situation at the time the accident at issue occurred. Weaver v. City of Statesboro, 288 Ga. App. 32, 653 S.E.2d 765, 2007 Ga. App. LEXIS 1133 (2007), cert. denied, No. S08C0421, 2008 Ga. LEXIS 221 (Ga. Feb. 25, 2008).

In an arrestee's state law claims, a city was not liable for actions of the city's police officers because the officers engaged in protected ministerial functions. Lavassani v. City of Canton, 760 F. Supp. 2d 1346, 2010 U.S. Dist. LEXIS 139378 (N.D. Ga. 2010).

Knowingly maintaining violent police officer. — It is unclear whether municipal immunity continues to encompass a nuisance claim against a city for knowingly maintaining a violent police officer. Brooks v. Scheib, 813 F.2d 1191, 1987 U.S. App. LEXIS 4469 (11th Cir. 1987).

Municipal corporation is not liable for illegal arrest of a person by the municipal corporation's police officers. Cook v. Mayor of Macon, 54 Ga. 468, 1875 Ga. LEXIS 201 (1875); Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792, 1900 Ga. LEXIS 543 (1900).

Drunken driving arrest. — Town marshal, in arresting and placing in town lockup a person for drunken driving, would be engaged in discharge of duty imposed on the marshal by law. Archer v. City of Austell, 68 Ga. App. 493, 23 S.E.2d 512, 1942 Ga. App. LEXIS 156 (1942).

Collision by police officer. — Trial court erred in granting the city's motion for judgment on the pleadings since the city could have been vicariously liable to plaintiff for the officer's alleged negligent act of driving the officer's patrol car into plaintiff 's vehicle up to the limits of the city's policy of motor vehicle liability. Ekarika v. City of East Point, 204 Ga. App. 731, 420 S.E.2d 391, 1992 Ga. App. LEXIS 912 (1992).

Claim for breach of an implied contract of bailment by a city in taking and holding plaintiff's motorcycle was not barred under the language of O.C.G.A § 36-33-3, which is restricted to tort claims. Harper v. Savannah Police Dep't, 179 Ga. App. 449, 346 S.E.2d 891, 1986 Ga. App. LEXIS 1923 (1986).

Negligence of fire fighter. — Even if cutting a hole and leaving the hole in an exposed condition was negligence on the part of a fire fighter, the city was not liable in damages to a person injured in consequence of the negligence. Rogers v. City of Atlanta, 143 Ga. 153, 84 S.E. 555, 1915 Ga. LEXIS 329 (1915).

City not liable for jail conditions. — Because a city was immune from suit in performing the governmental function of maintaining the city jail, it could not be concluded as a matter of law, in a federal civil rights action against the city and the city's police officers, alleging that the physical conditions in the jail deprived the defendant of due process, that "adequate state remedies" existed. Lambert v. McFarland, 612 F. Supp. 1252, 1984 U.S. Dist. LEXIS 22707 (N.D. Ga. 1984).

Acts of warden. — Even though sentence imposed by a recorder might have been wholly void, the city would not be liable for the tortious and illegal acts of a warden. Davis v. City of Rome, 23 Ga. App. 188, 98 S.E. 231, 1919 Ga. App. LEXIS 31 (1919).

Municipal corporation is not liable for injuries sustained by prisoner at hands of another confined in the same cell, notwithstanding police officer may have been guilty of wrong or negligence in confining the prisoner with intoxicated fellow-prisoner who was on that account violent and dangerous. Wilson v. Mayor of Macon, 88 Ga. 455, 14 S.E. 710, 1892 Ga. LEXIS 45 (1892).

City not liable for negligence in erecting prison. — In erecting and maintaining a city prison, a municipal corporation is exercising a purely governmental function, and is, therefore, not liable in damages to a person arrested and imprisoned therein by the municipality's police officers, for injuries sustained by the person, while so confined, by reason of the improper construction or negligent maintenance of such prison. Gray v. Mayor of Griffin, 111 Ga. 361, 36 S.E. 792, 1900 Ga. LEXIS 543 (1900).

Nonliability of railway company for wrongful killing by police officer. — When police officer of municipality, being paid by railway company to keep order at depot, wrongfully kills a passenger, the police officer is said to be a municipal officer, and the railway company is not liable in damages. Pounds v. Central of Ga. Ry., 142 Ga. 415, 83 S.E. 96, 1914 Ga. LEXIS 729 (1914).

Pleading failure to state claim sufficient. — Under notice pleading, an answer pleading a defense of failure to state a claim was minimally sufficient to give notice of substantive immunity defenses under either O.C.G.A. § 31-11-8 or O.C.G.A. § 36-33-3. Ramsey v. City of Forest Park, 204 Ga. App. 98, 418 S.E.2d 432, 1992 Ga. App. LEXIS 698 (1992).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 198.

Am. Jur. Proof of Facts.

Excessive Force by Police Officer, 21 POF3d 685.

C.J.S.

63 C.J.S., Municipal Corporations, §§ 878, 884, 885, 900.

ALR.

Liability of municipal corporation for tort of officer or employee of water department, 24 A.L.R. 545; 28 A.L.R. 822; 54 A.L.R. 1497.

Liability of municipality as affected by license issued by municipal officer, 42 A.L.R. 1208.

Policemen as public officers, 84 A.L.R. 309; 156 A.L.R. 1356.

Validity of statute or ordinance vesting discretion in public officials without prescribing a rule of action, 92 A.L.R. 400.

Liability of municipality or other political unit for malicious prosecution, 103 A.L.R. 1512.

Death action against municipal corporation as subject to statute of limitations governing wrongful death actions or that governing actions against a municipality for injury to person or property, 53 A.L.R.2d 1068.

Municipal liability for personal injuries resulting from police officer's use of excessive force in performance of duty, 88 A.L.R.2d 1330.

Liability of municipal corporation for shooting of bystander by law enforcement officer attempting to enforce law, 76 A.L.R.3d 1176.

Supreme Court jurisprudence on governmental use of excessive force as violation of constitutional or civil rights, 80 A.L.R. Fed. 3d 3.

What Constitutes Custom or Policy in Determining Local Government Liability Under 42 U.S.C.A. § 1983, 84 A.L.R. Fed. 3d Art. 1.

Liability of governmental unit or its officers for injury to innocent pedestrian or occupant of parked vehicle, or for damage to such vehicle, as result of police chase, 100 A.L.R.3d 815.

Immunity of public officer from liability for injuries caused by negligently released individual, 5 A.L.R.4th 773.

Municipal or state liability for injuries resulting from police roadblocks or commandeering of private vehicles, 19 A.L.R.4th 937.

Liability for failure of police response to emergency call, 39 A.L.R.4th 691.

Governmental tort liability for failure to provide police protection to specifically threatened crime victim, 46 A.L.R.4th 948.

36-33-4. Personal liability of councilmembers and other municipal officers.

Members of the council and other officers of a municipal corporation shall be personally liable to one who sustains special damages as the result of any official act of such officers if done oppressively, maliciously, corruptly, or without authority of law.

History.

Civil Code 1895, § 752; Civil Code 1910, § 901; Code 1933, § 69-208.

History of Code section.

This Code section is derived from the decision in Pruden v. Love, 67 Ga. 190 (1881).

Cross references.

False arrest, false imprisonment, and malicious prosecution, § 51-7-1 et seq.

Law reviews.

For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

For note discussing governmental immunity from tort liability in Georgia, see 5 Ga. St. B. J. 494 (1969).

For article, "Georgia Local Government Officers: Rights for Their Wrongs," see 13 Ga. L. Rev. 747 (1979).

For article discussing origin and construction of Georgia law of personal liability for municipal officials, see 14 Ga. L. Rev. 239 (1980).

For article, "Individual Liability in Georgia Local Government Law: The Haunting Hiatus of Hennessy," see 40 Mercer L. Rev. 27 (1988).

For article, "Local Government Tort Liability: The Summer of '92," see 9 Ga. St. U.L. Rev. 405 (1993).

JUDICIAL DECISIONS

There are two conditions for the liability of commissions under statute; namely for the defendants to have acted contrary to a nondiscretionary, ministerial duty, and to have acted with malice. City of Hawkinsville v. Wilson & Wilson, Inc., 231 Ga. 110, 200 S.E.2d 262, 1973 Ga. LEXIS 603 (1973).

Effect of the provisions of former Code 1933, § 69-208 (see now O.C.G.A. § 36-33-4) was to create liability against municipal officers under such conditions when the officers commit a tort, which as provided in former Code 1933, § 105-101 (see now O.C.G.A. § 51-1-1) was the unlawful violation of a private legal right.

Davis v. Johnson, 92 Ga. App. 858, 90 S.E.2d 426, 1955 Ga. App. LEXIS 732 (1955).

Malice defined. — Malice may consist in a general disregard of the right consideration of mankind, directed by chance against the individual injured. Kitchens v. Jefferson County, 85 Ga. App. 902, 70 S.E.2d 527, 1952 Ga. App. LEXIS 852 (1952).

Special damages required. — When plaintiff city council member failed to plead special damages in action against city manager and mayor's secretary for invasion of privacy based on taping of plaintiff's phone conversation with mayor, plaintiff failed to establish that plaintiff was entitled to proceed under O.C.G.A. § 36-33-4. Kennedy v. Johnson, 205 Ga. App. 220, 421 S.E.2d 746, 1992 Ga. App. LEXIS 1116 (1992), cert. denied, No. S92C1434, 1992 Ga. LEXIS 867 (Ga. Oct. 8, 1992).

General damages recoverable. — Claim under O.C.G.A. § 36-33-4 is essentially a tort action, not one based on a regulatory restriction; thus, general as well as compensatory damages may be recovered. City of Buford v. Ward, 212 Ga. App. 752, 443 S.E.2d 279, 1994 Ga. App. LEXIS 385 (1994), cert. denied, No. S94C1167, 1994 Ga. LEXIS 851 (Ga. July 7, 1994).

Claim based on actions taken without authority of law. — Plaintiff businessman, who was refused a certificate of occupancy for a garden center based on the inadequacy of a deceleration/acceleration lane, proved a cause of action against city officials under O.C.G.A. § 36-33-4 since the policy regarding construction of the lane was not based on an ordinance setting forth guidelines or specific factors sufficient to apprise citizens of what to expect and, thus, actions taken pursuant to such policy were without authority of law; further, plaintiff's testimony that plaintiff expended $2,800 to extend the lane beyond the length required for DOT approval was sufficient to show special damages. City of Buford v. Ward, 212 Ga. App. 752, 443 S.E.2d 279, 1994 Ga. App. LEXIS 385 (1994), cert. denied, No. S94C1167, 1994 Ga. LEXIS 851 (Ga. July 7, 1994).

Trial court erred in finding that a mayor was entitled to official immunity in city employees' action for wrongful termination because a question of fact remained as to whether the mayor acted without authority of law by failing to comply with the city's resolution requiring the mayor to get city council approval prior to any termination. Owens v. City of Greenville, 290 Ga. 557, 722 S.E.2d 755, 2012 Ga. LEXIS 191 (2012).

Immunity from liability. — Public official who fails to perform purely ministerial duties required by law is subject to an action for damages by one who is injured by the official's omission; however, when an officer is invested with discretion and is empowered to exercise the officer's judgment in matters brought before the officer, the officer is sometimes called a quasi-judicial officer, and when so acting the officer is usually given immunity from liability to persons who may be injured as a result of an erroneous decision, provided the acts complained of are done within the scope of the officer's authority, and without wilfulness, malice, or corruption. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, 1992 Ga. App. LEXIS 939 (1992), cert. denied, No. S92C1268, 1992 Ga. LEXIS 728 (Ga. Sept. 11, 1992).

Police officer's conduct in arresting plaintiff, while unprofessional, was not willful, fraudulent, corrupt, or malicious; therefore, the officer enjoyed limited immunity. Corporate Prop. Investors v. Milon, 249 Ga. App. 699, 549 S.E.2d 157, 2001 Ga. App. LEXIS 553 (2001), cert. dismissed, No. S01C1387, 2001 Ga. LEXIS 807 (Ga. Oct. 1, 2001), cert. denied, No. S01C1359, 2001 Ga. LEXIS 810 (Ga. Oct. 1, 2001).

City manager had official immunity in a defamation case under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d) and O.C.G.A. § 36-33-4 since: (1) the city finance director did not show that a statement the city manager made to the media regarding the city manager's concerns in the city finance director's department was outside the scope of the city manager's authority; (2) the city manager did not disclose anything to the city finance director's prospective employer that the

prospective employer did not obtain through a Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., request; and (3) there was no policy that prohibited the city manager from verbally responding in conjunction with the city manager's Open Records Act response. Smith v. Lott, 317 Ga. App. 37, 730 S.E.2d 663, 2012 Ga. App. LEXIS 692 (2012).

Appellate court erred by affirming the grant of the individual defendants' motion to dismiss in a personal injury suit involving a pedestrian falling at a high school because whether official immunity barred the action was a fact-specific inquiry that had not been definitively answered since limited discovery had been undertaken. Austin v. Clark, 294 Ga. 773, 755 S.E.2d 796, 2014 Ga. LEXIS 195 (2014).

Trial court properly granted summary judgment to the mayor and the council member defendants based on governmental liability because the remedies provided under O.C.G.A. § 36-33-4 could not be judicially grafted onto the Whistleblower Act, O.C.G.A. § 45-1-4, which does not mention that code section, nor provides for individual liability. Rintoul v. Tolbert, 341 Ga. App. 688, 802 S.E.2d 56, 2017 Ga. App. LEXIS 263 (2017).

Individual not liable if sued in official capacity. — Notwithstanding the provisions of O.C.G.A. § 36-33-4, a drinking water commissioner could not be held personally liable for requiring a water customer to extend a water main because the commissioner was not sued in the commissioner's individual capacity. The city could be held liable for the commissioner's actions because, although the actions were unauthorized, the actions were within the scope of the commissioner's employment. City of Atlanta v. Harbor Grove Apts., LLC, 308 Ga. App. 57, 706 S.E.2d 722, 2011 Ga. App. LEXIS 118 (2011).

Merely styling a suit against a public officer as one brought against the officer personally does not deprive the officer of any immunity to which the officer might otherwise be entitled for the officer's official acts. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, 1992 Ga. App. LEXIS 939 (1992), cert. denied, No. S92C1268, 1992 Ga. LEXIS 728 (Ga. Sept. 11, 1992).

Evidence insufficient to lift immunity. — Trial court correctly granted summary judgment in favor of police chief when the record was devoid of any conduct by the chief which could remotely be construed as being sufficient to lift the shield that protects public officers acting colore officii; therefore the plaintiff was not allowed to recover for the plaintiff's spouse's suicide while in police custody. McDay v. City of Atlanta, 204 Ga. App. 621, 420 S.E.2d 75, 1992 Ga. App. LEXIS 939 (1992), cert. denied, No. S92C1268, 1992 Ga. LEXIS 728 (Ga. Sept. 11, 1992).

Evidence did not support plaintiff's claim of conspiracy against the plaintiff by municipal officials based upon the city's issuance of citations for an electrical code violation and for having a derelict car on the plaintiff's premises. Brown v. City of Chamblee, 211 Ga. App. 45, 438 S.E.2d 396 (1993).

Trial court properly granted summary judgment to police officer on the arrested individual's claims against the officer arising out of the individual's arrest for criminal trespass as the officer was performing a discretionary duty at the time of the arrest and no showing was made that the officer acted maliciously or with an intent to injure; accordingly, the officer was entitled to official immunity from liability. Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584, 2003 Ga. App. LEXIS 765 (2003).

It is a jury question as to whether acts of a city manager in breaching a contract to perform a ministerial duty falls within provisions of O.C.G.A. § 36-33-4. City of Douglas v. Johnson, 157 Ga. App. 618, 278 S.E.2d 160, 1981 Ga. App. LEXIS 1938 (1981).

Nonliability for abatement of nuisance. — When the council of a municipal corporation, in the exercise of the municipality's police powers, and after due notice, declare a building to be a nuisance, and require the building to be torn down, the council would not be liable as individuals to the owner for damages, unless the council acted maliciously,

oppressively, corruptly, or without authority of law. Pruden v. Love, 67 Ga. 190, 1881 Ga. LEXIS 151 (1881).

Claim of nuisance created by failure to maintain and repair sewer lines. — Plaintiff's assertion that the failure of the city to properly maintain and identify the repairs needed on the sewer lines was a nuisance did not give rise to a right of action in nuisance as to plaintiffs. Rea v. Bunce, 179 Ga. App. 628, 347 S.E.2d 676, 1986 Ga. App. LEXIS 1996 (1986).

Applicability to council member presiding in police court. — This section has no application to acts of a member of a town council when the member is presiding in a police court. Calhoun v. Little, 106 Ga. 336, 32 S.E. 86, 1898 Ga. LEXIS 93 (1898).

Revocation of permit. — Provisions of this section as to oppressive, malicious, corrupt, and unlawful acts could not be applied to the acts of a mayor when the petition did not allege that the mayor by force, threats, or any means whatsoever prevented the plaintiff from conducting plaintiff's business or exercising the privilege and license, or canceled or revoked the permit, and only alleged that the mayor notified the plaintiff to the effect that the plaintiff's permit was void and that the plaintiff could not operate an abattoir. Davis v. Johnson, 92 Ga. App. 858, 90 S.E.2d 426, 1955 Ga. App. LEXIS 732 (1955).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 130, 240 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 295, 330.

ALR.

Personal liability of public official for personal injury on highway, 40 A.L.R. 39; 57 A.L.R. 1037.

Personal liability of municipal officer or employee for negligence in performance of duty, 40 A.L.R. 1358; 53 A.L.R. 381.

Liability of municipal officers for diversion of money from one fund to another, 96 A.L.R. 664.

Civil liability of law enforcement officers for malicious prosecution, 28 A.L.R.2d 646; 81 A.L.R.4th 1031.

Personal liability of policeman, sheriff, or other peace officer, or bond, for negligently causing personal injury or death, 60 A.L.R.2d 873.

Civil liability of school officials for malicious prosecution, 66 A.L.R.2d 749.

Liability for personal injury or damage from operation of fire department vehicle, 82 A.L.R.2d 312.

36-33-5. Written demand prerequisite to action for injury to person or property; time for presenting claim and for consideration by governing authority; suspension of limitations; statement of specific amount of monetary damages sought; service of claim on city officials.

(a) No person, firm, or corporation having a claim for money damages against any municipal corporation on account of injuries to person or property shall bring any action against the municipal corporation for such injuries, without first giving notice as provided in this Code section.

(b) Within six months of the happening of the event upon which a claim against a municipal corporation is predicated, the person, firm, or corporation having the claim shall present the claim in writing to the governing authority of the municipal corporation for adjustment, stat-

ing the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury. No action shall be entertained by the courts against the municipal corporation until the cause of action therein has first been presented to the governing authority for adjustment.

(c) Upon the presentation of such claim, the governing authority shall consider and act upon the claim within 30 days from the presentation; and the action of the governing authority, unless it results in the settlement thereof, shall in no sense be a bar to an action therefor in the courts.

(d) The running of the statute of limitations shall be suspended during the time that the demand for payment is pending before such authorities without action on their part.

(e) The description of the extent of the injury required in subsection (b) of this Code section shall include the specific amount of monetary damages being sought from the municipal corporation. The amount of monetary damages set forth in such claim shall constitute an offer of compromise. In the event such claim is not settled by the municipal corporation and the claimant litigates such claim, the amount of monetary damage set forth in such claim shall not be binding on the claimant.

(f) A claim submitted under this Code section shall be served upon the mayor or the chairperson of the city council or city commission, as the case may be, by delivering the claim to such official personally or by certified mail or statutory overnight delivery.

History.

Ga. L. 1899, p. 74, § 1; Civil Code 1910, § 910; Code 1933, § 69-308; Ga. L. 1953, Ex. Sess., p. 338, § 1; Ga. L. 1956, p. 183, § 1; Ga. L. 2014, p. 125, § 1/HB 135.

Law reviews.

For article, "Georgia Municipal Tort Liability: Ante Litem Notice," see 4 Ga. L. Rev. 134 (1969).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981).

For annual survey of local government law, see 35 Mercer L. Rev. 233 (1983).

For annual survey of torts law, see 35 Mercer L. Rev. 291 (1983).

For article, "Defending the Lawsuit: A First-Round Checklist," see 22 Ga. St. B.J. 24 (1985).

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999).

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

For annual survey on trial practice and procedure, see 66 Mercer L. Rev. 211 (2014).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

For annual survey on trial practice and procedure, see 67 Mercer L. Rev. 257 (2015).

For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016).

For annual survey on labor and employment law, see 69 Mercer L. Rev. 141 (2017).

For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

For annual survey on local governments, see 74 Mercer L. Rev. 197 (2022).

For article, "The City Suit," see 72 Emory L.J. 1351 (2023).

For note, "Taking a Toll on the Equities: Governing the Effect of the PLRA'S Exhaustion Requirements on State Statutes of Limitations," 47 Ga. L. Rev. 1321 (2013).

JUDICIAL DECISIONS

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General Consideration

Constitutionality. — O.C.G.A. § 36-33-5 does not violate the constitutional guarantees of either due process or equal protection. Shoemaker v. Aldmor Mgt., Inc., 249 Ga. 430, 291 S.E.2d 549, 1982 Ga. LEXIS 855 (1982).

Statute is in derogation of the common law and should be strictly construed as against the municipality. Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116, 1919 Ga. LEXIS 106 (1919); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, 1925 Ga. App. LEXIS 796 (1925), overruled in part, Gilson v. Mitchell, 131 Ga. App. 321, 205 S.E.2d 421, 1974 Ga. App. LEXIS 1413 (1974); City of Atlanta v. Hawkins, 45 Ga. App. 847, 166 S.E. 262, 1932 Ga. App. LEXIS 735 (1932); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325, 1933 Ga. App. LEXIS 19 (1933); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353, 1936 Ga. App. LEXIS 176 (1936); Mayor of Buford v. Light, 65 Ga. App. 99, 15 S.E.2d 459, 1941 Ga. App. LEXIS 265 (1941); City of Atlanta v. J.J. Black & Co., 110 Ga. App. 667, 139 S.E.2d 515, 1964 Ga. App. LEXIS 732 (1964); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245, 1972 Ga. App. LEXIS 1408, 1972 Ga. App. LEXIS 1498, 1972 Ga. App. LEXIS 1501 (1972); Hicks v. City of Atlanta, 154 Ga. App. 809, 270 S.E.2d 58, 1980 Ga. App. LEXIS 2400 (1980).

Purpose of statute was simply to give to the municipality notice that the citizen or property owner has a grievance against the municipality. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930); City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467, 1935 Ga. App. LEXIS 356 (1935); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353, 1936 Ga. App. LEXIS 176 (1936); Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691, 1959 Ga. App. LEXIS 592 (1959); City of Fairburn v. Clanton, 102 Ga. App. 556, 117 S.E.2d 197, 1960 Ga. App. LEXIS 677 (1960); City of Atlanta v. J.J. Black & Co., 110 Ga.

App. 667, 139 S.E.2d 515, 1964 Ga. App. LEXIS 732 (1964); Holland v. Calhoun, 114 Ga. App. 51, 150 S.E.2d 155, 1966 Ga. App. LEXIS 654, rev'd on other grounds, 222 Ga. 817, 152 S.E.2d 752, 1966 Ga. LEXIS 638 (1966); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245, 1972 Ga. App. LEXIS 1408, 1972 Ga. App. LEXIS 1498, 1972 Ga. App. LEXIS 1501 (1972); Dennis v. City of Palmetto, 130 Ga. App. 242, 202 S.E.2d 717, 1973 Ga. App. LEXIS 1291 (1973); Washington v. City of Columbus, 136 Ga. App. 682, 222 S.E.2d 583, 1975 Ga. App. LEXIS 1462 (1975).

Purpose and intent of the legislature in the adoption of O.C.G.A. § 36-33-5 was fourfold: (1) to afford the officials of an offending city opportunity to investigate the complaint at a time when the evidence relative thereto is calculated to be more readily available; (2) to afford the officials an opportunity, if the complaint relates to a continuing nuisance, to take proper steps to abate the nuisance before the effects thereof become great or far-reaching; (3) to bar a claimant's right of recovery for any and all claims arising by reasons of matters that may have transpired or existed giving rise to a cause of action on dates more than six months prior to the giving of the required ante litem notice; and (4) to afford the city an opportunity to negotiate a settlement of such claims as the city may determine to be meritorious before litigation is commenced, thus protecting the interests of the general public by reducing the exposure of the funds in the city treasury to depletion from growing claims for damages. City of Gainesville v. Moss, 108 Ga. App. 713, 134 S.E.2d 547, 1963 Ga. App. LEXIS 755 (1963); Robinette v. Johnston, 637 F. Supp. 922, 1986 U.S. Dist. LEXIS 24057 (M.D. Ga. 1986).

Notice requirement is a statute of limitations, and satisfaction of the requirement is a condition precedent to maintaining a lawsuit on a claim against a municipality. Everett v. Napper, 632 F. Supp. 1481, 1986 U.S. Dist. LEXIS 26570 (N.D. Ga. 1986), aff'd, 825 F.2d 341, 1987 U.S. App. LEXIS 11321 (11th Cir. 1987).

Applicability to whistleblower claims. — Like other statutes of limitations, this statute of limitations does not begin to run in the case of continuing torts until the injury is discovered; therefore, former jail inmates' suit against a town for compelling the inmates, while incarcerated, to perform clean-up work on a contaminated building was not time-barred. City of Forsyth v. Bell, 258 Ga. App. 331, 574 S.E.2d 331, 2002 Ga. App. LEXIS 1340 (2002), cert. denied, No. S03C0434, 2003 Ga. LEXIS 141 (Ga. Feb. 10, 2003).

City employee who filed suit under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, seeking money damages, among other remedies, was not required to provide written notice of the employee's claim within six months of the alleged retaliation under the municipal ante litem notice statute, O.C.G.A. § 36-33-5, because the claim was not a negligence claim. West v. City of Albany, 300 Ga. 743, 797 S.E.2d 809, 2017 Ga. LEXIS 177 (2017).

Use of summary judgment. — When property owners assert claims against a municipality, flexibility by the court is required in determining whether compliance with the ante litem notice requirements of O.C.G.A. § 36-33-5 is properly considered a matter in abatement which must be raised in a motion to dismiss under O.C.G.A. § 9-11-12; accordingly, consideration of the matter within the summary judgment context, pursuant to O.C.G.A. § 9-11-56, was proper because matters outside of the pleadings, including the owners' depositions, were considered. Davis v. City of Forsyth, 275 Ga. App. 747, 621 S.E.2d 495, 2005 Ga. App. LEXIS 998 (2005), cert. denied, No. S06C0356, 2006 Ga. LEXIS 235 (Ga. Mar. 27, 2006).

Purpose of notice requirement is to apprise city of claim in order that the city may determine whether or not to adjust the claim without suit. Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982);

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Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

Notice not protected First Amendment speech. — Plaintiff's ante litem notice against the city did not constitute speech protected by the First Amendment. Holbrook v. City of Alpharetta, 112 F.3d 1522, 1997 U.S. App. LEXIS 11910 (11th Cir. 1997).

Claim for attorney fees and costs. — Plaintiff's failure to comply with the notice requirement of O.C.G.A. § 36-33-5 precluded the plaintiff's ability to sue for money damages in the form of attorney fees and costs of litigation under O.C.G.A. § 13-6-11. Dover v. City of Jackson, 246 Ga. App. 524, 541 S.E.2d 92, 2000 Ga. App. LEXIS 1277 (2000), cert. denied, No. S01C0323, 2001 Ga. LEXIS 377 (Ga. Apr. 30, 2001), overruled in part, Greater Atlanta Home Builders Ass'n, Inc. v. City of McDonough, 322 Ga. App. 627, 745 S.E.2d 830, 2013 Ga. App. LEXIS 576 (2013).

Firefighters' request for costs of litigation, including attorney fees, was properly submitted to the jury in the firefighters' class action, challenging a promotional examination, as the firefighters were not statutorily required to give ante-litem notice to the city. City of Atlanta v. Bennett, 322 Ga. App. 726, 746 S.E.2d 198, 2013 Ga. App. LEXIS 601 (2013), cert. denied, No. S13C1677, 2013 Ga. LEXIS 988 (Ga. Nov. 18, 2013).

Identification with former § 15-10-16. — The Georgia Court of Appeals has identified former § 15-10-16, concerning actions against justices of the peace, with the municipal ante litem notice provision contained in O.C.G.A. § 36-33-5. Doss v. Long, 93 F.R.D. 112, 1981 U.S. Dist. LEXIS 16639 (N.D. Ga. 1981).

O.C.G.A. § 36-33-5 provides that ante litem notice be given the city as a condition precedent to suit against the city. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

Effect of failure to comply. — Failure to comply with the provisions of this law within the time required thereby is a bar to any right of action against a municipality, and the giving of such notice is a condition precedent to the bringing of any action against a municipality. Stambaugh v. City of Demorest, 221 Ga. 527, 145 S.E.2d 539, 1965 Ga. LEXIS 517 (1965); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995); Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163, 1971 U.S. Dist. LEXIS 10329 (N.D. Ga. 1971); Dennis v. City of Palmetto, 130 Ga. App. 242, 202 S.E.2d 717, 1973 Ga. App. LEXIS 1291 (1973); Goen v. City of Atlanta, 224 Ga. App. 484, 481 S.E.2d 244; Whipple v. City of Cordele, 231 Ga. App. 274, 499 S.E.2d 113; Stanford v. City of Manchester, 246 Ga. App. 129, 539 S.E.2d 845, 2000 Ga. App. LEXIS 1170 (2000).

Effect of section as conferring immunity. — Before the enactment of former Code 1933, § 69-308 (see O.C.G.A. § 36-33-5) requiring a demand, the liability of every municipal corporation in Georgia, under former Code 1933, § 69-301 (see O.C.G.A. § 36-33-1), was unqualified and unconditional. By the enactment of former Code 1933, § 69-308 the unqualified liability of each municipal corporation became conditional upon the demand required by the statute. City of Atlanta v. Hudgins, 193 Ga. 618, 19 S.E.2d 508, 1942 Ga. LEXIS 451 (1942).

Elements of section. — This section consists of both a time limitation and a requirement of exhaustion of administrative remedies. Ehlers v. City of Decatur, 614 F.2d 54, 1980 U.S. App. LEXIS 19503 (5th Cir. 1980).

No conflict with other sections. — There is no conflict between the statute of limitation applicable to insurance suits against municipalities and the constitutional and statutory provisions relating to waiver of immunity. Cobb v. Board of Comm'rs of Rds. & Revenue, 151 Ga. App. 472, 260 S.E.2d 496, 1979 Ga. App. LEXIS 2574 (1979).

Applies only against municipal corporations. — By its plain terms, O.C.G.A. § 36-33-5(d) applies only

against municipal corporations, whether under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., or otherwise. Foster v. Ga. Reg'l Transp. Auth., 297 Ga. 714, 777 S.E.2d 446, 2015 Ga. LEXIS 653 (2015).

Tort claims against city barred because of the failure to comply with ante-litem notice statute. Camp v. City of Columbus, 252 Ga. 120, 311 S.E.2d 834, 1984 Ga. LEXIS 622 (1984); Fulton v. City of Roswell, 982 F. Supp. 1472, 1997 U.S. Dist. LEXIS 18910 (N.D. Ga. 1997).

When plaintiff failed to give the required notice of the plaintiff's state tort claims against a city, plaintiff's state tort claims against the city were barred as a matter of law. Young v. City of Atlanta, 631 F. Supp. 1498, 1986 U.S. Dist. LEXIS 26901 (N.D. Ga. 1986).

In a civil rights action, plaintiff was awarded attorney's fees and costs incident to the assertion of a frivolous defense by the defendant-city that dismissal was appropriate because the city had not received ante litem notice of the suit. Booker v. City of Atlanta, 586 F. Supp. 340, 1984 U.S. Dist. LEXIS 18030 (N.D. Ga. 1984), aff'd, 827 F.2d 775, 1987 U.S. App. LEXIS 10753 (11th Cir. 1987).

Applicability of section to 42 U.S.C. § 1983 actions. — Action against city under 42 U.S.C. § 1983 is materially different from a negligence suit required to be submitted for adjustment under O.C.G.A. § 36-33-5; therefore § 1983 provides a remedy independent of any provided by state law and, consequently, the ante litem notice requirement does not apply to § 1983 actions. Williams v. Posey, 475 F. Supp. 133, 1979 U.S. Dist. LEXIS 10216 (M.D. Ga. 1979); Ehlers v. City of Decatur, 614 F.2d 54, 1980 U.S. App. LEXIS 19503 (5th Cir. 1980); Robinette v. Johnston, 637 F. Supp. 922, 1986 U.S. Dist. LEXIS 24057 (M.D. Ga. 1986).

Trial court erred in holding that plaintiff's action against the city was barred by the plaintiff's failure to give ante litem notice since the notice provisions of O.C.G.A. § 36-33-5 do not apply to actions filed pursuant to 42 U.S.C. § 1983. Armour v. Davidson, 203 Ga. App. 12, 416 S.E.2d 92, 1992 Ga. App. LEXIS 243 (1992), cert. denied, No. S92C0646, 1992 Ga. LEXIS 284 (Ga. Apr. 9, 1992).

Former psychiatric inmate's pro se complaint against a city in which the inmate alleged civil rights and other violations was properly dismissed based on the inmate's failure to comply with the ante litem notice provisions of O.C.G.A. § 36-33-5. Although the provisions did not apply to actions filed pursuant to 42 U.S.C. § 1983, the complaint had not been filed pursuant to § 1983, and the inmate had not alleged any facts that would give rise to § 1983 liability. White v. City of Atlanta Police Dep't, 289 Ga. App. 575, 657 S.E.2d 545, 2008 Ga. App. LEXIS 70 (2008).

Notice not shown. — In a nuisance suit brought by homeowners against a city, it was proper to grant the city's motion for judgment notwithstanding the verdict as to one of the homeowners on the ground that the homeowner had not given the ante litem notice required by O.C.G.A. § 36-33-5(b); the city had not stipulated that such notice had been given, and although ante litem notice given by the homeowner's spouse might have been sufficient to apprise the city of the homeowner's claim, the homeowners had not cited to where in the record the spouse's ante litem notice appeared. City of Atlanta v. Broadnax, 285 Ga. App. 430, 646 S.E.2d 279, 2007 Ga. App. LEXIS 452 (2007), cert. denied, No. S07C1446, 2007 Ga. LEXIS 615 (Ga. Sept. 10, 2007), cert. denied, No. S07C1445, 2007 Ga. LEXIS 648 (Ga. Sept. 10, 2007), overruled in part, Royal Capital Dev. LLC v. Md. Cas. Co., 291 Ga. 262, 728 S.E.2d 234, 2012 Ga. LEXIS 501 (2012), overruled in part as stated in City of Stone Mountain v. Black, 340 Ga. App. 630, 797 S.E.2d 927, 2017 Ga. App. LEXIS 112 (2017).

Contract not shown. — Developer which claimed that a mayor and council had breached a contract by delaying the provision of water to a subdivision had not shown the existence of a contract that would preclude the need for ante litem notice; the town had voted to construct a water line, but had not committed to a specific date for completion, and there was no other evidence that the parties had

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reached a meeting of the minds as to the time for installation. King v. Comfort Living, Inc., 287 Ga. App. 337, 651 S.E.2d 484, 2007 Ga. App. LEXIS 964 (2007).

Imposition by state of conditions precedent to civil rights suit. — By its terms this section applies to claims for money damages on account of negligence attributable to the municipality. Under 42 U.S.C. § 1983, plaintiff must prove that some policy, practice, ordinance, or regulation of the city has deprived plaintiff of plaintiff's rights under the Constitution of the United States. Williams v. Posey, 475 F. Supp. 133, 1979 U.S. Dist. LEXIS 10216 (M.D. Ga. 1979).

Section 1983 plaintiff to be given benefit of effected toll. — Although plaintiffs need not comply with state exhaustion requirements before filing claims under 42 U.S.C. § 1983 in federal court, nothing prevents the plaintiffs from so doing; and given that plaintiffs may, if the plaintiffs choose, seek to exhaust state administrative remedies, the rule that federal courts must employ the applicable state statute of limitations in § 1983 cases clearly requires federal courts to give a § 1983 plaintiff the benefit of any toll effected by plaintiff's compliance with a state exhaustion requirement. Lawson v. Glover, 957 F.2d 801, 1987 U.S. App. LEXIS 15695 (11th Cir. 1987).

Effect on special Act. — When at the time of enactment of a special law amending a city charter, providing that no suit for injury to person or property could be maintained against the city unless within 90 days from such injury written notice was given, there existed a general law, this section. This general law provided for the case covered by the special law, and the latter was repugnant to Ga. Const. 1877, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV), and therefore void. City of Atlanta v. Hudgins, 193 Ga. 618, 19 S.E.2d 508, 1942 Ga. LEXIS 451 (1942).

Insurer of city not agent for purposes of notice. — Contract between a city and the city's insurer does not convert the insurer into the agent of the city for the purpose of ante litem notice required by O.C.G.A. § 36-33-5; thus, notice to a city's insurer is not substantial compliance with the requirement of notice to the governing authority of the municipality. City of LaGrange v. USAA Ins. Co., 211 Ga. App. 19, 438 S.E.2d 137, 1993 Ga. App. LEXIS 1423 (1993); Evans v. City of Covington, 240 Ga. App. 373, 523 S.E.2d 594.

Effect of insurance statute. — Former Code 1933, § 69-308 (see now O.C.G.A. § 36-33-5) was still the law irrespective of insurance coverage, and it was not changed by former Code 1933, § 56-2437 (see now O.C.G.A. § 33-24-51). Perdue v. City Council, 137 Ga. App. 702, 225 S.E.2d 62, 1976 Ga. App. LEXIS 2578 (1976).

Demand not required to be within city's insurance limits. — In a negligence action arising from a pedestrian's fall on a sidewalk, the trial court did not err in denying the city's motion for summary judgment on the ground that the demand in the ante litem notice was noncompliant because the offer needed to be able to be accepted by the city and could not be accepted because it was not within the city's insurance limits. City of Suwanee v. Padgett, 364 Ga. App. 34, 873 S.E.2d 712, 2022 Ga. App. LEXIS 255 (2022).

Similarity to presentment of claims against county. — While former Code 1933, § 69-308 (see now O.C.G.A. § 36-33-5), providing for the filing of a claim against a municipality before suit against such municipality, was unlike the provisions of former Code 1933, § 23-1602 (see now O.C.G.A § 36-11-1) relative to the presentment of claims against a county, the objects and purposes of these two statutes were similar. Davis v. Cobb County, 65 Ga. App. 533, 15 S.E.2d 814, 1941 Ga. App. LEXIS 349 (1941).

Words "any suit" (now "any action") clearly mean that in every suit wherein such damages are sought, notice shall be given. Thompson v. City of Atlanta, 219 Ga. 190, 132 S.E.2d 188, 1963 Ga. LEXIS 400 (1963).

Generally accepted meaning of the phrase "governing authority" or "governing body," in reference to the operation of city or county governments, is a council

or board performing legislative functions. Peek v. City of Albany, 101 Ga. App. 564, 114 S.E.2d 451, 1960 Ga. App. LEXIS 941 (1960).

Terminology synonymous. — General character of the claim is all that is necessary; when the word "claim," and the word "suit," and the words "cause of action," appear in this section, those words are synonymous. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930).

"Claim" and "demand for payment" as used in this section have the same meaning. The presentation of the claim for adjustment is a condition precedent to bringing the action. Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691, 1959 Ga. App. LEXIS 592 (1959).

Applicability to counterclaims. — Defendant property-lessor and business operator's failure to give adequate ante litem notice for counterclaims against city alleging tortious interference with their business relationship warranted dismissal of these counterclaims. Sims v. City of Alpharetta, 207 Ga. App. 411, 428 S.E.2d 94, 1993 Ga. App. LEXIS 196 (1993).

Applicability to breach of contract. — Ante litem notice provisions of this section do not apply to claims arising out of a breach of contract. City of Atlanta v. J.J. Black & Co., 110 Ga. App. 667, 139 S.E.2d 515, 1964 Ga. App. LEXIS 732 (1964).

Summary judgment for a city in a police officer's breach of contract claim was error because O.C.G.A. § 36-33-5 did not apply to contract suits, and the police officer's failure to provide ante litem notice to the city in a contract action did not bar the suit. Neely v. City of Riverdale, 298 Ga. App. 884, 681 S.E.2d 677, 2009 Ga. App. LEXIS 819 (2009), cert. denied, No. S09C1925, 2010 Ga. LEXIS 28 (Ga. Jan. 12, 2010).

Subcontractor seeking to recover against a city for payment for work performed under a subcontract under theories of unjust enrichment, quantum merit, and implied obligation to pay was not required to comply with the ante litem notice requirements before filing suit because O.C.G.A. § 36-33-5(a) applied only to tort claims regarding personal injury or property damage. Contrary language in Jacks v. City of Atlanta, 284 Ga. App. 200 (2007),was disapproved. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101, 2015 Ga. App. LEXIS 177 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. June 15, 2015).

Applicability to action for illegal imprisonment. — This section applies to a claim against a city for illegal imprisonment under sentence from a recorder's court. Marks v. City of Rome, 145 Ga. 399, 89 S.E. 324, 1916 Ga. LEXIS 339 (1916).

Litigant seeking injunctive relief is not bound by the requirements of this statute. Ehlers v. City of Decatur, 614 F.2d 54, 1980 U.S. App. LEXIS 19503 (5th Cir. 1980).

Applicability to out-of-state municipalities. — This section applies not only to municipalities located in the state, but also to any other municipality. Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163, 1971 U.S. Dist. LEXIS 10329 (N.D. Ga. 1971).

Applicability to trespass and inverse condemnation claims. — Property owner's ante litem notice did not bar its trespass and inverse condemnation claims because the owner alleged that the city wrongfully and intentionally demolished the owner's building. City of Atlanta v. MLK Properties, LLC, 372 Ga. App. 210, 904 S.E.2d 79, 2024 Ga. App. LEXIS 281 (June 27, 2024).

Applicability to zoning disputes. — Ante litem notice provisions applied to a claim for damages arising out of a zoning dispute. City of Walnut Grove v. Questco, Ltd., 275 Ga. 266, 564 S.E.2d 445, 2002 Ga. LEXIS 487 (2002).

Property cannot be encumbered. — City board of education has no authority to place an encumbrance upon articles which the city had unconditionally purchased on account several months previously, and which the city had installed as necessary to the operation of the schools. Southern Sch. Supply Co. v. City of Abbeville, 34 Ga. App. 93, 128 S.E. 231, 1925 Ga. App. LEXIS 49 (1925).

O.C.G.A. § 36-33-5, taken together with City of Chamblee v. Maxwell, 264 Ga.

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635, 452 S.E.2d 488 (1994) does not stand for the proposition that a municipality's liability for the effects of a continuing nuisance or trespass is truncated by ante litem notice; the trial court did not err in allowing an owner to present evidence of damages to the owner's property due to a city's abatable nuisance for the period after the owner presented ante litem notice to the city. City of Atlanta v. Landmark Envtl. Indus., 272 Ga. App. 732, 613 S.E.2d 131, 2005 Ga. App. LEXIS 274 (2005), cert. denied, No. S05C1466, 2005 Ga. LEXIS 558 (Ga. Sept. 19, 2005), cert. denied, No. S05C1464, 2005 Ga. LEXIS 559 (Ga. Sept. 19, 2005).

Sufficiency of Notice

Substantial compliance with this section is all that is required. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930); Mayor of Savannah v. Helmken, 43 Ga. App. 84, 158 S.E. 64, 1931 Ga. App. LEXIS 185 (1931); City of Atlanta v. Hawkins, 45 Ga. App. 847, 166 S.E. 262, 1932 Ga. App. LEXIS 735 (1932); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325, 1933 Ga. App. LEXIS 19 (1933); Lundy v. City Council, 51 Ga. App. 655, 181 S.E. 237, 1935 Ga. App. LEXIS 433 (1935); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353, 1936 Ga. App. LEXIS 176 (1936); Olmstead v. Mayor of Savannah, 57 Ga. App. 815, 196 S.E. 923, 1938 Ga. App. LEXIS 402 (1938); Mayor of Buford v. Light, 65 Ga. App. 99, 15 S.E.2d 459, 1941 Ga. App. LEXIS 265 (1941); City of Acworth v. McLain, 99 Ga. App. 407, 108 S.E.2d 821, 1959 Ga. App. LEXIS 864 (1959); Caldwell v. Mayor of Savannah, 101 Ga. App. 683, 115 S.E.2d 403, 1960 Ga. App. LEXIS 979 (1960); Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265, 1961 Ga. App. LEXIS 744 (1961); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245, 1972 Ga. App. LEXIS 1408, 1972 Ga. App. LEXIS 1498, 1972 Ga. App. LEXIS 1501 (1972); City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718, 1975 Ga. App. LEXIS 2124 (1975); City of Arlington v. Smith, 238 Ga. 50, 230 S.E.2d 863, 1976 Ga. LEXIS 1087 (1976); Hicks v. City of Atlanta, 154 Ga. App. 809, 270 S.E.2d 58, 1980 Ga. App. LEXIS 2400 (1980); City of Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909, 1980 Ga. App. LEXIS 2588 (1980); Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

Property owners did not substantially comply with the notice requirement of O.C.G.A. § 36-33-5(b) in the owners' assertion, by amendment to the owners' complaint, of a personal injury claim against a municipality, arising from the continued backup of sewage on the owners' property, as the only indication in the owners' ante litem notice that the owners were seeking personal injuries was a statement that the sewage backup had "caused an ongoing health hazard"; such did not state the "extent of the injury," including the "nature, character, and particulars of the injury," and those personal injury claims were properly barred. Davis v. City of Forsyth, 275 Ga. App. 747, 621 S.E.2d 495, 2005 Ga. App. LEXIS 998 (2005), cert. denied, No. S06C0356, 2006 Ga. LEXIS 235 (Ga. Mar. 27, 2006).

Trial court erred in granting a city summary judgment because city employees substantially complied with ante litem notice requirements; a letter the employees' acting attorney sent to the mayor sufficed to place the city on notice of the general character of the complaint, namely the wrongful terminations, and, in a general way, of the time, place, and extent of the injury. Owens v. City of Greenville, 290 Ga. 557, 722 S.E.2d 755, 2012 Ga. LEXIS 191 (2012).

Trial court erred in denying a city's motion for judgment on the pleadings because it was undisputed that the property owner failed to serve either the mayor, or the chairperson of the city council or city commission; thus, the owner did not comply with the ante litem notice statute, O.C.G.A. § 36-33-5(f), which was fatal to the owner's claim. City of Albany v. GA HY Imports, LLC, 348 Ga. App. 885, 825

S.E.2d 385, 2019 Ga. App. LEXIS 96 (2019), overruled in part, Fleureme v. City of Atlanta, No. S24G0995, 2025 Ga. LEXIS 148 (Ga. June 24, 2025).

Strict compliance required. — Georgia General Assembly intended to reduce uncertainty by limiting the pool of individuals or entities upon which ante litem notice could be served for purposes of satisfying the notice requirements of O.C.G.A. § 36-33-5(f); in other words, the court presumed the General Assembly meant what it said and said what it meant. Strict compliance with O.C.G.A. § 36-33-5(f) is required. City of Albany v. GA HY Imports, LLC, 348 Ga. App. 885, 825 S.E.2d 385, 2019 Ga. App. LEXIS 96 (2019), overruled in part, Fleureme v. City of Atlanta, No. S24G0995, 2025 Ga. LEXIS 148 (Ga. June 24, 2025).

In a wrongful death action, city's motion for summary judgment properly granted because by failing to provide specific amount that would constitute binding offer of settlement that could be accepted by city, plaintiff's ante litem notice failed to strictly or substantially comply with O.C.G.A. § 36-33-5(e). Brandenburg v. City of Vidalia, 366 Ga. App. 51, 880 S.E.2d 625, 2022 Ga. App. LEXIS 526 (2022).

Mere notice insufficient. — Mere notice of injury, although in writing and announcing an intention to file suit, does not constitute a presentation of the claim or demand to the governing authorities of the municipality for adjustment so as to meet the requirements of this section. Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691, 1959 Ga. App. LEXIS 592 (1959); Chiles v. City of Smyrna, 146 Ga. App. 260, 246 S.E.2d 177 (1978).

Notice of intention to sue held sufficient. — Written notice to a municipal corporation of the intention of a person injured to bring suit against the municipality at a certain term of court, to recover for alleged injuries, is a presentation in writing of such claim to the governing authority of the municipal corporation for adjustment as required by this section. Lewis v. City of Moultrie, 31 Ga. App. 712, 121 S.E. 843, 1924 Ga. App. LEXIS 145 (1924), overruled, Tanner v. Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Claimant substantially complied with the statute as the claimant's letter to the defendant city included the elements of time, place, and extent of the injury since: (1) the termination of a contract between the parties was the subject of the letter and, therefore, the nature and the extent of the injury were communicated; (2) the plaintiff specifically referenced a conversation between a city commissioner and the plaintiff's president, so the elements of time and place were included; and (3) the letter even listed potential causes of action. Info. Sys. & Networks Corp. v. City of Atlanta, 281 F.3d 1220, 2002 U.S. App. LEXIS 1803 (11th Cir. 2002).

Hazard notice filed by city not sufficient. — Issuance of a "Hazard Notice" by the city against the plaintiff did not constitute an ante litem notice on behalf of the plaintiff which would satisfy the notice requirements of O.C.G.A. § 36-33-5. Brown v. City of Chamblee, 211 Ga. App. 45, 438 S.E.2d 396 (1993).

It is necessary only that the city shall be put on notice of the general character of the complaint and, in a general way, of time, place, and extent of injury. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325, 1933 Ga. App. LEXIS 19 (1933); City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467, 1935 Ga. App. LEXIS 356 (1935); Lundy v. City Council, 51 Ga. App. 655, 181 S.E. 237, 1935 Ga. App. LEXIS 433 (1935); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353, 1936 Ga. App. LEXIS 176 (1936); Mayor of Buford v. Light, 65 Ga. App. 99, 15 S.E.2d 459, 1941 Ga. App. LEXIS 265 (1941); Caldwell v. Mayor of Savannah, 101 Ga. App. 683, 115 S.E.2d 403, 1960 Ga. App. LEXIS 979 (1960); City of Atlanta v. J.J. Black & Co., 110 Ga. App. 667, 139 S.E.2d 515, 1964 Ga. App. LEXIS 732 (1964); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995); City of Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909, 1980 Ga. App. LEXIS 2588 (1980).

What is substantial compliance. — Requirements of this section are suffi-

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ciently complied with when the notice gives information sufficiently definite to locate the property alleged to have been injured, the amount of damages claimed, and sufficient data to enable the city authorities to examine into the alleged injuries and determine whether the claim should be adjusted without suit. Kennedy v. Mayor of Savannah, 8 Ga. App. 98, 68 S.E. 652, 1910 Ga. App. LEXIS 51 (1910); Mayor of Macon v. Stringfield, 16 Ga. App. 480, 85 S.E. 684, 1915 Ga. App. LEXIS 95 (1915); Marks v. City of Rome, 145 Ga. 399, 89 S.E. 324, 1916 Ga. LEXIS 339 (1916); City of Griffin v. Stewart, 19 Ga. App. 817, 92 S.E. 400, 1917 Ga. App. LEXIS 381 (1917); Sirmans v. City of Ray City, 32 Ga. App. 430, 124 S.E. 60, 1924 Ga. App. LEXIS 441 (1924); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, 1925 Ga. App. LEXIS 796 (1925), overruled in part, Gilson v. Mitchell, 131 Ga. App. 321, 205 S.E.2d 421, 1974 Ga. App. LEXIS 1413 (1974); Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930); Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353, 1936 Ga. App. LEXIS 176 (1936); Olmstead v. Mayor of Savannah, 57 Ga. App. 815, 196 S.E. 923, 1938 Ga. App. LEXIS 402 (1938); Aldred v. City of Summerville, 215 Ga. 651, 113 S.E.2d 108, 1960 Ga. LEXIS 294 (1960); Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245, 1972 Ga. App. LEXIS 1408, 1972 Ga. App. LEXIS 1498, 1972 Ga. App. LEXIS 1501 (1972).

In a wrongful death action, the trial court committed no error in determining that the original notice failed to substantially comply with O.C.G.A. § 36-33-5(b) because the parents' original notice contained no allegations of negligence by the city and instead identified alleged negligent acts only of the public school, a separate legal entity, as causing the fatal accident; thus, the original notice failed to identify what alleged negligence on the part of the city caused the fatal incident. Wallace v. City of Atlanta, 368 Ga. App. 260, 889 S.E.2d 438, 2023 Ga. App. LEXIS 286 (2023).

Substantial compliance not shown. — When appellant gave oral notice to a representative of the municipal corporation and documents prepared by city employees and the city's insurer were not presented to the city by the appellant as required by O.C.G.A. § 36-33-5, there was no proper ante litem notice. Clark v. City of Smyrna, 212 Ga. App. 598, 442 S.E.2d 461, 1994 Ga. App. LEXIS 354 (1994), cert. denied, No. S94C1126, 1994 Ga. LEXIS 733 (Ga. May 27, 1994).

Because plaintiffs' ante litem notice failed to comply with O.C.G.A. § 36-33-5(e), denial of city's motion to dismiss on all claims except for plaintiffs' claims for inverse condemnation was reversed as notice merely provided estimated range of potential damages and failed to identify which insurance policies they sought to recover under. City of Alpharetta v. Francis, 366 Ga. App. 454, 883 S.E.2d 400, 2023 Ga. App. LEXIS 24 (2023).

In a wrongful death action involving an alleged delay in rendering aid to a minor gun shot victim, the trial court did not err in finding that the plaintiffs' claims were premised on negligence, and were thus subject to dismissal under the ante litem provisions of O.C.G.A. § 36-33-5, since the notices did not state the specific amount of monetary damages sought from the municipal corporations. Payton v. City of College Park, 368 Ga. App. 396, 890 S.E.2d 278, 2023 Ga. App. LEXIS 334 (2023), overruled in part, Wasserman v. Franklin Cnty., 320 Ga. 624, 911 S.E.2d 583, 2025 Ga. LEXIS 15 (2025).

Trial court properly dismissed a parent's personal injury suit against a city arising from a tree branch falling on a child on city property because O.C.G.A. § 36-33-5 was held not tolled by the tolling provision for minors in O.C.G.A. § 9-3-90(b), and the notice failed to comply with O.C.G.A. § 36-33-5(e) by providing the amount of the loss claimed was in excess of $500,000 as such a statement was too indefinite. Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), aff'd, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025).

City of Atlanta v. Barrett, 102 Ga. App. 469 (1960) and its progeny were disapproved because the time for filing an

ante litem notice under O.C.G.A. § 36-33-5 is not subject to tolling under O.C.G.A. § 9-3-90(b) as the Supreme Court of Georgia made clear in Dep't of Pub. Safety v. Ragsdale, 308 Ga. 210 (2020) that an ante litem notice was not a statute of limitation. Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), aff'd, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025).

Statute does not contemplate that notice shall be drawn with all technical niceties necessary in framing a declaration for the purpose of the law was simply to give to the municipality notice that the citizen or property owner has a grievance against the municipality and it is necessary only that the city be put on notice of the general character of the complaint and, in a general way, of the time, place, and extent of the injury. City of E. Point v. Christian, 40 Ga. App. 633, 151 S.E. 42, 1929 Ga. App. LEXIS 679 (1929); Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930); Mayor of Savannah v. Helmken, 43 Ga. App. 84, 158 S.E. 64, 1931 Ga. App. LEXIS 185 (1931); City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325, 1933 Ga. App. LEXIS 19 (1933); Olmstead v. Mayor of Savannah, 57 Ga. App. 815, 196 S.E. 923, 1938 Ga. App. LEXIS 402 (1938); City of Dalton v. Joyce, 70 Ga. App. 557, 29 S.E.2d 112, 1944 Ga. App. LEXIS 46 (1944); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995); City of Columbus v. Preston, 155 Ga. App. 379, 270 S.E.2d 909, 1980 Ga. App. LEXIS 2588 (1980).

Service of verbatim copy of petition sufficient notice. — Service upon the municipal corporation of a verbatim copy of the petition which the person injured intends to file in a suit against the municipality, which states the time, place, and extent of the injuries complained of, accompanied by a letter from the plaintiff's attorneys to the clerk of the municipal corporation reciting the name of the case and stating that "we enclose herewith claim in the above-stated matter as required by law," is sufficient as a presentation of the claim for adjustment. Lewis v. City of Moultrie, 31 Ga. App. 712, 121 S.E. 843, 1924 Ga. App. LEXIS 145 (1924), overruled, Tanner v. Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Absolute exactness of notice not necessary. — When the notice states the time, place, manner, circumstances, and details of the accident causing the injuries for which the claim was made and the acts of negligence charged against the municipality as well as the amount claimed as damages, this is a sufficient compliance with the statute, and the fact that the claim filed with the municipality states that the plaintiffs claimed "35,000 from said municipality," and the action was filed jointly against the municipality and an individual is immaterial. City of Dalton v. Joyce, 70 Ga. App. 557, 29 S.E.2d 112, 1944 Ga. App. LEXIS 46 (1944).

This section recognizes, by the use of the words "as near as practicable," that absolute exactness need not be had; a substantial compliance with the section is all that is required; and, when the notice describes the time, place, and extent of the injury with reasonable certainty, that notice will be sufficient. City of E. Point v. Christian, 40 Ga. App. 633, 151 S.E. 42, 1929 Ga. App. LEXIS 679 (1929); City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995).

Words "as near as practicable," as used in this section do not make any difference in their qualification between "time, place, and extent of such injury," and "the negligence which caused the same." City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467, 1935 Ga. App. LEXIS 356 (1935).

Slight inaccuracies of the facts will not render the notice invalid. City of Fairburn v. Clanton, 102 Ga. App. 556, 117 S.E.2d 197, 1960 Ga. App. LEXIS 677 (1960).

Variance between petition and notice. — If notice and petition correspond in all substantial respects as to matters, information of which is

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required to be given, the variance is immaterial. Langley v. City Council, 118 Ga. 590, 45 S.E. 486, 1903 Ga. LEXIS 629 (1903); Smith v. City of Elberton, 5 Ga. App. 286, 63 S.E. 48, 1908 Ga. App. LEXIS 95 (1908); Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930).

Petition need not actually follow the notice, and an immaterial variance between the two as to time, place, or extent of injury will not amount to a fatal variance. Mayor of Macon v. Stringfield, 16 Ga. App. 480, 85 S.E. 684, 1915 Ga. App. LEXIS 95 (1915); Williamson v. Mayor of Savannah, 19 Ga. App. 784, 92 S.E. 291, 1917 Ga. App. LEXIS 357 (1917).

Notice need not be as clear and specific as petition. — It would be entirely contrary to the purpose of this section to say that the negligence relied on must be as clearly and specifically set forth in the notice as in the petition; the object and purpose of the notice is merely to give the city an opportunity to investigate the matter in order to determine whether the city will pay without suit. City of Atlanta v. Blackmon, 50 Ga. App. 448, 178 S.E. 467, 1935 Ga. App. LEXIS 356 (1935).

Technical accuracy in filing claims is no longer necessary, and the old doctrine of strict and literal compliance, with the statute's attendant harsh and unfair results, has virtually disappeared from the law. What is required by this section is that there be substantial compliance with a demand or claim requirement. Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245, 1972 Ga. App. LEXIS 1408, 1972 Ga. App. LEXIS 1498, 1972 Ga. App. LEXIS 1501 (1972).

Notice not required to specify amount of damages. — It is not a prerequisite to suit against a municipal corporation in this state, for injury to person or property, that the written notice required under this section should specify any amount of money claimed as damages. Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116, 1919 Ga. LEXIS 106 (1919); Maryon v. City of Atlanta, 23 Ga. App. 716, 99 S.E. 316, 1919 Ga. App. LEXIS 308 (1919); Mayor of Savannah v. Clarke, 42 Ga. App. 275, 155 S.E. 790, 1930 Ga. App. LEXIS 336 (1930); Mayor of Waynesboro v. Hargrove, 111 Ga. App. 26, 140 S.E.2d 286, 1965 Ga. App. LEXIS 870 (1965).

For contrary view that notice must specify amount of damages, see Mayor of Macon v. Stringfield, 16 Ga. App. 480, 85 S.E. 684, 1915 Ga. App. LEXIS 95 (1915); Williamson v. Mayor of Savannah, 19 Ga. App. 784, 92 S.E. 291, 1917 Ga. App. LEXIS 357 (1917); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, 1925 Ga. App. LEXIS 796 (1925), overruled in part, Gilson v. Mitchell, 131 Ga. App. 321, 205 S.E.2d 421, 1974 Ga. App. LEXIS 1413 (1974).

Ante litem notice is sufficient without inclusion of monetary amount. Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Specific amount of monetary damages required. — After the plaintiff was involved in a car accident with a police officer, the officer's motion to dismiss the plaintiff's complaint was properly granted because the plaintiff's notice did not substantially comply with the amendment to O.C.G.A. § 36-33-5 as the notice did not include any specific amount of monetary damages being sought from the officer that could constitute an offer of compromise; the amendment applied prospectively to all ante litem notices issued after the effective date of the amendment; and there was no constitutional violation for improper retrospective application of the amendment as the amendment affected only a procedure or remedy, and not any vested rights. Harrell v. City of Griffin, 346 Ga. App. 635, 816 S.E.2d 738, 2018 Ga. App. LEXIS 423 (2018), cert. denied, No. S18C1542, 2019 Ga. LEXIS 166 (Ga. Mar. 4, 2019).

Trial court did not err in concluding that the appellants' ante litem notices failed to comply with O.C.G.A. § 36-33-5(e) and in dismissing the claim for monetary damages because the appellants were required to include a specific amount of monetary damages being sought from the city and it was

undisputed that none of the notices sent to the city included a claim for a specific amount of monetary damages. Wright v. City of Greensboro, 350 Ga. App. 685, 830 S.E.2d 228, 2019 Ga. App. LEXIS 365 (2019), cert. denied, No. S19C1468, 2020 Ga. LEXIS 30 (Ga. Jan. 13, 2020).

In the plaintiff's action for damages against the city and two of the city's employees after one of the city's firefighters was involved in a motor vehicle collision with the plaintiff, the trial court properly denied the city's motion to dismiss because the plaintiff's ante litem notice satisfied the plain language and purposes of O.C.G.A. § 36-33-5(e) as the notice stated that the plaintiff would seek to recover $1,000,000 in monetary damages, and that was a specific amount of monetary damages that could constitute an offer of compromise. City of Lafayette v. Chandler, 354 Ga. App. 259, 840 S.E.2d 638, 2020 Ga. App. LEXIS 145 (2020).

Trial court did not err by dismissing the plaintiffs' personal injury action against the city for failure to comply with O.C.G.A. § 36-33-5 because the plaintiffs' notice's statement that the plaintiffs' claim likely exceeded $100,000 merely provided an estimate of potential damages and was not the specific amount of monetary damages being sought from the city as contemplated by the unambiguous language of the statute. Picklesimer v. City of Eatonton, 356 Ga. App. 504, 847 S.E.2d 863, 2020 Ga. App. LEXIS 475 (2020), cert. denied, No. S21C0194, 2021 Ga. LEXIS 330 (Ga. Apr. 19, 2021).

Trial court did not err in granting the city's motion to dismiss the driver's action arising from a motor vehicle collision with a city employee because the driver's ante litem notice did not include the specific amount of monetary damages being sought from the city. While the ante litem notice stated that the driver was claiming damages for medical bills in the amount of $30,000 as well as general damages in an amount not less than $20,000.00, this fell short of providing a specific amount of monetary damages that could constitute an offer of compromise. Davis v. City of Valdosta, 357 Ga. App. 900, 852 S.E.2d 859, 2020 Ga. App. LEXIS 680 (2020).

Trial court did not err in dismissing the plaintiff's lawsuit against the city based on a motor vehicle collision involving a city employee because the ante litem notice failed to comply with O.C.G.A. § 36-33-5(e), in that the notice failed to provide the specific amount of monetary damages being sought from the city and, thus, fell short of constituting an offer of compromise. Tanks v. Nesmith, 359 Ga. App. 596, 859 S.E.2d 559, 2021 Ga. App. LEXIS 244 (2021).

By failing to provide a specific amount that would constitute a binding offer of settlement that could be accepted by the municipality, the plaintiff's ante litem notice failed to strictly or substantially comply with O.C.G.A. § 36-33-5(e) and the trial court properly dismissed the action against the city for injuries suffered in a motor vehicle accident. Hall v. City of Blakely, 361 Ga. App. 135, 863 S.E.2d 393, 2021 Ga. App. LEXIS 444 (2021).

In an action arising from a motor vehicle collision between a police officer and a driver, the trial court erred in finding that the driver's claims could proceed in the absence of a proper ante litem notice because the driver failed to include the specific amount sought in the notice as required. City of Atlanta v. Burgos, 361 Ga. App. 490, 864 S.E.2d 670, 2021 Ga. App. LEXIS 501 (2021).

Trial court erred in denying the city's motion to dismiss plaintiff's personal injury action because plaintiff's ante litem notice failed to provide a specific amount that would constitute a binding offer of settlement that could be accepted by the city but sought an amount not to exceed $500,000 from the city and the county. City of Conyers v. Sampson, 362 Ga. App. 301, 868 S.E.2d 283, 2022 Ga. App. LEXIS 25 (2022).

Trial court erred in finding that the plaintiff's ante litem notices complied with O.C.G.A. § 36-33-5(e) because the plaintiff's ante litem notices stated that the plaintiff sought $ 1.5 million in damages against the city and any and all other employees, agencies or entities who might have been involved in causing the plaintiff's injuries, but it did not identify the specific amount the plaintiff sought against the city alone. City of Norcross v.

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Johnson, 363 Ga. App. 78, 870 S.E.2d 564, 2022 Ga. App. LEXIS 128 (2022).

Trial court erred by finding that the property owner's ante litem notice complied with O.C.G.A. § 36-33-5 because the notice lacked a specific amount of monetary damages being claimed that were exact enough to constitute an offer of compromise as the notice provided only an open-ended estimate of potential damages. City of Atlanta v. MLK Properties, LLC, 372 Ga. App. 210, 904 S.E.2d 79, 2024 Ga. App. LEXIS 281 (June 27, 2024).

Plaintiff not bound by amount claimed in notice. — Addition of the amount is unnecessary and, if set forth, mere surplusage, and does not bar a recovery of a greater sum. Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116, 1919 Ga. LEXIS 106 (1919); Scearce v. Mayor of Gainesville, 33 Ga. App. 411, 126 S.E. 883, 1925 Ga. App. LEXIS 796 (1925), overruled in part, Gilson v. Mitchell, 131 Ga. App. 321, 205 S.E.2d 421, 1974 Ga. App. LEXIS 1413 (1974).

It is not necessary that the plaintiff state any amount in the notice to meet the requirements of this section, and plaintiff is not bound by the amount of damages claimed in plaintiff's notice. City of Gainesville v. Moss, 108 Ga. App. 713, 134 S.E.2d 547, 1963 Ga. App. LEXIS 755 (1963).

Words "extent of such injury" do not mean the amount of damages claimed in dollars and cents, but mean the nature, character, and particulars of the injury, and which should be stated "as near as practicable." Maryon v. City of Atlanta, 149 Ga. 35, 99 S.E. 116, 1919 Ga. LEXIS 106 (1919).

No need to disclose jurisdictional fact. — Neither in the title nor in the body of this section is there any requirement that claimants shall disclose any jurisdictional fact. Carruthers v. City of Hawkinsville, 171 Ga. 313, 155 S.E. 520, 1930 Ga. LEXIS 341 (1930).

Plaintiff must show "substantial compliance" with section. — Under this section, it is a prerequisite to the recovery of money damages from a municipal corporation on account of an injury to person or property, that the plaintiff shall show a "substantial compliance" with the statute's provisions and not only that a written claim of the nature and contents specified shall have been presented before the suit to the governing authority of the municipality for adjustment, but that either the municipal authorities must have actually passed upon the claim, or more than 30 days must have elapsed between its presentation and the filing of the suit, within which the authorities failed to act upon it. City of La Fayette v. Rosser, 53 Ga. App. 228, 185 S.E. 377, 1936 Ga. App. LEXIS 47 (1936).

Letters held sufficient. — As required by O.C.G.A. § 36-33-5(b), the November 24, 1997 letter to the city's attorney notified the city of the date of the fire (June 9, 1997), the location (the plaintiffs' home), the extent of injury (the home was completely destroyed), and the negligence that caused the injury (the fire department's failure to respond to the fire); thus, the letter clearly provided notice that the plaintiffs seek reimbursement for the loss of the plaintiffs' home, furnishings, and personal belongings. Adequate notice does not require itemization of all damages sought as a result of the city's negligence. Canberg v. City of Toccoa, 2000 Ga. App. LEXIS 769 (Ga. Ct. App. June 20, 2000).

Landowners substantially complied with statutory ante litem requirements of O.C.G.A. § 36-33-5 as the letter the landowners sent to the city alleging damages from continuing nuisance the city allegedly maintained on the landowners property and that identified the nature and location of the damage, the cause, and the nature of the potential cause of action, sufficiently put the city on notice of the problem occurring on the landowners' property. City of Columbus v. Barngrover, 250 Ga. App. 589, 552 S.E.2d 536, 2001 Ga. App. LEXIS 826 (2001).

No precise standard for determining whether any given ante litem notice is substantively sufficient exists. Therefore, the trial court properly denied a city's motion to dismiss for failure to give proper ante litem notice because the landowners'

letters were sufficient to put the city on notice of the general character of the complaint, namely the claim of a continuing nuisance on their property caused by the city's water drainage system, and in a general way, of the time, place, and extent of the injury, namely, the flooding was ongoing and that the damage amounted to a taking of their property. City of Greensboro v. Rowland, 334 Ga. App. 148, 778 S.E.2d 409, 2015 Ga. App. LEXIS 590 (2015), cert. denied, No. S16C0305, 2016 Ga. LEXIS 154 (Ga. Feb. 8, 2016).

Notice found to be insufficient. — Letter written by the plaintiff's son failed to present any claim or demand for adjustment and, therefore, did not satisfy the statutory requirement for a written demand prerequisite to an action for injury to person or property; buried as it was amid reference to a prior letter (that antedated the plaintiff's fall), the generally poor state of the sidewalks downtown, the financial ability of the city to repair the sidewalks, multiple instances of poor zoning ordinances, the responsiveness of elected officials to property owners, the lamented absence of building requirements and the need to enforce existing zoning ordinances, the bare mention of the plaintiff's arm needing surgery after plaintiff tripped on uneven concrete was not sufficient to put a reasonable recipient on notice that the injury specified would be pursued as a claim for money damages against the municipality requiring investigation, analysis, and perhaps pre-litigation adjustment. Woodall v. City of Villa Rica, 236 Ga. App. 788, 513 S.E.2d 525, 1999 Ga. App. LEXIS 336 (1999).

Because a driver failed to present sufficient record evidence that a city received timely ante litem notice that the driver sustained a personal injury, much less the nature, character, or particularities of any such injury, but the notice submitted merely established that the driver sustained property damage, the driver did not substantially comply with O.C.G.A. § 36-33-5(b); thus, the trial court properly granted the city summary judgment on that issue. Harris-Jackson v. City of Cochran, 287 Ga. App. 722, 652 S.E.2d 607, 2007 Ga. App. LEXIS 1074 (2007).

Grant of summary judgment in favor of the city in negligence action was appropriate because the claimant failed to show that the claimant timely presented a written notice of the negligence claim to the city as required under O.C.G.A. § 36-33-5(b). An unauthenticated, purported notice did not create a genuine issue of material fact for summary judgment purposes. Jones v. City of Willacoochee, 299 Ga. App. 741, 683 S.E.2d 683, 2009 Ga. App. LEXIS 961 (2009).

Trial court did not err in granting a city's motion for summary judgment in a citizen's personal injury action because the citizen's ante litem notice was insufficient when although the notice gave the date and the particulars of the citizen's fall, the notice failed to properly or even generally identify where the incident actually occurred; while the citizen previously gave an oral report of the incident, which allowed the city to investigate the actual site of the fall, the citizen could not rely upon such oral notice or the city's earlier investigations and repairs to satisfy the requirements of O.C.G.A. § 36-33-5. Simmons v. Mayor of Savannah, 303 Ga. App. 452, 693 S.E.2d 517, 2010 Ga. App. LEXIS 143 (2010), cert. denied, No. S10C1364, 2010 Ga. LEXIS 734 (Ga. Sept. 20, 2010).

In a personal injury suit against a city, the trial court properly granted summary judgment in favor of the city because the notice the pedestrian provided under O.C.G.A. § 36-33-5 did not accurately identify the address for the missing water meter cover the pedestrian was alleged to have stepped into, thus, the notice failed to substantially comply with the statutory requirement. It is not the geographic proximity of the addresses that matters; rather, to substantially comply with the statute, O.C.G.A. § 36-33-5, the notice itself must provide enough information for a city to be able to properly investigate and adjust a claim pre-litigation. Williams v. City of Atlanta, 342 Ga. App. 470, 803 S.E.2d 614, 2017 Ga. App. LEXIS 355 (2017).

Plaintiff's civil negligence complaint against the city was properly dismissed because the plaintiff failed to include a

Sufficiency of Notice (Cont'd)

specific amount of monetary damages being sought from the city pursuant to the ante litem notice requirements of O.C.G.A. § 36-33-5 as the notice the plaintiff provided was merely an estimate of potential damages, and the notice did not constitute a real offer of compromise which the city could have accepted; nothing in § 36-33-5 imposed an obligation on the city to notify the plaintiff that the plaintiff's notice was insufficient; and the fact that the city conducted a preliminary investigation of the plaintiff's claim and denied liability did not remedy the plaintiff's failure to comply with the requirements of the statute. Pickens v. City of Waco, 352 Ga. App. 37, 833 S.E.2d 713, 2019 Ga. App. LEXIS 524 (2019), cert. denied, No. S20C0323, 2020 Ga. LEXIS 415 (Ga. May 4, 2020).

Formalities of Notice

Required contents. — Specified elements of notice are "the time, place, and extent of such injury, as nearly as practicable, and the negligence which caused the same." "Extent of such injury" means the nature, character, and particulars of the injury. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

O.C.G.A. § 36-33-5 requires a claimant to provide the relevant municipality with information about the events giving rise to a claimant's injuries as well as a demand for the specific amount of monetary damages the claimant is seeking for those injuries, which allows the municipality to make an informed decision about whether to accept the claimant's offer, make a counter-offer, or take other action to resolve the claim and thereby avoid costly, unnecessary litigation. The fact that a claimant is still undergoing medical treatment does not prevent the claimant from providing a demand for a specific monetary amount of damages as the claimant can include any prospective future costs into the specified monetary amount. Pickens v. City of Waco, 352 Ga. App. 37, 833 S.E.2d 713, 2019 Ga. App. LEXIS 524 (2019), cert. denied, No. S20C0323, 2020 Ga. LEXIS 415 (Ga. May 4, 2020).

Oral notice insufficient. — Oral notice to the mayor and city manager, together with written notice to the municipality which was five days late, will not suffice. Allen v. City of Macon, 118 Ga. App. 88, 162 S.E.2d 783, 1968 Ga. App. LEXIS 1315 (1968), overruled in part, Tanner v. Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Oral notice to a municipal corporation or a representative thereof is not considered substantial compliance with the provisions of the statute. Gillingwater v. City of Valdosta, 177 Ga. App. 241, 339 S.E.2d 287, 1985 Ga. App. LEXIS 2584 (1985).

Oral notice with appearance before council insufficient. — Oral notices followed by actual appearance before the mayor and council of the city in official session as the city's governing body, and the officials' assurances of indemnification, will not suffice and cannot create an estoppel. Allen v. City of Macon, 118 Ga. App. 88, 162 S.E.2d 783, 1968 Ga. App. LEXIS 1315 (1968), overruled in part, Tanner v. Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Written notice addressed to municipality sufficient. — Requirement that the ante litem notice be in writing addressed to the governing authority of the municipality is substantially complied with when the written notice is addressed to the municipality. City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995).

In order for notice to be in compliance with this section, the notice must be addressed to and received by the municipality or one of the municipality's departments or officials. Chiles v. City of Smyrna, 146 Ga. App. 260, 246 S.E.2d 177 (1978); Hicks v. City of Atlanta, 154 Ga. App. 809, 270 S.E.2d 58, 1980 Ga. App. LEXIS 2400 (1980); Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Ante litem notice addressed to and received by mayor is sufficient compliance with O.C.G.A. § 36-33-5. Tanner v.

City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Letter addressed to "Mayor's Office, City of Gainesville, Gainesville, Ga. 30501" created factual issue as to notice required under O.C.G.A. § 36-33-5 and precluded a grant of summary judgment. Tanner v. City of Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Notice to mayor and council. — Notice of damages for injuries addressed to the Mayor and Council of Greensboro instead of to the city in the city's corporate name is sufficient, and the fact that the notice attempts a compromise does not render the notice insufficient. City of Greensboro v. Robinson, 19 Ga. App. 199, 91 S.E. 244, 1917 Ga. App. LEXIS 62 (1917).

Strict compliance with service requirements of ante litem notice statute O.C.G.A. § 36-33-5(f) was required, and the ante litem notice must be addressed and served upon the mayor or chairperson of the city council/commission, not their offices. Fleureme v. City of Atlanta, 371 Ga. App. 416, 900 S.E.2d 625, 2024 Ga. App. LEXIS 160 (2024), rev'd, No. S24G0995, 2025 Ga. LEXIS 148 (Ga. June 24, 2025).

Leaving notice with clerk of city commission. — Filing of the required notice in writing in the office of, and leaving of the notice with, the officer who is the secretary or the clerk of the city commission, which is the governing authority of the city, and is the officer who is the custodian of the records of the city, is a presentation of the claim to the governing authority of the city as required. Davis v. City of Rome, 37 Ga. App. 762, 142 S.E. 171, 1928 Ga. App. LEXIS 600 (1928).

Notice required under statute must be given by person injured and having a claim because a city is only required to make adjustments with parties who make known the parties' claim and the parties' identity as claimants. Chiles v. City of Smyrna, 146 Ga. App. 260, 246 S.E.2d 177 (1978).

Notice may be given by one other than plaintiff. — When there is only one cause of action, a notice given a municipality setting out the time and place of the occurrence, the extent and nature of the injury, to whom occasioned, and the negligence which allegedly caused the injury is a sufficient "substantial compliance" with this section, although the notice may have been given by one other than the plaintiff in the present suit. Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265, 1961 Ga. App. LEXIS 744 (1961).

Subrogation notice from insurer insufficient. — Letter from the landowner's insurance carrier which fails to set out the time, place, extent of injury, or negligence which caused the injury and is nothing more than a subrogation notice letter is not sufficient notice under O.C.G.A. § 36-33-5. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

Notice of a personal injury claim by a tenant is not sufficient as ante litem notice of a property damage claim by the landlord under O.C.G.A. § 36-33-5. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

There is no requirement as to name and address of claimant in this section; failure to state either does not render the notice insufficient or noncompliant with this section. Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245, 1972 Ga. App. LEXIS 1408, 1972 Ga. App. LEXIS 1498, 1972 Ga. App. LEXIS 1501 (1972).

Even if claim requirement, unlike statute, demands address of claimant, that requirement is deemed satisfied if an address is given at which or through which the claimant may be found in order that the local government officials may make such investigation of the merits of the claim as may be desired. Bush v. City of Albany, 125 Ga. App. 558, 188 S.E.2d 245, 1972 Ga. App. LEXIS 1408, 1972 Ga. App. LEXIS 1498, 1972 Ga. App. LEXIS 1501 (1972).

Waiver and Estoppel

Knowledge of claim alone cannot work waiver of notice. — That the city governing authorities may have had knowledge of the fact that a party had a

Waiver and Estoppel (Cont'd)

claim which the party expected to assert against the city, either from communications which do not meet the requisites of written notice under this section, or from a reference of the claim to an insurance carrier which undertook an investigation and settlement, cannot work a waiver of the notice, an estoppel to assert lack thereof, or toll the time for giving the notice. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969); Robinette v. Johnston, 637 F. Supp. 922, 1986 U.S. Dist. LEXIS 24057 (M.D. Ga. 1986).

Notice not required when city, as party to contract, aware of claims. — Ante litem notice to a municipality is required for claims "on account of injuries to person or property." Property rights in contracts being intangible in nature rather than tangible, the notice was not required where the city, as a party to the contract or negotiations leading up to the contract in question, was well aware of the conflicting claims, if any, arising out of the contract. Holbrook v. City of Atlanta, 139 Ga. App. 510, 229 S.E.2d 21, 1976 Ga. App. LEXIS 1868 (1976).

Notice not required for claims that were not for injury to person or property. — No ante litem notice to the city under O.C.G.A. § 36-33-5 was required for city water customers' claims for unjust enrichment, money had and received, and breach of the city code because the claims were not claims for injuries to a person or property covered under § 36-33-5. City of Atlanta v. Benator, 310 Ga. App. 597, 714 S.E.2d 109, 2011 Ga. App. LEXIS 611 (2011), overruled in part, FDIC v. Loudermilk, 305 Ga. 558, 826 S.E.2d 116, 2019 Ga. LEXIS 186 (2019).

Individual acts of city official will not create estoppel or waiver of this section when it is not shown that such city official had the actual or delegated authority of the governing body to waive such municipal rights. Peek v. City of Albany, 101 Ga. App. 564, 114 S.E.2d 451, 1960 Ga. App. LEXIS 941 (1960).

Statutory requirements for ante litem notice to the governing authority of the city generally may not be waived by the city or by an individual, even if that individual is the official directly responsible for the injury or for claims adjustment. City of LaGrange v. USAA Ins. Co., 211 Ga. App. 19, 438 S.E.2d 137, 1993 Ga. App. LEXIS 1423 (1993).

City's insurer. — City did not waive the ante litem notice requirement because the appellant's claim was referred to the city's insurer. Clark v. City of Smyrna, 212 Ga. App. 598, 442 S.E.2d 461, 1994 Ga. App. LEXIS 354 (1994), cert. denied, No. S94C1126, 1994 Ga. LEXIS 733 (Ga. May 27, 1994).

Counteroffer by city's insurer did not meet notice requirements. — Trial court erred in relying, in some manner, on a counteroffer made to the plaintiff by an adjuster for the city's insurer as a means to cure the plaintiff's deficient ante litem notice because governing officials could not waive statutory ante litem notice requirements. City of Norcross v. Johnson, 363 Ga. App. 78, 870 S.E.2d 564, 2022 Ga. App. LEXIS 128 (2022).

Notice sent to wrong party. — City waived the city's claim that the subject ante litem notice did not comply with O.C.G.A. § 36-33-5 by sending the notice to a city claims investigator, rather than the city attorney or the mayor. City of Atlanta v. Atlantic Realty Co., 205 Ga. App. 1, 421 S.E.2d 113, 1992 Ga. App. LEXIS 1052 (1992).

City not estopped from invoking notice requirement by city attorney's unauthorized declarations. — Any unauthorized declarations on the part of the city attorney to the effect that no written ante litem notice would be required in view of the fact that the matter had already been brought to the city's attention would not estop the city from invoking the statutory notice requirement since there was no evidence that the city attorney had any authority to waive the statutory notice requirement on behalf of the city. Gillingwater v. City of Valdosta, 177 Ga. App. 241, 339 S.E.2d 287, 1985 Ga. App. LEXIS 2584 (1985).

Governing officials of municipal corporation have no right to waive provisions of this section, and the municipality cannot be estopped by the represen-

tations of the municipality's governing officials to a claimant that the claim will be settled without litigation. City of Calhoun v. Holland, 222 Ga. 817, 152 S.E.2d 752, 1966 Ga. LEXIS 638 (1966); Allen v. City of Macon, 118 Ga. App. 88, 162 S.E.2d 783, 1968 Ga. App. LEXIS 1315 (1968), overruled in part, Tanner v. Gainesville, 162 Ga. App. 405, 290 S.E.2d 541, 1982 Ga. App. LEXIS 2189 (1982).

Municipality not liable when no notice and defect has not existed long enough to substitute for notice. — When the defective condition of a sidewalk is due to a failure to repair or to negligent acts of third persons, a city is not liable unless the city has had actual notice of the defect, or unless the city appears from the facts in the case that the defect could have been ascertained by the exercise of ordinary care, as when the defect existed for such a length of the time that notice will be implied. City of Rome v. Stone, 46 Ga. App. 259, 167 S.E. 325, 1933 Ga. App. LEXIS 19 (1933).

Two appearances by plaintiff insufficient to waive notice. — Although notice was in the possession of the governing body of the municipal corporation before whom the plaintiff twice appeared, that alone would be insufficient to waive written notice within the time limited. Holland v. Calhoun, 114 Ga. App. 51, 150 S.E.2d 155, 1966 Ga. App. LEXIS 654, rev'd on other grounds, 222 Ga. 817, 152 S.E.2d 752, 1966 Ga. LEXIS 638 (1966).

Reply to plaintiff's claim acts as estoppel to assert defects in notice. — When neither the pleadings nor the evidence reveals the slightest suggestion of restrictions on counsel for the city, the presumption arises that the city attorney had authority to bind the client by the solemn acknowledgment to plaintiff after receipt of plaintiff's letter giving notice of plaintiff's injury that, after investigation, the conclusion had been reached that the city was not liable. This amounts to an acknowledgment that this section had been complied with and the ante litem notice was sufficient, clearing the way for the filing of the complaint and estopping the city to deny the validity of the notice. City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995).

Evidence stricken when insufficient to show waiver or estoppel. — When allegations that the matter of plaintiff's injury was referred to a liability insurance carrier for investigation and settlement are insufficient to show waiver or any basis for estoppel, the allegations are improper in the pleadings of a tort action because the allegations are irrelevant to the issue and the allegations are properly stricken on motion. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969).

Issue of lack of notice must be raised at trial. — While the notice required before a suit against a city cannot be waived by the city authorities and is a condition precedent to recovery, a city which fails to raise the issue at trial cannot take advantage of the failure of a claimant to plead compliance with this section. Horton v. City of Macon, 144 Ga. App. 380, 241 S.E.2d 311, 1977 Ga. App. LEXIS 2704 (1977).

Time of Notice and Action

Requirement of ante litem notice in statute is a statute of limitations. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969); City of Barnesville v. Powell, 124 Ga. App. 132, 183 S.E.2d 55, 1971 Ga. App. LEXIS 842 (1971), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025); Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341, 1975 Ga. App. LEXIS 1794 (1975), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025).

Notice requirement subject to general laws tolling statute of limitations. — Requirement that the notice be given within six months from the

Time of Notice and Action (Cont'd)

date of the injuries, or else that the action therefor be forever barred, is itself a statute of limitations and subject to the general law of this state with respect to the tolling of statutes of limitations. City of Atlanta v. Barrett, 102 Ga. App. 469, 116 S.E.2d 654, 1960 Ga. App. LEXIS 654 (1960), overruled in part as stated in Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163, 1971 U.S. Dist. LEXIS 10329 (N.D. Ga. 1971).

Former Code 1933, § 69-308 (see now O.C.G.A. § 36-33-5) did not purport to curtail a two-year period of limitations, in actions for personal injuries, as provided in former Code 1933, § 3-1004 (see now O.C.G.A. § 9-3-33). It required that, as claims relate to municipal corporations, ante litem claims prepared as fully set forth shall be presented to the governing authority for adjustment, and inhibits commencement of an action against municipalities until such claims shall have been presented. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Second proviso of statute is exception to general rule that statute of limitations runs and continues to run from time that a complete cause of action arose; that is, from the time that plaintiff could have sued. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Applicability of section providing for computation of time after commencement of action. — Ga. L. 1966, p. 609, § 6 (see now O.C.G.A. § 9-11-6) provided for the computations of time applicable to proceedings after commencement of the action. It did not apply in determining the time within which an action may be instituted, or when it may be barred by a statute of limitations. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969).

Section contemplates statute of limitations for injuries to person. — Term statute of limitations as used in former Code 1933, § 69-308 (see now O.C.G.A. § 36-33-5) so employed, though not expressly naming it, contemplated former Code 1933, § 3-1004 (see now O.C.G.A. § 9-3-33). City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Claim still pending when not considered within 30 days. — When a governing authority does not consider and act upon a claim within 30 days from the time the action was commenced, it must follow that the claim will still be pending before the governing authority. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Suspension of statute of limitations while claim pending. — Proviso in this section respecting the suspension of the statute of limitations is to the effect that the running of the statute shall be suspended during the time that the demand for payment is pending before the authorities without action on the authorities' part. This necessarily means that so long as the claim for damages is pending before the governing authorities of the municipality, and the authorities have not acted upon the claim, the statute of limitations is suspended. City of Atlanta v. Truitt, 55 Ga. App. 365, 190 S.E. 369, 1937 Ga. App. LEXIS 100 (1937).

When a claim not having been acted on by the governing authority is still pending under the plain and unambiguous language of the second proviso of this section, the statute of limitations is suspended not merely for 30 days, no action on the claim having been taken, but after 30 days up to the institution of suit. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941) (see O.C.G.A. § 36-33-5).

It was not intended by the legislature that a municipality by refusing or omitting to act upon a claim could thereby delay or prevent institution of suit, and have the statute of limitations operative against the other party during the same period. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Trial court erred by dismissing an arrestee's suit against a city alleging false arrest and other claims as being time-barred for not being filed within the two-

year limitation period established in O.C.G.A. § 9-3-33 because the arrestee established that the arrestee had provided a timely ante litem notice, pursuant to O.C.G.A. § 36-33-5(b), to the city and had properly included evidence of the notice in the record as an exhibit to the appellate brief. Simon v. City of Atlanta, 287 Ga. App. 119, 650 S.E.2d 783, 2007 Ga. App. LEXIS 895 (2007).

Municipality's failure to answer claim no bar to action. — When it appeared from the petition in which the plaintiff sought to recover for personal injuries alleged to have been received by plaintiff as a result of a city's negligence in the maintenance of one of the city's streets, that the cause of action accrued January 23, 1938, and a claim therefor was filed with the governing authority of the defendant municipal corporation on January 19, 1940 (within the period of limitations), and that the defendant had never acted upon the claim, the plaintiff's cause of action had not become barred by the statute of limitations upon the filing of the suit on February 24, 1940. City of Rome v. Rigdon, 64 Ga. App. 625, 13 S.E.2d 709, 1941 Ga. App. LEXIS 486, aff'd, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Filing of suit after expiration of 30-day claim period. — While this statute only prevents suit being filed within the period of 30 days after the filing of the claim with the city authorities, the statute does not prevent the filing of the suit at any time after the expiration of the 30 days, irrespective of whether or not the city authorities have acted on the claim. City of Atlanta v. Truitt, 55 Ga. App. 365, 190 S.E. 369, 1937 Ga. App. LEXIS 100 (1937).

When period begins to run. — Time within which the notice must be given in order to comply with the statute begins to run on the day the breach of the city's duty occurred. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969).

Suit may not be filed until 30 days from filing of claim. — This section clearly prevents the filing of a suit against the municipality until after the expiration of 30 days from the filing of the claim in writing with the municipal authorities as required. Of course, this claim must be filed within the period of the statute of limitations, and before the plaintiffs' right of action is barred. City of Atlanta v. Truitt, 55 Ga. App. 365, 190 S.E. 369, 1937 Ga. App. LEXIS 100 (1937).

O.C.G.A. § 36-33-5 contemplates that suit shall not be brought until after the municipal authorities have acted upon the claim, or have failed to take action thereon within 30 days. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

Effect of only part of injury occurring within statutory period. — While the ante litem notice required to be given by this section is a prerequisite to the maintenance of an action against a city, if it appears from the notice that a part of the injury from which the claim arises occurred within the six-month period immediately preceding the notice, a general demurrer (now motion to dismiss) will not lie for noncompliance with this statute. City of Gainesville v. Moss, 108 Ga. App. 713, 134 S.E.2d 547, 1963 Ga. App. LEXIS 755 (1963).

Municipality may answer claim after period elapsed. — Length of time in which to consider and act upon a claim against a municipal corporation under this section has reference to consideration and action by public officers as affecting the public interest. It is not declared that the governing authority may not consider and act upon the claim after 30 days have elapsed. It could be to the public interest to have longer than 30 days. The object is to facilitate adjustment without suit, and there is no express withdrawal of power to consider and act. Thus, the quoted part of the first proviso of this section is merely directory, and not a limitation of authority. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Effect of disability. — When the person to whom the claim belongs under former Code 1933, § 69-308 (see now O.C.G.A. § 36-33-5) is a person under disability as set forth in O.C.G.A. §§ 9-3-90 and 9-3-98, the limitation period does not begin to run until such time as the disability shall have been

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removed. City of Barnesville v. Powell, 124 Ga. App. 132, 183 S.E.2d 55, 1971 Ga. App. LEXIS 842 (1971), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025); Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341, 1975 Ga. App. LEXIS 1794 (1975), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025); Lowe v. Pue, 150 Ga. App. 234, 257 S.E.2d 209, 1979 Ga. App. LEXIS 2129 (1979), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025); City of Fairburn v. Cook, 188 Ga. App. 58, 372 S.E.2d 245, 1988 Ga. App. LEXIS 879 (1988); Jacobs v. Littleton, 241 Ga. App. 403, 525 S.E.2d 433.

Plaintiff waiting past expiration of 30-day period protected. — When a plaintiff, though having the right to sue immediately after the expiration of the 30-day period, nevertheless waits longer pending action on the demand by the municipal authorities, the plaintiff does so by permission of the law as well as under guaranty of the law that so long as the claim was pending without action the statute would not run against the plaintiff. It necessarily follows that this case is not to be governed by the general rule as to computing the limitation period from the time the cause of action accrues, but that it is governed by the exception found in the second proviso to this section, so far as it relates to the statute of limitations. City of Rome v. Rigdon, 192 Ga. 742, 16 S.E.2d 902, 1941 Ga. LEXIS 564 (1941).

Effect of later discovery of additional injury. — Later discovery by plaintiff that plaintiff was suffering from additional injury from plaintiff's previous fall does not toll or extend the time for giving the requisite ante litem notice. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969).

Effect of period ending on Sunday. — If the statutory six-months period for the giving of the notice ends on a Sunday, it does not extend the time to the Monday following since the period is measured in months, not days. Schaefer v. Mayor of Athens, 120 Ga. App. 301, 170 S.E.2d 339, 1969 Ga. App. LEXIS 751 (1969).

When the plaintiff failed to give notice to a municipality within six months of the claim's origin, the court did not err in dismissing the complaint. Perdue v. City Council, 137 Ga. App. 702, 225 S.E.2d 62, 1976 Ga. App. LEXIS 2578 (1976); Anderson v. City of Glenwood, 893 F. Supp. 1086, 1995 U.S. Dist. LEXIS 10207 (S.D. Ga. 1995).

Tolling of claims against municipal corporations. — In a tort action brought by a passenger against a regional transportation authority, the reversal of the denial of the authority's motion for judgment on the pleadings was upheld because by its terms, O.C.G.A. § 36-33-5(d) permitted the tolling of the period of limitation only for claims against municipal corporations and it was not a municipal corporation. Foster v. Ga. Reg'l Transp. Auth., 297 Ga. 714, 777 S.E.2d 446, 2015 Ga. LEXIS 653 (2015).

Case of continuing nuisance. — Notice to a city alleged to have been given within six months from the expiration of the four-year statute of limitations period during which the nuisance sued on continuously caused damage to the petitioner's property was given within the time prescribed by this section. Vickers v. City of Fitzgerald, 216 Ga. 476, 117 S.E.2d 316, 1960 Ga. LEXIS 509 (1960), overruled, City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488, 1994 Ga. LEXIS 894 (1994).

Upon giving the six-month notice required by O.C.G.A. § 36-33-5, a property owner who incurs damage as a result of a continuing nuisance or trespass maintained by a municipality is entitled within the four-year period of limitations, to recover only those damages incurred

during the six-months preceding the giving of such notice. The recovery of any damages incurred prior thereto would be barred, since no timely notice of claim therefor was given pursuant to this section; overruling Vickers v. City of Fitzgerald, 216 Ga. 476, 117 S.E.2d 316 (1960); City of Gainesville v. Moss, 108 Ga. App. 713(2), 134 S.E.2d 547 (1963). City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488, 1994 Ga. LEXIS 894 (1994).

When a property owner failed to give any written notice to a city prior to filing a complaint for continuing trespass, summary judgment in favor of the city was proper as to the owner's claim for damages resulting from any continuing trespass "event" which occurred more than six months prior to the filing of the complaint. Any claim for damages resulting from a continuing trespass "event" which occurred within six months of the filing of the complaint was subject to a plea in abatement, rather than a motion seeking substantive adjudication. City of Chamblee v. Maxwell, 264 Ga. 635, 452 S.E.2d 488, 1994 Ga. LEXIS 894 (1994).

Trial court properly granted summary judgment to the city on the claimant's tort claims arising from the back up of a sewer that flooded the claimant's home as no genuine dispute existed that the claimant did not file a written ante litem notice with the city within six months of the happening of the event that gave rise to the claim, the first flooding. The claimant was required to file written notice within that time even though the claimant alleged the flooding was a continuing nuisance as the city was entitled to notice arising from the first flooding so the city could attempt to fix the problem and the claimant's failure to timely give the city written notice meant the city could not be held liable. Cundy v. City of Smyrna, 264 Ga. App. 535, 591 S.E.2d 447, 2003 Ga. App. LEXIS 1504 (2003).

Trial court properly determined that the property owners' claims of property damage, based on a continuing nuisance due to sewage backup, that occurred more than six months prior to the filing of their ante litem notice pursuant to O.C.G.A. § 36-33-5(b) were barred as untimely; although a prior letter could have constituted an ante litem notice, the four-year limitations period under O.C.G.A. § 9-3-30 had run prior to the institution of the lawsuit such that any claims in the six months prior to that letter were also barred. Davis v. City of Forsyth, 275 Ga. App. 747, 621 S.E.2d 495, 2005 Ga. App. LEXIS 998 (2005), cert. denied, No. S06C0356, 2006 Ga. LEXIS 235 (Ga. Mar. 27, 2006).

Disability of infancy is only removed when party affected reaches that party's lawful majority. Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341, 1975 Ga. App. LEXIS 1794 (1975), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025).

Statute will not run against minor represented in litigation by next friend or guardian ad litem. Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341, 1975 Ga. App. LEXIS 1794 (1975), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025).

Appointment of a guardian does not operate to start the statute of limitations running against the minor or the guardian in cases when the title to the cause of action is in the minor. Barnum v. Martin, 135 Ga. App. 712, 219 S.E.2d 341, 1975 Ga. App. LEXIS 1794 (1975), overruled in part, Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024), overruled in part as stated in Dates v. Atlanta City of, No. S24G1246, 2025 Ga. LEXIS 130 (Ga. June 10, 2025).

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Necessity of alleging timely notice. — An action for damages for personal injuries against a municipality which fails to allege that the plaintiff's claim has been presented in writing to the municipality within six months of the occurrence of the injury is subject to general demurrer (now motion to dismiss). Jones v. City Council, 100 Ga. App. 268, 110 S.E.2d 691, 1959 Ga. App. LEXIS 592 (1959).

That part of the holding in Dover v. City of Jackson, 246 Ga. App. 524 (2000),

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requiring an ante litem notice for a statutory claim for attorney fees and costs of litigation is overruled because it is contrary to the specific statutory language, which limits its applicability to claims brought "on account of injuries to person or property"; the holding also ignores the courts' duty to strictly construe the statute because it is in derogation of common law. Greater Atlanta Home Builders Ass'n, Inc. v. City of McDonough, 322 Ga. App. 627, 745 S.E.2d 830, 2013 Ga. App. LEXIS 576 (2013).

Substantial compliance must be alleged. — In a claim for money damages against a municipal corporation on account of injuries to person or property, the petition must affirmatively allege a compliance with the provisions of this section and unless it does so, it should be dismissed on demurrer (now motion to dismiss). Saunders v. City of Fitzgerald, 113 Ga. 619, 38 S.E. 978, 1901 Ga. LEXIS 329 (1901); Hooper v. City of Atlanta, 26 Ga. App. 221, 105 S.E. 723, 1921 Ga. App. LEXIS 79 (1921); Grooms v. City of Hawkinsville, 31 Ga. App. 424, 120 S.E. 807, 1923 Ga. App. LEXIS 968 (1923); Newton v. City of Moultrie, 37 Ga. App. 631, 141 S.E. 322, 1928 Ga. App. LEXIS 538 (1928).

While giving of notice is a condition precedent to bringing an action, the giving of such notice is at once part and parcel of the enforcement of the right and it is an inseparable part of the bringing of the action. It is a part of the procedure for enforcing the right and as such it must affirmatively appear in the petition, either in the body thereof or by an exhibit thereto that such notice has been given. A petition which does not thus affirmatively show performance of the condition precedent is subject to general demurrer (now motion to dismiss). City of Atlanta v. Barrett, 102 Ga. App. 469, 116 S.E.2d 654, 1960 Ga. App. LEXIS 654 (1960), overruled in part as stated in Dates v. City of Atlanta, 371 Ga. App. 824, 903 S.E.2d 289, 2024 Ga. App. LEXIS 226 (2024); Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163, 1971 U.S. Dist. LEXIS 10329 (N.D. Ga. 1971).

Compliance with statute must be alleged in the complaint or else the complaint cannot state a cause of action. City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995).

Allegations of compliance are not subject to demurrer (now motion to dismiss) merely because no copy of a claim was attached to the petition. Habersham County v. Cornwall, 38 Ga. App. 419, 144 S.E. 55, 1928 Ga. App. LEXIS 261 (1928).

When no allegation in complaint that notice given to city, claim not maintainable. — O.C.G.A. § 36-33-5 requires written notice of the charges to the municipal corporation. When a complaint does not make any allegation that written notice was given to a city, no claim based on state law can be maintained against the city. Dague v. Riverdale Athletic Ass'n, 99 F.R.D. 325, 1983 U.S. Dist. LEXIS 13169 (N.D. Ga. 1983).

Effect of allegation of notice in renewal petition. — An allegation in the renewal petition to the effect that prior to the institution of the former suit, which was against a municipal corporation, the plaintiff had served upon the defendant a written notice of claim, as provided by this section, in which the plaintiff claimed damages arising out of the same cause of action as that sued on in the renewal petition, is not an allegation as to the cause of action sued on in the former suit. Barber v. City of Rome, 39 Ga. App. 225, 146 S.E. 856, 1929 Ga. App. LEXIS 268 (1929).

Giving of notice is part of trial process. City of Atlanta v. Frank, 120 Ga. App. 273, 170 S.E.2d 265, 1969 Ga. App. LEXIS 737 (1969), overruled, City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551, 1995 Ga. LEXIS 352 (1995).

Stipulation as to receiving notice. — In a nuisance suit by homeowners against the City of Atlanta with regard to recurrent flooding in a neighborhood, the trial court erred in granting the city's motion for judgment notwithstanding the verdict as to one homeowner based on the homeowners' alleged failure to put forth

any evidence that those homeowners served the city with the statutorily required ante litem notice; because the record demonstrated that the city stipulated that one of the homeowners had provided ante litem notice, the trial court erred in granting a judgment notwithstanding the verdict as to that homeowner, but since there was no citation in the record as to the other homeowner providing ante litem notice to the city, granting of the city's motion for judgment notwithstanding the verdict as to that homeowner was proper. City of Atlanta v. Broadnax, 285 Ga. App. 430, 646 S.E.2d 279, 2007 Ga. App. LEXIS 452 (2007), cert. denied, No. S07C1446, 2007 Ga. LEXIS 615 (Ga. Sept. 10, 2007), cert. denied, No. S07C1445, 2007 Ga. LEXIS 648 (Ga. Sept. 10, 2007), overruled in part, Royal Capital Dev. LLC v. Md. Cas. Co., 291 Ga. 262, 728 S.E.2d 234, 2012 Ga. LEXIS 501 (2012), overruled in part as stated in City of Stone Mountain v. Black, 340 Ga. App. 630, 797 S.E.2d 927, 2017 Ga. App. LEXIS 112 (2017).

Amended notice did not cure defects in original notice. — Trial court properly concluded the parents' amended notice did not relate back to the time of the filing of the original notice as an amended ante litem notice provided to a defendant municipality outside the six-month deadline did not relate back to the date of an original, defective notice and did not cure any defects contained in the original notice. Wallace v. City of Atlanta, 368 Ga. App. 260, 889 S.E.2d 438, 2023 Ga. App. LEXIS 286 (2023).

Failure to rebut allegation of notice in amended complaint. — When plaintiff, in plaintiff's amended complaint, alleged plaintiff gave the ante litem notice required by O.C.G.A. § 36-33-5, but the defendants failed to rebut the allegation in the amended complaint, the dismissal of the complaint under O.C.G.A. § 36-33-5 was improper. Harper v. Savannah Police Dep't, 179 Ga. App. 449, 346 S.E.2d 891, 1986 Ga. App. LEXIS 1923 (1986).

Municipality required to consider claim. — After plaintiffs furnish a sufficient ante litem notice, the municipality is required to consider and act on the claim by settlement or denial. City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718, 1975 Ga. App. LEXIS 2124 (1975).

Compliance not required since intentional acts of municipality alleged. — Denial of the city's motion to dismiss was upheld because strictly construing O.C.G.A. § 36-33-5, the municipal ante litem notice requirements were inapplicable since plaintiffs asserted an inverse condemnation claim based on intentional acts on the part of the of the city as opposed to negligent acts. City of Canton v. Brandreth Holdings, LLC, 2024 Ga. App. LEXIS 155.

Evasive answer treated as admission. — Petition alleged that notice of claim for damages was given to the defendant municipal corporation. The defendant being chargeable with knowledge of the service upon it of this notice, and its answer to this allegation of the petition being evasive, the answer will be treated as an admission that the notice was given as alleged. Mayor of Madison v. Bearden, 22 Ga. App. 376, 96 S.E. 572, 1918 Ga. App. LEXIS 346 (1918).

Availability of discovery. — Further discovery procedures are available to the city on the same basis offered by law to parties in all litigation proceedings. City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718, 1975 Ga. App. LEXIS 2124 (1975).

Municipality may not demand additional information or hearing. — There is no requirement contemplated by the statute that after receipt of a notice of claim the municipality may require additional information, or that the city may demand that the complainant appear before the city's council for an informational hearing. City of Claxton v. Claxton Poultry Co., 134 Ga. App. 679, 215 S.E.2d 718, 1975 Ga. App. LEXIS 2124 (1975).

Compliance with section must be proven. — When, in an action for personal injuries against a city, compliance with this section is alleged, and such allegation is denied by the city, it is a necessary part of the plaintiff's case that plaintiff prove compliance with the statute, and on failure to show substantial

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compliance therewith it is not error to grant a nonsuit. City of Tallapoosa v. Brock, 138 Ga. 622, 75 S.E. 644, 1912 Ga. LEXIS 636 (1912); Bostwick v. City of Griffin, 141 Ga. 120, 80 S.E. 657, 1913 Ga. LEXIS 344 (1913).

When the trial record did not clearly establish that six-months' ante litem notice was not given, it was error to dismiss the claim against the municipal corporation. Brackett v. City of Atlanta, 149 Ga. App. 147, 253 S.E.2d 786, 1979 Ga. App. LEXIS 1760 (1979).

Plaintiff bound by acts alleged in notice. — Petition on which the plaintiff seeks recovery against the city must be based on the claimed negligent transaction as set out in the notice given to the city, and plaintiff cannot proceed against the city upon acts of negligence different from those set out in that notice. City of Atlanta v. Harris, 52 Ga. App. 56, 182 S.E. 202, 1935 Ga. App. LEXIS 31 (1935).

Plaintiff's action for malicious prosecution was premature, as was plaintiff's ante litem notice to the defendant municipality, when plaintiff's indictment for theft of services had been dead-docketed, since termination of that prosecution in plaintiff's favor was a prerequisite to bringing of a malicious prosecution suit and dead-docketing of a case does not terminate a malicious prosecution case. Webster v. City of E. Point, 164 Ga. App. 605, 294 S.E.2d 588, 1982 Ga. App. LEXIS 2885 (1982).

Premature suit grounds for abatement, not summary judgment. — Compliance with O.C.G.A. § 36-33-5 is a condition precedent to filing suit against the city, but the filing of suit against the city prior to the expiration of 30 days from the time of filing the claim is a matter that is properly raised as a plea in abatement and not a proper subject for summary judgment. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

Dismissal, rather than summary judgment, is appropriate in cases when the merits cannot be reached because of the plaintiff 's failure to satisfy the notice requirements of O.C.G.A. § 36-33-5. Robinette v. Johnston, 637 F. Supp. 922, 1986 U.S. Dist. LEXIS 24057 (M.D. Ga. 1986).

Dismissal of premature suit is without prejudice. — In cases in which the merits could not have been reached because of the failure of the plaintiff to satisfy a precondition, such as when a suit is filed prior to the expiration of 30 days from the time of filing the claim, the appropriate action is dismissal of the case on motion. Such a dismissal should be without prejudice, and, having no res judicata effect, would not bar the filing of another suit. Jones v. City of Austell, 166 Ga. App. 808, 305 S.E.2d 653, 1983 Ga. App. LEXIS 2339 (1983).

Complaint properly amended after notice of claim given. — Claim by an association of taxicab owners that a city violated procedural due process by failing to provide the association's members with proper notice of violations of regulations was improperly dismissed for failure to comply with the ante-litem notice requirements of O.C.G.A. § 36-33-5 when the association failed to give notice of the claim before filing the association's original complaint, withdrew the claim from the complaint, gave notice under O.C.G.A. § 36-33-5, and then amended the original complaint to add the claim; the notification could not have been accomplished simply by amending the complaint after the action was filed, and to the extent that City of Atlanta v. Fuller, 164 S.E.2d 364 (1968) held otherwise, that case was overruled, but the procedure followed by the association satisfied the procedural requirement of giving the city an opportunity to investigate the claim so as to determine whether to settle the claim without resorting to litigation, and the association was not procedurally barred from pursuing the association's claim for the alleged due process violations that occurred in the six months before the ante-litem notice was given. Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta, 281 Ga. 342, 638 S.E.2d 307, 2006 Ga. LEXIS 1030 (2006), overruled in part, Republican Nat. Committee v. Eternal Vigilance Action Case, 2025 Ga. LEXIS 131 (Ga. June 10, 2025), overruled

in part, Republican Nat'l Comm. v. Eternal Vigilance Action, Inc., 2025 Ga. LEXIS 131 (Ga. June 10, 2025), overruled in part, State of Ga. v. Eternal Vigilance Action, Inc., No. S25A0362, No. S25A0490, 2025 Ga. LEXIS 131 (Ga. June 10, 2025).

Effect of nonsuit on proof of notice. — In an action against a municipality for personal injuries, duly renewed after the grant of a nonsuit in a substantially similar former action in the superior court, the former judgment cannot be taken as having determined that the petition was insufficient, and that the plaintiff had no right to recover, because plaintiff's notice of injury to the municipality was legally insufficient under this section, especially since it is not made to appear that the sufficiency of the notice was in anywise determined or questioned in the former action by demurrer (now motion to dismiss) or otherwise, or that the nonsuit was granted for any reason other than that the evidence as to negligence was insufficient to authorize a recovery. Jones v. Mayor of Savannah, 52 Ga. App. 537, 184 S.E. 353, 1936 Ga. App. LEXIS 176 (1936).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 584 et seq.

C.J.S.

64A C.J.S., Municipal Corporations, § 2465 et seq.

ALR.

Applicability of statute or ordinance requiring notice of claim for damages from injuries in street as affected by the conditions which caused the injury, 10 A.L.R. 249.

Necessity of presenting claim against municipality for damaging property, 52 A.L.R. 639.

Right of person not named as claimant in notice of claim to municipality to sustain action thereon, 63 A.L.R. 1080.

Power of municipality to consent to judgment against itself, 67 A.L.R. 1503.

Places within operation of statute or ordinance requiring notice of claim as a condition of municipal liability for injuries, 72 A.L.R. 840.

Waiver of failure to give notice of claim or injury as condition of municipal liability for injury from defect in street or other public place, 82 A.L.R. 749; 159 A.L.R. 329; 65 A.L.R.2d 1278.

What amounts to claim for personal injury within statute or ordinance requiring notice as condition of municipal liability, 97 A.L.R. 118.

Requirement of notice of injury or claim as condition of action against municipality as applicable to injury or death of municipal officer or employee, 98 A.L.R. 522.

Statute of limitations as applicable to actions by or against school districts, 98 A.L.R. 1221.

Construction, application, and effect of statutory provisions avoiding effect of inaccuracy or omission in notice of injury required as condition of municipal liability, 103 A.L.R. 298.

Power of city, town, or county or its officials to compromise claim, 105 A.L.R. 170; 15 A.L.R.2d 1359.

Continuing character of municipality's negligence and injury or damage therefrom as affecting requirement of notice to municipality, 116 A.L.R. 975.

When statute of limitations commences to run as to action against municipality for damages to riparian premises by pollution of stream by discharge of sewage, 122 A.L.R. 1509.

Necessity and sufficiency of statement as to amount of damages or compensation claimed, in notice or claim required as condition of municipal liability for injury to person or property, 136 A.L.R. 1368.

Waiver of, or estoppel to assert, defects in notice of claim against county or municipality, 148 A.L.R. 637.

Necessity and sufficiency of statement in notice of tort claim against county or municipality regarding identity of officers or employees chargeable with fault, 150 A.L.R. 1054.

Waiver of, or estoppel to assert, failure to give notice of claim of injury as condition of liability of municipality, county, or other governmental agency for injury

from defect in street, road, or other public place, 153 A.L.R. 329; 65 A.L.R.2d 1278.

Use of abbreviations of name of municipal body or private corporation in designating party to judicial proceedings, 167 A.L.R. 1217.

Statute respecting presentation of liability claim against municipality as affecting its powers in that field, 170 A.L.R. 237.

Power of city, town, or county or its officials to compromise claim, 15 A.L.R.2d 1359.

Persons upon whom notice of injury or claim against municipal corporation may or must be served, 23 A.L.R.2d 969.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury, 34 A.L.R.2d 725.

Claimant's deposition or statement taken by municipality or other political subdivision as statutory notice of claim for injury or as waiver thereof, 41 A.L.R.2d 883.

Effect of death as a result of injury on requirement of notice of claim against a city or other subordinate governmental unit, 51 A.L.R.2d 1128.

Variance between notice of claim against municipality and proof as regards cause, manner, or locality of the accident, 52 A.L.R.2d 966.

Sufficiency of notice of claim against municipality with respect to nature of defect and cause of accident, 62 A.L.R.2d 397.

Sufficiency of notice of claim against municipality as regards description of personal injury or property damage, 63 A.L.R.2d 863.

Sufficiency of notice of claim against municipality as regards identity, name, and residence of claimant, 63 A.L.R.2d 911.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body, 65 A.L.R.2d 1278.

Waiver of, or estoppel to rely upon, contractual limitation of time for bringing action against municipality or other political subdivision, 81 A.L.R.2d 1039.

Necessity and sufficiency of plaintiff's pleading of having given requisite notice or presented claim to municipality or other public body, 83 A.L.R.2d 1178.

Claim for contribution or indemnification from another tort-feasor as within provisions of statute or ordinance requiring notice of claim against municipality, 93 A.L.R.2d 1385.

Power of municipal corporation to submit to arbitration, 20 A.L.R.3d 569.

Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery, 24 A.L.R.3d 965.

Incapacity caused by accident in suit as affecting notice of claim required as condition of holding local governmental unit liable for personal injury, 44 A.L.R.3d 1108.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity, 59 A.L.R.3d 93.

Plaintiff's right to bring tort action against municipality prior to expiration of statutory waiting period, 73 A.L.R.3d 1019.

Actual notice or knowledge by governmental body or officer of injury or incident resulting in injury as constituting required claim or notice of claim for injury — modern status, 7 A.L.R.4th 1063.

Local government tort liability: minority as affecting notice of claim requirement, 58 A.L.R.4th 402.

Insufficiency of notice of claim against municipality as regards statement of place where accident occurred, 69 A.L.R.4th 484.

Complaint as satisfying requirement of notice of claim upon states, municipalities, and other political subdivisions, 45 A.L.R.5th 109.

Persons or entities upon whom notice of injury or claim against state or state agencies may or must be served, 45 A.L.R.5th 173.

Sufficiency of notice of claim against local political entity as regards time when accident occurred, 57 A.L.R.5th 689.

Waiver of, or estoppel to assert, failure to give or defects in notice of claim against state or local political subdivision — modern status, 64 A.L.R.5th 519.

36-33-6. Exemption of municipal property from levy and sale.

Property of a municipal corporation in use for the public or held for future use for the public is not subject to levy and sale under executions. All property held by a municipal corporation is presumptively for public use.

History.
Civil Code 1895, § 750; Civil Code 1910, § 899; Code 1933, § 69-305.
History of Code section.
This Code section is derived from the decision in Curry v. Mayor of Savannah, 64 Ga. 290 (1879).

Law reviews.
For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

All property of every kind held by municipality is presumptively for public use, and while perhaps the presumption may be overcome on proof of a holding for other purposes, as a mere investment to reap profits and save taxes, and with no ulterior purpose to apply the investment to the use or enjoyment of the public thereafter, yet the onus would be upon the plaintiff in execution to make that proof. Curry v. Mayor of Savannah, 64 Ga. 290, 1879 Ga. LEXIS 53 (1879).

Municipal property held in proprietary capacity subject to sale. — As a general rule, property held by a municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended; the rule is otherwise as to property held by a municipality in the municipality's proprietary or private capacity if not devoted to any specific public use. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953).

Land not used for public use subject to sale. — Though land be bought for a public use, if not actually used for such purpose it cannot be said to be held by the municipality as a public trust, and may be sold. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953).

When property held by municipality for governmental or public use is abandoned as to such use, the municipality may sell the property without express legislative approval. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953).

Town schoolhouse is not subject to levy and sale by virtue of judgment and execution against the town, regardless of whether it is run as a free school, or rented to private teachers, who charge tuition; and consequently, if the house be destroyed by fire, the insurance therefor cannot be reached by garnishment by the judgment creditor. Fleishel & Kimsey v. Hightower, 62 Ga. 324, 1879 Ga. LEXIS 517 (1879); Walden v. Town of Whigham, 120 Ga. 646, 48 S.E. 159, 1904 Ga. LEXIS 664 (1904).

OPINIONS OF THE ATTORNEY GENERAL

Lease to private entity prohibited absent express authority. — Property held by a municipality for the public use and the benefit of the municipality's citizens cannot be leased to a private entity without express legislative authority in the absence of other applicable exceptions. 1992 Op. Att'y Gen. No. U92-9.

RESEARCH REFERENCES

C.J.S.
63 C.J.S., Municipal Corporations, §§ 1124 et seq., 1133.

CHAPTER 34

POWERS OF MUNICIPAL CORPORATIONS GENERALLY

Sec.	
36-34-1.	Legislative intent.
36-34-2.	Powers relating to administration of government generally.
36-34-3.	Acquisition and operation of certain buildings and facilities; contracts with other political subdivisions for joint use.
36-34-4.	Establishment of facilities and services for treatment of patients.
36-34-5.	Acquisition and construction of water and sewage systems.
36-34-5.1.	Lease agreements for providing library services.
36-34-5.2.	Leases and contracts for operation and maintenance of botanical gardens in certain municipal corporations.
36-34-5.3.	Leases and contracts for operation and maintenance of public zoos in certain municipal corporations.
36-34-6.	Financing of facilities and services.
36-34-7.	Powers supplemental.
36-34-8.	Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.

Cross references.

Constitutional provision authorizing General Assembly to provide for self-government of municipalities, Ga. Const. 1983, Art. IX, Sec. II, Para. II.

Authority of governing body, planning agency, of municipality to approve plans for clearance, development, of blighted areas, § 8-4-5.

Resolution of conflicts between this chapter and T. 36, C. 35, § 36-35-8.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this chapter are included in the annotations for this chapter.

Municipality is a political division of the state, having for the municipality's object the administration of a portion of the power of government delegated to the municipality for that purpose. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617, 1956 Ga. App. LEXIS 548 (1956); Spence v. Rowell, 213 Ga. 145, 97 S.E.2d 350, 1957 Ga. LEXIS 325 (1957) (decided under former Code 1933, § 22-103).

Nature of powers possessed by municipal corporation. — Municipal corporation possesses, and can exercise, the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied; third, those essential to the declared objects and purposes of the corporation — not simply convenient, but indispensable. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503, 1938 Ga. App. LEXIS 485 (1938) (decided under former law).

Powers granted to municipal corporations are to be strictly construed, and if there is any reasonable doubt of the existence of the power, it will be resolved against the municipality. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953) (decided under former Code 1933, § 69-203).

Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the municipal

corporation. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503, 1938 Ga. App. LEXIS 485 (1938) (decided under former law).

Powers of municipal corporation are fixed by the municipality's charter and by general statutory authority relating to such corporations, and the municipal corporation may exercise such powers as are expressly delegated to the municipality, as well as those which would be reasonably implied from the express terms of the charter. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953) (decided under former Code 1933, § 69-203).

Duty to protect citizen. — Municipality, like the state as a whole, owes as the municipality's paramount duty to the citizen the protection of the citizen's person and property. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617, 1956 Ga. App. LEXIS 548 (1956) (decided under former law).

Municipal corporation is without authority, not only to contract or incur liability, but to donate the municipality's money or property, unless authorized by the municipality's charter or some general law of the state. Such a power is not conferred by a general welfare provision in the charter. Miller v. City of Cornelia, 188 Ga. 674, 4 S.E.2d 568, 1939 Ga. LEXIS 591 (1939) (decided under former law).

Municipalities have right to control burials in public cemeteries. — Municipalities, under authority to protect the health of a municipality's citizens, have the right to control, by reasonable regulations, the interment and disinterment of bodies in public or municipal cemeteries. Mayor of Savannah v. Colding, 181 Ga. 260, 181 S.E. 821, 1935 Ga. LEXIS 67 (1935) (decided under former law).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former law are included in the opinions for this chapter.

Municipality cannot, even with approval by referendum election, construct building for rental to private industry as municipalities have no authority to enter into business. 1954-56 Ga. Op. Att'y Gen. 489 (decided under former law).

RESEARCH REFERENCES

ALR.

Power of municipality to exact license tax or fee from interurban carrier, 31 A.L.R. 594.

Power of municipal corporation to submit to arbitration, 40 A.L.R. 1370.

Power of municipal corporation or authorities to employ detective, 45 A.L.R. 737.

Delegation by municipality of its powers as to building regulations, 46 A.L.R. 88.

Power of municipality to acquire and operate ice plant, 46 A.L.R. 836; 68 A.L.R. 872.

Power of municipal corporation to fix rates of motor vehicles for hire, 65 A.L.R. 1364.

Power of municipality as to billboards and outdoor advertising, 72 A.L.R. 465.

Power of municipal corporation to employ attorney, 83 A.L.R. 135.

Power of municipality to classify for purposes of taxation as affected by classification made by state or its failure to classify, 110 A.L.R. 1203.

Power of municipality to impose chain store license tax, 111 A.L.R. 596.

Delegation to board or officer of police power to require vacation, destruction, or repair of individual building deemed by such officer or board unsafe or insanitary, apart from noncompliance with specific regulations, 114 A.L.R. 446.

Right of municipality to invoke consti-

tutional provisions against acts of state legislature, 116 A.L.R. 1037.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 A.L.R. 997.

Municipal ordinance relating to persons engaged in specified occupations or professions as applicable to officials or employees of state or political subdivision other than the municipality, 123 A.L.R. 1383.

Municipal license as affecting municipality's exercise of police power adversely to licensee, 124 A.L.R. 523.

Power of municipal corporation to contribute financially to municipal league or other organizations of a similar character, 169 A.L.R. 1230.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A.L.R.2d 595.

Power of municipal corporation to submit to arbitration, 20 A.L.R.3d 569.

Power of municipal corporation to lease or sublet property owned or leased by it, 47 A.L.R.3d 19.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 A.L.R.3d 998.

36-34-1. Legislative intent.

It is declared to be the intention of the General Assembly to vest certain general powers in the governing body of each of the municipal corporations of this state, such powers to be in addition to or cumulative of those which any municipal corporation may now have under its charter or any other special or general law. It is the purpose of this grant of general powers:

(1) To provide authority for all municipal corporations to exercise certain common functions of local government;

(2) To provide for local self-government to the extent of the powers granted; and

(3) To relieve the necessity for special legislative action by the General Assembly to the extent of the powers granted in this chapter.

History.

Ga. L. 1962, p. 140, § 1.

Law reviews.

For article, "The Municipal Home Rule Act of 1965," see 3 Ga. St. B. J. 333 (1967).

For annual survey of construction law, see 56 Mercer L. Rev. 109 (2004).

JUDICIAL DECISIONS

The 1962 Home Rule Act was intended to allow municipalities to exercise certain powers themselves, not to define the means by which the cities would and could manage a municipalities' affairs. Sadler v. Nijem, 251 Ga. 375, 306 S.E.2d 257, 1983 Ga. LEXIS 809 (1983).

No municipal corporations possess inherent powers; instead, the corporations possess only such powers as are expressly delegated by the legislature. Evidence of express delegation by the legislature is found in the charter of each municipality. Palmer v. Hall, 380 F. Supp. 120, 1974 U.S. Dist. LEXIS 7401 (M.D. Ga. 1974), aff'd in part and rev'd in part, 517 F.2d 705, 1975 U.S. App. LEXIS 13119 (5th Cir. 1975).

Powers and authority of mayor and aldermen derived from city charter. — Legislature has not enacted general laws giving any general powers to either mayors or aldermen of municipal corporations. Therefore, the powers and

authority of the mayor and aldermen are derived from the charter of the city. Palmer v. Hall, 380 F. Supp. 120, 1974 U.S. Dist. LEXIS 7401 (M.D. Ga. 1974), aff'd in part and rev'd in part, 517 F.2d 705, 1975 U.S. App. LEXIS 13119 (5th Cir. 1975).

Conflicting special law unconstitutional. — Georgia Laws 1968, p. 2953, providing for collective bargaining for Chatham County public employees, violates Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV), since it is a special law dealing with matters provided for by the general law under Ga. L. 1962, p. 140, §§ 1 and 2 (see now O.C.G.A. §§ 36-34-1 and 36-34-2). Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394, 1969 Ga. LEXIS 590 (1969).

Taxpayer actions. — Local government provisions applicable to municipal corporations do not provide for derivative actions by taxpayers in the name of a municipality. Taxpayers may bring direct actions in mandamus to compel or enjoin city officials to perform a public duty or sue city officials for damages in connection with the unlawful expenditure of public funds with any recovery to be paid to the city. Common Cause/Ga. v. Campbell, 268 Ga. App. 599, 602 S.E.2d 333, 2004 Ga. App. LEXIS 969 (2004), aff'd sub nom. Common Cause/Ga. v. City of Atlanta, 279 Ga. 480, 614 S.E.2d 761, 2005 Ga. LEXIS 444 (2005).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 10.

C.J.S.

62 C.J.S., Municipal Corporations, § 133 et seq.

36-34-2. Powers relating to administration of government generally.

In addition to the other powers which it may have, the governing body of any municipal corporation shall have the following powers, under this chapter, relating to the administration of municipal government:

(1) The power to establish municipal offices, agencies, and employments;

(2) The power to define, regulate, and alter the powers, duties, qualifications, compensation, and tenure of all municipal officers, agents, and employees, provided that the members of the municipal governing body shall not have the right to fix or change their own terms or the terms of their successors, nor to alter their own salaries or compensation, except pursuant to the authority of Code Section 36-35-4, nor to alter such duties or responsibilities as are specifically given to a particular elective official by charter;

(3) The power to authorize any of the officers, agents, and employees of the municipal corporation to serve, in any manner prescribed by applicable law, any process, summons, notice, or order on all persons, as defined in Code Section 1-3-3 therein named, when:

(A) The paper to be served arises out of or relates to an activity or condition conducted or maintained by such person within the

territorial jurisdiction of the municipal corporation in violation of an applicable law or ordinance; and

(B) The paper to be served originates in or is issued under the authority of the department or branch of municipal government employing such officer, agent, or employee.

Where any such paper names one or more persons who reside outside the territorial jurisdiction of the municipal corporation, the several sheriffs, marshals, and constables of the several counties of this state are authorized and directed to serve any such paper and make appropriate return of such service by them, as other process is served and returned, on such named persons residing in their respective jurisdictions, upon receipt of a written request to make such service, for the fees allowed for service of process issued by the superior courts of this state;

(4) The power to establish merit systems, retirement systems, and insurance plans for all municipal employees and to establish insurance plans for school employees of independent municipal systems and to provide the method or methods of financing such systems and plans;

(5) The power to contract with any state department or agency or any other political subdivision for joint services or the exchange of services; to contract with such agencies or subdivisions for the joint use of facilities or equipment; and to contract with any state agency or political subdivision to perform any service or execute any project for such agency or subdivision in which the municipal corporation has an interest;

(6) The power to legislate, regulate, and administer all matters pertaining to absentee voting in municipal elections; and

(7)(A) The power to grant franchises to or make contracts with railroads, street railways, or urban transportation companies, electric light or power companies, gas companies, steam-heat companies, telephone companies, water companies, and other public utilities for the use and occupancy of the streets of the city, for the purpose of rendering utility services, upon such conditions and for such time as the governing authority of the municipal corporation may deem wise and subject to the Constitution and the general laws of this state.

(B) The amount of fees collected from customers of public utilities or companies as a result of franchise agreements or contracts authorized by this paragraph shall be itemized on bills or invoices transmitted to customers for utility services. The requirements of this subparagraph shall not apply to fees that are included in the

system-wide charges or base rates of a public utility or company subject to a franchise agreement or contract.

History.

Ga. L. 1962, p. 140, § 2; Ga. L. 1973, p. 778, § 2; Ga. L. 1976, p. 188, § 1; Ga. L. 1979, p. 645, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1989, p. 812, § 1; Ga. L. 1992, p. 2122, § 2; Ga. L. 1993, p. 91, § 36; Ga. L. 1995, p. 1189, § 1; Ga. L. 2007, p. 164, § 1/HB 107; Ga. L. 2012, p. 847, § 2/HB 1115.

Cross references.

Home rule powers of municipalities, Ga. Const. 1983, Art. IX, Sec. II, Paras. I-VII.

Extent of interest obtainable by condemnor upon condemnation, § 22-2-85.

Taxation of special franchises, § 48-5-420 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "compensation" was substituted for "compensations" in paragraph (2).

Law reviews.

For article, "The Use of the Police Power by Local Governments and Some Problems of Intergovernmental Relations," see 8 J. of Pub. L. 109 (1959).

For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969).

JUDICIAL DECISIONS

Analysis

General Consideration
Public Employees
Franchises

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section are included in the annotations for this Code section.

Section not retrospective in operation. — There is no intent expressed in paragraph (7) of O.C.G.A. § 36-34-2 or any of the remaining portions of that section which express an intent that the section be retrospective in the section's operation or act as a ratification for prior acts of a municipality. Blue Ridge Tel. Co. v. City of Blue Ridge, 161 Ga. App. 452, 288 S.E.2d 705, 1982 Ga. App. LEXIS 1912 (1982).

Municipal corporation is a political division of the state, and is a public corporation, having for the municipality's object the administration of a portion of the power of government delegated to the municipality for such purpose. It is a creature of the General Assembly and the municipality's charter powers may be enlarged, lessened, or completely withdrawn at the will of the municipality's creator. Spence v. Rowell, 213 Ga. 145, 97 S.E.2d 350, 1957 Ga. LEXIS 325 (1957) (decided under former Code 1933, § 22-103).

Nature of powers possessed by municipal corporation. — Municipal corporation possesses, and can exercise, the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied; third, those essential to the declared objects and purposes of the corporation — not simply convenient, but indispensable. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503, 1938 Ga. App. LEXIS 485 (1938) (decided under former law).

Freedom to interpret powers. — Grant of authority under O.C.G.A. § 36-34-2 does not define the means by which the cities would and could manage the city's affairs or prohibit municipal governing authorities from choosing how such powers shall be exercised. City of Atlanta v. McKinney, 265 Ga. 161, 454 S.E.2d 517, 1995 Ga. LEXIS 151 (1995).

Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the municipal corporation. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503, 1938 Ga. App.

LEXIS 485 (1938) (decided under former law).

Disposition of business by resolution. — Proper disposition of administrative business by council of municipal corporation is by resolution. Allen v. Wise, 204 Ga. 415, 50 S.E.2d 69, 1948 Ga. LEXIS 459 (1948) (decided under Ga. L. 1898, pp. 255, 256).

Estoppel of council to question legality of election. — When a council by mistake of law duly advertised and held an election at the wrong time, participating as candidates themselves, the council are estopped from bringing an action quo warranto to question legality. Dorsey v. Ansley, 72 Ga. 460, 1884 Ga. LEXIS 279 (1884) (decided under Ga. L. 1872, p. 19).

City cannot regulate construction of substation on power company's property. — City did not have the authority, under O.C.G.A. § 36-34-2(7), to regulate the construction of a power substation on property owned by the power company since the city's authority was limited to a utility's use of city property. City of Buford v. Ga. Power Co., 276 Ga. 590, 581 S.E.2d 16, 2003 Ga. LEXIS 475 (2003).

No contractual agreement established with city through statutes or ordinances. — In a suit brought by taxi cab companies, the trial court properly granted the city's motion to dismiss because the taxi cab companies failed to established that the statutes permitting the issuance of Certificates of Public Necessity and Convenience (CPNC), or the city's ordinances, created a clear and unequivocal intent by the city to create a contractual or franchise agreement that prevented the city to allow personal transportation network companies to operate in the city. Atlanta Metro Leasing, Inc. v. City of Atlanta, 353 Ga. App. 785, 839 S.E.2d 278, 2020 Ga. App. LEXIS 81 (2020), cert. denied, No. S2000994, 2020 Ga. LEXIS 845 (Ga. Sept. 28, 2020).

Public Employees

Special legislation may not place restrictions in the form of mandatory collective bargaining upon the unlimited powers granted by Ga. L. 1962, p. 140, § 2 (see now O.C.G.A. § 36-34-2). Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394, 1969 Ga. LEXIS 590 (1969).

Conflicting special law unconstitutional. — Georgia Laws 1968, p. 2953, providing for collective bargaining for Chatham County public employees, violates Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV) since it is a special law dealing with matters provided for by the general law under Ga. L. 1962, p. 140, §§ 1 and 2 (see now O.C.G.A. §§ 36-34-1 and 36-34-2). Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394, 1969 Ga. LEXIS 590 (1969).

Collective bargaining not required. — Powers of a municipality to regulate terms of employment may be executed by a city in any manner the city chooses, in the exercise of the city's nondelegable discretion. A city is not required to bargain collectively with any person or organization as to those powers. Local 574, Int'l Ass'n of Firefighters v. Floyd, 225 Ga. 625, 170 S.E.2d 394, 1969 Ga. LEXIS 590 (1969).

City ordinance increasing pension plan contribution rate. — Trial court properly granted the city defendants summary judgment on the city employees' claims of breach of contract and unconstitutional impairment of contract regarding an ordinance increasing their pension plan contribution rate because the Georgia General Assembly expressly contemplated that a municipal corporation's provision for employee retirement or pension benefits would be subject to being supplemented by local law. Borders v. City of Atlanta, 298 Ga. 188, 779 S.E.2d 279, 2015 Ga. LEXIS 786 (2015).

Franchises

Granting by municipality of franchise to distribute electricity in municipality is not an ultra vires act. Singer v. City of Cordele, 225 Ga. 323, 168 S.E.2d 138, 1969 Ga. LEXIS 488 (1969).

When power to grant franchises stems from paragraph (7) of Ga. L. 1962, p. 140,

Franchises (Cont'd)

§ 2 (see now O.C.G.A § 36-34-2), there is no violation of former Code 1933, § 69-202 (see now O.C.G.A. § 36-30-3). City of Lithonia v. Georgia Pub. Serv. Comm'n, 238 Ga. 339, 232 S.E.2d 832, 1977 Ga. LEXIS 1023 (1977).

Municipality can set conditions. — Municipality has the authority to condition the grant of a franchise upon requirements as the municipality deems wise. Athens-Clarke County v. Walton Elec. Membership Corp., 265 Ga. 229, 454 S.E.2d 510, 1995 Ga. LEXIS 149 (1995).

Authority of city to charge franchise fee. — In O.C.G.A. § 46-3-14(b), nothing in the first sentence purports to prohibit a city from conditioning the city's grant of a street franchise to an electric company upon the payment of a reasonable franchise fee, and the second sentence is a statutory preservation of the right of a "municipality" under paragraph (7) of O.C.G.A. § 36-34-2 to charge "any secondary supplier" a franchise fee, even when the municipality itself is also the primary supplier. City of Calhoun v. North Ga. Elec. Membership Corp., 264 Ga. 205, 443 S.E.2d 469, 1994 Ga. LEXIS 394 (1994).

Effect of rate schedule compatible with exercise of municipality's discretion in granting franchises. — Jurisdiction of the Georgia Public Service Commission stems from the Georgia Constitution. Therefore, any indirect effect which a rate schedule might have upon a municipality's exercise of the municipality's discretion in granting franchises is entirely compatible with the authority granted the municipalities by paragraph (7) of this section. City of Lithonia v. Georgia Pub. Serv. Comm'n, 238 Ga. 339, 232 S.E.2d 832, 1977 Ga. LEXIS 1023 (1977).

Electric company must show right to erect poles in land of highway. — To justify setting up the company's poles in the land of a highway, a company which uses poles and wires in the transmission of electric currents must show that the company has acquired the right to do so, either by consent or condemnation from the owner of the soil. The designation by the municipality of the street where the poles may be set up is not enough. Donalson v. Georgia Power & Light Co., 175 Ga. 462, 165 S.E. 440, 1932 Ga. LEXIS 272 (1932).

Acquiescence in use of streets by telephone company. — Acquiescence of the city during the period from the 1962 enactment of paragraph (7) of O.C.G.A. § 36-34-2 to the date of the judgment in the trial court, the city's acquiescence in the use of the city streets and the operation of the telephone system, is sufficient conduct on the part of the city so as to estop the city from denying the authority of the defendant telephone company to use the city streets during that period; but as the city's acquiescence did not carry any promise, explicit or implicit, that the city would allow this fait accompli to continue for any definite time or for any time into the future whatsoever, there is no basis upon which the city may be restrained from exercising the city's powers to abrogate this present informal arrangement. Blue Ridge Tel. Co. v. City of Blue Ridge, 161 Ga. App. 452, 288 S.E.2d 705, 1982 Ga. App. LEXIS 1912 (1982).

OPINIONS OF THE ATTORNEY GENERAL

City may establish personnel department and merit board without the necessity of special Acts of the General Assembly. 1969 Op. Att'y Gen. No. 69-310.

City may set up retirement system for city employees without necessity of amending city charter. 1970 Op. Att'y Gen. No. U70-80.

State law does not prohibit grant of franchise to community antenna television system by municipality; cable television is not regulated by the Georgia Public Service Commission. 1970 Op. Att'y Gen. No. U70-190.

State not exempt from franchise fee when paid indirectly. — While the state might not be required to pay a franchise fee or other tax directly to a city, in those situations where the state is paying money to a company, and that company is

in turn remitting the money to the city as a franchise fee, it cannot be said that the state is the entity which is subject to the legal incidence of the tax so that it could successfully assert an exemption from such fees. 1976 Op. Att'y Gen. No. 76-42.

Payment for utilities by department unaffected by taxes paid to municipality. — Obligation of the Department of Administrative Services to pay for utilities at an established rate is not affected by the fact that the sums paid may include or reflect taxes paid by the provider of the services to a municipality. 1976 Op. Att'y Gen. No. 76-42.

Municipal contributions to day care center. — Unless a provision in the city charter allows such an expenditure, a city may not contribute to a day care center. 1984 Op. Att'y Gen. No. U84-14.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 160 et seq., 221 et seq., 233 et seq.

C.J.S.

29 C.J.S., Election, § 345 et seq. 37 C.J.S., Franchises, §§ 26, 27. 62 C.J.S., Municipal Corporations, §§ 137, 170, 403, 477 et seq. 63 C.J.S., Municipal Corporations, § 852 et seq. 64 C.J.S., Municipal Corporations, §§ 1140, 1142 et seq., 1151 et seq., 1261 et seq.

ALR.

Power of municipality to assume the duty of providing and maintaining railroad crossings, 1 A.L.R. 316.

Power of public service commission to increase franchise rates, 3 A.L.R. 730; 9 A.L.R. 1165; 28 A.L.R. 587; 29 A.L.R. 356.

Power of municipal council to correct its minutes, 3 A.L.R. 1308.

Power of municipality to exact license tax or fee from interurban carrier, 31 A.L.R. 594.

Power of municipal corporation to take out liability insurance, 33 A.L.R. 717.

Forfeiture of street railway franchise for breach of condition, 34 A.L.R. 1413.

Power of municipal corporation to purchase or charter a boat or barge, 39 A.L.R. 1332.

Power of municipal corporation to submit to arbitration, 40 A.L.R. 1370.

Liability of municipal corporation upon implied contract for use of property which it received under an invalid contract, 42 A.L.R. 632.

Liability of municipality as affected by license issued by municipal officer, 42 A.L.R. 1208.

Power of municipal corporation or authorities to employ detective, 45 A.L.R. 737.

Liability of municipal corporations and their licensees for the torts of independent contractors, 52 A.L.R. 1012.

Power of municipality to transfer or assign its right to enforce assessment or lien for local improvements, 55 A.L.R. 667.

Power of municipality to maintain public hack stand on property of carrier, 56 A.L.R. 767.

Power of municipal corporation to fix rates of motor vehicles for hire, 65 A.L.R. 1364.

Power of board to appoint officer or make contract extending beyond its own term, 70 A.L.R. 794; 149 A.L.R. 336.

Duration of street franchise without fixed term, beyond the life of the grantee, 71 A.L.R. 121.

Discretion of civil service commission as regards promotional examinations for eligible list, 75 A.L.R. 1234.

Power to include in municipal contract or proposal therefor, provisions designed to relieve local unemployment, or encourage local industries, 81 A.L.R. 255.

Power of municipality to fix specific scale of wages or hours for employees of contractors or subcontractors for municipal contracts, 81 A.L.R. 349; 129 A.L.R. 763.

Power of municipal corporation to employ attorney, 83 A.L.R. 135.

Power of municipality to extend license regulation or occupation tax beyond its own territorial limits, 86 A.L.R. 917.

Rights, duties, and remedy in respect of leasing or hiring public property to private person for occasional use, 86 A.L.R. 1175.

Estoppel of municipality to deny that it

gave its consent to street franchise, 89 A.L.R. 619.

Profit factor in determining rates for municipally owned or operated public utility, 90 A.L.R. 700.

Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation, 103 A.L.R. 579; 165 A.L.R. 854.

Power of municipal corporation, as adjunct of public utility service furnished by it, to sell to consumers equipment necessary or convenient for use of the service, 108 A.L.R. 1454.

Power of municipality to classify for purposes of taxation as affected by classification made by state or its failure to classify, 110 A.L.R. 1203.

Right and duty of city and public utility upon expiration by limitation of street franchise, 112 A.L.R. 625.

Power of county or municipality to exempt from taxation or otherwise aid or subsidize private enterprises conducted for recreational, exhibition, or entertainment purposes, 116 A.L.R. 889.

Right of municipality to invoke constitutional provisions against acts of state legislature, 116 A.L.R. 1037.

Right of municipality or other political subdivision to enforce against other party contract which was in excess of former's power, or which did not comply with the conditions of its power in that regard, 122 A.L.R. 1370.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 A.L.R. 997.

Municipal ordinance relating to persons engaged in specified occupations or professions as applicable to officials or employees of state or political subdivision other than the municipality, 123 A.L.R. 1383.

Municipal license as affecting municipality's exercise of police power adversely to licensee, 124 A.L.R. 523.

Inclusion of different franchise rights or purposes in same ordinance, 127 A.L.R. 1049.

Power of municipality to agree to abide by conditions or regulations imposed by federal authority in respect of construction, maintenance, or operation of a municipal public utility plant or enterprise, 128 A.L.R. 620.

Public regulation of dry cleaning and dyeing establishments, 128 A.L.R. 678.

Statute relating to municipal fire departments as interference with local self-government, 141 A.L.R. 903.

Implied or inherent power of municipal corporation to sell its real property, 141 A.L.R. 1447.

Validity, construction, and application of municipal ordinances relating to loading or unloading passengers by interurban buses on streets, 144 A.L.R. 1119.

Certificates by state authorizing operation of motorbus lines over section of highway as affected by its subsequent annexation to city, 154 A.L.R. 1440.

Governmental body's right to enjoin breach of contract for unique or extraordinary services, 161 A.L.R. 881.

Power of municipal corporation to contribute financially to municipal league or other organizations of a similar character, 169 A.L.R. 1230.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 A.L.R.2d 595.

Power of city, town, or county or their officials to compromise claim, 15 A.L.R.2d 1359.

Liability of municipality in damages for its refusal to grant permit, license, or franchise, 37 A.L.R.2d 694.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A.L.R.2d 595.

Power of municipal corporation to submit to arbitration, 20 A.L.R.3d 569.

Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute, 33 A.L.R.3d 397.

Validity and construction of municipal ordinances regulating community antenna television service (CATV), 41 A.L.R.3d 384.

Standing to contest award of, or acquisition of right to operate, cable TV certificate, license, or franchise in state court action, 78 A.L.R.3d 1255.

Validity, construction, and application of enactments relating to requirement of residency within or near specified governmental unit as condition of continued employment for policemen or firemen, 4 A.L.R.4th 380.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 A.L.R.4th 602.

Validity, construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination, 82 A.L.R.5th 1.

Construction and application of U.S. Const. Art. I, § 10, cl. 1, and state constitutional provisions proscribing state bills of attainder, 63 A.L.R.6th 1.

36-34-3. Acquisition and operation of certain buildings and facilities; contracts with other political subdivisions for joint use.

In addition to the other powers it may have, any municipal corporation shall have the power, in the interest of the health and general welfare, to accept by gift, acquire, construct, lease, own, regulate, operate, improve, open, close, or extend public streets, alleys, sidewalks, parks, swimming pools, golf courses, recreation grounds, airports, airfields, parking areas, parking buildings, athletic fields, grandstands and stadia buildings used or useful for sports, buildings used or useful for housing fairs and exhibits, buildings for educational purposes, libraries, buildings used or useful for poultry and livestock shows and exhibits, and buildings used or useful for public amusement purposes, together with facilities or buildings used for any combination of the above. Any municipal corporation may, under this chapter, contract with any other political subdivision for the joint use of any of such facilities.

History.

Ga. L. 1962, p. 140, § 4.

Cross references.

Municipal public libraries generally, § 20-5-20 et seq.

Law reviews.

For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969).

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section are included in the annotations for this Code section.

This power is broad enough to authorize the governing authorities to exercise poor judgment so long as it is the governing authorities' judgment and is not capricious and arbitrary. Goodman v. City of Atlanta, 246 Ga. 79, 268 S.E.2d 663, 1980 Ga. LEXIS 972 (1980).

Property dedicated to particular purpose cannot by the dedicatee, a municipality, be diverted from that purpose, except under the right of eminent domain. Donalson v. Georgia Power & Light Co., 175 Ga. 462, 165 S.E. 440, 1932 Ga. LEXIS 272 (1932) (decided under former law).

Occupant of city lot does not have any right in the name of an abutting municipal street as will preclude city governing authority from renaming the public thoroughfare. The only justiciable issue is whether the legislative action (naming or renaming the street) was taken for the public health or welfare or was, instead, accomplished arbitrarily, capriciously, maliciously, or with intent to

cause injury to an abutting property owner or the general public. Goodman v. City of Atlanta, 246 Ga. 79, 268 S.E.2d 663, 1980 Ga. LEXIS 972 (1980).

Municipal corporation is without power to vacate a public thoroughfare unless authority to do so is conferred upon the municipal corporation in express terms or by necessary implication. City of Statesboro v. Dorman, 203 Ga. 25, 45 S.E.2d 403, 1947 Ga. LEXIS 561 (1947) (decided under former law).

OPINIONS OF THE ATTORNEY GENERAL

Regulation of vehicular weights. — By establishing truck routes, a city may effectively regulate the amount of weight which may be carried on designated streets on a municipal street system. 1982 Op. Att'y Gen. No. 82-20.

Any city or county ordinances purporting to regulate vehicular weights must not exceed maximum weights permitted by O.C.G.A. § 32-6-26. 1982 Op. Att'y Gen. No. 82-20.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 189, 459 et seq.

C.J.S.

63 C.J.S., Municipal Corporations, § 1114 et seq. 64 C.J.S., Municipal Corporations, §§ 1140, 1142.

ALR.

Liability of municipal corporation upon implied contract for use of property which it received under an invalid contract, 42 A.L.R. 632.

Public "comfort stations," 42 A.L.R. 891; 55 A.L.R. 472.

Measure of damages or compensation where property is taken to widen street, 64 A.L.R. 1513.

Power to include in municipal contract or proposal therefor, provisions designed to relieve local unemployment, or encourage local industries, 81 A.L.R. 255.

Aggregate of rent for entire period of lease of property to municipality as present indebtedness for purposes of condition of incurring, or limitation of amount of, municipal debt, 112 A.L.R. 278.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 A.L.R. 997.

Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 A.L.R. 415.

Necessity for adhering to statutory procedure prescribed for vacation, discontinuance, or change of route of street or highway, 175 A.L.R. 760.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof, 11 A.L.R.2d 168.

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 A.L.R.3d 998.

Liability to one struck by golf ball, 53 A.L.R.4th 282.

36-34-4. Establishment of facilities and services for treatment of patients.

In addition to the other powers it may have, the governing body of any municipal corporation may provide for the general health and welfare by establishing hospitals and clinics for the reception and treatment of charitable and pay patients. It shall have the power to contract with any state agency or political subdivision of this state to provide joint facilities or services for the care and treatment of patients.

History.
Ga. L. 1962, p. 140, § 3; Ga. L. 1992, p. 6, § 36.
Cross references.
County and municipal hospital authorities, § 31-7-70 et seq.
Care of indigent and elderly patients, § 31-8-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Health, §§ 10, 11. 40A Am. Jur. 2d, Hospitals and Asylums, § 39 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 469.
C.J.S.
39A C.J.S., Health and Environment, §§ 4, 6. 41 C.J.S., Hospitals, § 12 et seq.
ALR.
Power of municipality to acquire and operate ice plant, 68 A.L.R. 872.
Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 A.L.R. 997.
Municipal power to condemn land for cemetery, 54 A.L.R.2d 1322.
Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 A.L.R.3d 998.

36-34-5. Acquisition and construction of water and sewage systems.

(a) In addition to the other powers which it may have, any municipal corporation shall have the power under this chapter:

(1) To acquire by gift, by purchase, or by the exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend any water system or sewage system, or both, within the municipal corporation;

(2) To acquire by gift, by purchase, or by the exercise of the right of eminent domain any lands, easements, rights in lands, and water rights in connection therewith;

(3) To operate and maintain any such systems for its own use and for:

(A) Public and private persons within the territorial boundaries of the municipal corporation who use the system; or

(B) Persons to whom the system is made available at the property owned by such persons; and

(4) To prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities:

(A) Furnished to persons or users; or

(B) Made available by such systems to the property owner at such owner's property. When services are available but not used,

the maximum rates, fees, tolls, or other charges imposed shall not exceed the minimum charge or fee imposed on a user of such system.

(b) The provisions of subparagraphs (a)(3)(B) and (a)(4)(B) of this Code section shall apply with respect to an individual residential property owner only in the case of a municipality or public water system or project thereof that is exempted from the provisions of subsections (a) and (b) of Code Section 36-60-17.1 pursuant to subsection (d) of such Code section.

History.

Ga. L. 1962, p. 140, § 6; Ga. L. 1985, p. 1393, § 1; Ga. L. 2007, p. 737, § 1/HB 247; Ga. L. 2025, p. 1029, § 36(8)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "subsection (d)" for "subsection (c)" in subsection (b).

Cross references.

Georgia Water Quality Control Act, § 12-5-20 et seq.

Contracts between Department of Natural Resources and municipalities pertaining to furnishing of water supplies, § 12-5-72.

Georgia Safe Drinking Water Act of 1977, § 12-5-170 et seq.

Georgia Comprehensive Solid Waste Management Act, § 12-8-20 et seq.

Retention of contractual payments and creation of escrow accounts in contracts for installation, improvement of water or sewer facilities, § 13-10-81.

Exercise of power of eminent domain for construction and operation of waterworks, § 22-3-60 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, a comma was added following "tolls" in the last sentence of subdivision (4) (now subdivision (a)(4)(B)).

Law reviews.

For article, "Local Government and Contracts that Bind," see 3 Ga. L. Rev. 546 (1969).

For article advocating centralizing industrial and domestic waste treatment by local statutory amendments, see 23 Mercer L. Rev. 603 (1972).

For article surveying local government law in 1984-1985, see 37 Mercer L. Rev. 313 (1985).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section are included in the annotations for this Code section.

Property dedicated to a particular purpose cannot by the dedicatee, a municipality, be diverted from that purpose, except under the right of eminent domain. Donalson v. Georgia Power & Light Co., 175 Ga. 462, 165 S.E. 440, 1932 Ga. LEXIS 272 (1932) (decided under former law).

Power to condemn other property. — One municipality has power to condemn under reasonable circumstances the public property of other municipalities. Mays v. State, 110 Ga. App. 881, 140 S.E.2d 223, 1965 Ga. App. LEXIS 1133 (1965).

City cannot compel use of city water. — There is nothing in the general authority conferred upon a city under the law set forth in this section in respect to the acquisition or construction of a water system, in addition to any powers a municipality may already have, whereby a city can compel the use of city water, or connection to a city water system. City of Midway v. Midway Nursing & Convalescent Ctr., Inc., 230 Ga. 77, 195 S.E.2d 452, 1973 Ga. LEXIS 817 (1973).

Nothing in the general authority conferred under O.C.G.A. § 36-34-5 in respect to the acquisition or construction of a water system, in addition to any powers a municipality may already have, empowers a city to compel the use of city water or connection to a city water system. Wall v. City of Athens, 663 F. Supp. 747, 1987 U.S. Dist. LEXIS 5539 (M.D. Ga. 1987), aff'd, 976 F.2d 649, 1992 U.S. App. LEXIS 28370 (11th Cir. 1992).

No power to conspire with private parties. — While O.C.G.A. § 36-34-5 does establish a policy to displace competition with regulation to some degree, and the legislation immunizes some of the anticompetitive activities engaged in by the defendant in providing water services outside the city from antitrust attack under the state action exemption, the legislation does not provide the state action exemption for contracting and conspiring with private parties, as opposed to political subdivisions, to maintain artificially low rates for these private parties in exchange for the private parties' agreement not to engage in direct competition, and maintenance of a discriminatory rate schedule, without cost justification, in order to make up for the losses incurred by such conduct. Wall v. City of Athens, 663 F. Supp. 747, 1987 U.S. Dist. LEXIS 5539 (M.D. Ga. 1987), aff'd, 976 F.2d 649, 1992 U.S. App. LEXIS 28370 (11th Cir. 1992).

Municipal corporation may not compel any person outside the municipal corporation's territorial limits to accept water service which the municipality undertakes to furnish, nor may the municipal authorities be compelled to render such service. City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1, 1955 Ga. LEXIS 527 (1955) (decided under former law).

Municipal corporation does not become in any sense a public utility by reason of the fact that the municipal corporation is empowered to operate, and does operate, electric light and water plant. City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1, 1955 Ga. LEXIS 527 (1955) (decided under former law).

Constitutionality of different rates for those residing outside corporate limits. — Plaintiffs, having no right to demand water service from the city, may purchase the water at the city's charge therefor, or plaintiffs may decline to do so, at plaintiffs' will, but the plaintiffs are in no position which authorizes the plaintiffs to complain of an excessive charge or a discriminating rate. Hence, there was no merit in the contention that the city's ordinances which fixed different water rates for those who resided outside of the city's corporate limits offended U.S. Const., amend. 14, or Ga. Const. 1945, Art. I, Sec. I, Para. II (see now Ga. Const. 1983, Art. I, Sec. I, Para. II). City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1, 1955 Ga. LEXIS 527 (1955) (decided under former law).

Power to set rates in outlying territories. — Municipal corporation may classify rates to be charged in outlying territories, and upon failure of customers to pay such charges, the municipal corporation may discontinue the municipal corporation's service. City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1, 1955 Ga. LEXIS 527 (1955) (decided under former law).

Only "users" may be charged. — City is authorized to prescribe and collect rates, fees, and charges only for public and private consumers and users who actually use the city's sewer system. Hummings v. City of Woodbine, 253 Ga. 255, 319 S.E.2d 862, 1984 Ga. LEXIS 883 (1984).

Immunity from federal antitrust liability. — City's anticompetitive operation of a waterworks is protected from federal antitrust liability by the state action immunity doctrine under Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943), and its progeny. McCallum v. City of Athens, 976 F.2d 649, 1992 U.S. App. LEXIS 28370 (11th Cir. 1992).

Claim of state-action immunity did not entitle a city to dismissal of a suit alleging the city violated the Sherman and Clayton Acts by tying its water-utility service to its natural-gas service for some customers because Georgia's policy to displace federal antitrust law as to municipal anticompetitive conduct in providing water and sewage services does not have as an inherent, logical, or ordinary result that cities would use their water monopoly to increase their share of an unrelated mar-

ket. Diverse Power, Inc. v. City of Lagrange, 934 F.3d 1270, 2019 U.S. App. LEXIS 24772 (11th Cir. 2019).

Construction with O.C.G.A. § 36-36-7. — In a dispute concerning a city's desire to access water lines owned by a county but located in an area annexed by the city, it was determined, upon discerning the interplay between O.C.G.A. §§ 36-34-5 and 36-36-7(b), that the city was not permitted access to the line in question absent compliance with one of the three methods enumerated in § 36-34-5, namely by gift, purchase, or the exercise of the right of eminent domain. Cobb County v. City of Smyrna, 270 Ga. App. 471, 606 S.E.2d 667, 2004 Ga. App. LEXIS 1505 (2004).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 488 et seq.

ALR.

Power of state to exact fee or require license for taking water from stream, 29 A.L.R. 1478.

Duty of public utility to duplicate service, 52 A.L.R. 1111.

Power of municipalities or other political subdivisions to engage in a joint project or enterprise, 123 A.L.R. 997.

Power of municipality to agree to abide by conditions or regulations imposed by federal authority in respect of construction, maintenance, or operation of a municipal public utility plant or enterprise, 128 A.L.R. 620.

Waters: right of municipality, as riparian owner, to use of water for public supply, 141 A.L.R. 639.

Liability of municipality for fire loss due to its failure to provide or maintain adequate water supply or pressure, 163 A.L.R. 348.

Liability of municipal corporation for damage to property resulting from inadequacy of drains and sewers due to defects in plan, 173 A.L.R. 1031.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 A.L.R.2d 595.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof, 11 A.L.R.2d 168.

Right of municipality or public to use of subsurface of street or highway for purposes other than sewers, pipes, conduits for wires, and the like, 11 A.L.R.2d 180.

Right to compel municipality to extend its water system, 48 A.L.R.2d 1222.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability, 57 A.L.R.2d 1336.

Municipality's liability for damage resulting from obstruction or clogging of drains or sewers, 59 A.L.R.2d 281.

Municipality's liability arising from negligence or other wrongful act in carrying out construction or repair of sewers and drains, 61 A.L.R.2d 874.

Right to condemn property in excess of needs for a particular public purpose, 6 A.L.R.3d 297.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

Right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services, 60 A.L.R.3d 714.

Validity and construction of regulation by municipal corporation fixing sewer-use rates, 61 A.L.R.3d 1236.

What constitutes "state action" rendering public official's participation in private antitrust activity immune from application of federal antitrust laws, 109 A.L.R. Fed. 758.

Construction and application of 7 USCA § 1926(b), prohibiting curtailment or conditioning of water or sewer service based on inclusion within municipal borders, 146 A.L.R. Fed. 387.

36-34-5.1. Lease agreements for providing library services.

Notwithstanding any provision of law to the contrary, each municipal

corporation of this state is authorized, in the discretion of its governing authority, to enter into valid and binding lease agreements with nonprofit corporations, classified as public foundations (not private foundations) under the United States Internal Revenue Code, for the stated purpose of providing library services for any period of time not to exceed 15 years.

History.

Ga. L. 1981, p. 833, § 1; Ga. L. 1987, p. 191, § 9.

Editor's notes.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 480.

C.J.S.

63 C.J.S., Municipal Corporations, § 1118.

ALR.

Exercise of eminent domain for purpose of library, 66 A.L.R. 1496.

36-34-5.2. Leases and contracts for operation and maintenance of botanical gardens in certain municipal corporations.

Notwithstanding any provision of law to the contrary, any municipal corporation of this state having a population of more than 300,000 according to the United States decennial census of 1970 or any future such census is authorized, in the discretion of its governing authority, to enter into valid and binding leases and contracts with private persons, firms, associations, or corporations for any period of time not to exceed 50 years to provide for the operation and maintenance of botanical gardens on municipal property.

History.

Ga. L. 1979, p. 4196, § 1; Code 1981, § 36-34-5.2, enacted by Ga. L. 1982, p. 2107, § 37.

36-34-5.3. Leases and contracts for operation and maintenance of public zoos in certain municipal corporations.

Notwithstanding any provision of law to the contrary, any municipal

corporation of this state having a population of more than 300,000 according to the United States decennial census of 1970 or any future such census is authorized, in the discretion of its governing authority, to enter into valid and binding leases and contracts with private persons, firms, associations, or corporations for any period of time not to exceed 50 years to provide for the operation and maintenance of public zoos on municipal property.

History.
Ga. L. 1980, p. 3734, § 1; Code 1981, § 36-34-5.3, enacted by Ga. L. 1982, p. 2107, § 38.

36-34-6. Financing of facilities and services.

The governing body of each municipal corporation of this state is given the authority to issue, refund, and liquidate financial obligations, including bonds, incurred to finance any facilities or services which such municipal corporation undertakes to provide under authority of this chapter, subject to the provisions of the Constitution of this state and the general laws applicable to such bonds or other financial obligations.

History.
Ga. L. 1962, p. 140, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 497 et seq.

C.J.S.
64A C.J.S., Municipal Corporations, §§ 2018 et seq., 2096 et seq.

ALR.
Change in law as to municipal bonds as affecting bonds previously authorized or voted, but not issued, 19 A.L.R. 1055.

Assignment and transfer of government bonds, 22 A.L.R. 775.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7; 162 A.L.R. 396.

Validity of municipal bond issue for purpose of paying employees, 96 A.L.R. 1204.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters, 97 A.L.R. 442.

Priority or preference as between different issues of bonds of municipalities or political subdivisions, absent express provisions in that regard, 108 A.L.R. 1018.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 A.L.R. 1467.

Kind or type of contractual obligation within general terms, "contracts," "obligations," or specific terms, "bonds," "notes," in statute validating or legalizing obligations of municipalities or other public bodies, 128 A.L.R. 1411.

Estoppel by recitals in municipal bonds as to lawfulness of issue, 158 A.L.R. 938.

36-34-7. Powers supplemental.

The provisions of this chapter are in addition to the powers heretofore or hereafter granted to any municipal corporation.

History.
Ga. L. 1962, p. 140, § 8.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 163.

C.J.S.
62 C.J.S., Municipal Corporations, §§ 147, 148. 64 C.J.S., Municipal Corporations, § 1426.

36-34-8. Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.

It is declared to be the intention of the General Assembly that the provisions of this chapter are general laws within the meaning of Article III, Section VI, Paragraph IV(a) of the Constitution. No local or special laws shall be enacted on subject matters over which municipal corporations are authorized to act pursuant to this chapter. Any provision of any municipal charter heretofore enacted covering subject matters over which municipal corporations are authorized to act pursuant to this chapter shall be amended, modified, superseded, or repealed only in accordance with subsection (b) of Code Section 36-35-3.

History.
Ga. L. 1972, p. 820, § 1; Ga. L. 1983, p. 3, § 57.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 92, 160 et seq.

C.J.S.
62 C.J.S., Municipal Corporations, §§ 133, 136, 142 et seq.

CHAPTER 35

HOME RULE POWERS

Sec.
36-35-1. Short title.
36-35-2. Incorporation, dissolution, merger, and boundary changes by local Act or under general law; annexation of deannexed property.
36-35-3. Adoption of ordinances, rules, and regulations; amendment of charters and amendment or repeal of ordinances, rules, and regulations by petition and referendum.
36-35-4. Compensation and benefits for employees and members of governing authority; conditions and requirements governing increases for elective members of governing authority.
36-35-4.1. Reapportionment of election districts for municipal elections.
36-35-5. Filing of charter amendments or revisions, notices, and affidavits; publication and distribution of amendments and revisions by Secretary of State.
36-35-6. Limitations on home rule powers.
36-35-6.1. Signs for privately owned businesses.
36-35-7. Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.
36-35-8. Effect of conflict with Chapter 34.

Cross references.

Constitutional provision authorizing General Assembly to provide for self-government of municipalities, Ga. Const. 1983, Art. IX, Sec. II, Para. II.

Law reviews.

For article, "Home Rule for Home Affairs," see 1 Ga. L. Rev. 24 (1927).

For note discussing home rule in Georgia under 1947 Home Rule Act (Ga. L. 1947, p. 118, § 1 et seq.), see 1 Mercer L. Rev. 280 (1950).

For article analyzing alternative means of implementing home rule legislation and advocating home rule for municipalities in light of numerous attempts to pass such legislation in Georgia, prior to repeal of Municipal Home Rule Law of 1951 (Ga. L. 1951, p. 116, § 1 et seq.) and adoption of the Municipal Home Rule Act of 1965 (this chapter), see 8 Mercer L. Rev. 337 (1957).

For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B. J. 333 (1967).

For article discussing the development of the Municipal Home Rule Act of 1965 (this chapter), see 4 Ga. St. B. J. 317 (1968).

For article, "Home Rule: Its Impact on Georgia Local Government Law," see 8 Ga. St. B. J. 277 (1972).

For article analyzing the changing relationship between state and local governments in Georgia in light of "Amendment 19," see 9 Ga. L. Rev. 757 (1975).

For article discussing limitations on municipalities' "home rule" powers, see 12 Ga. L. Rev. 805 (1978).

For article surveying recent legislative and judicial developments in zoning, planning and environmental law, see 31 Mercer L. Rev. 89 (1979).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B. J. 58 (1987).

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Municipal corporation which adopts or amends a retirement plan for the municipal corporation's employees must publish a notice of intent. 1973 Op. Att'y Gen. No. U73-119.

Charter consolidating governments of city and county should set out the desired powers of the consolidated government in an enumerated and specific manner. 1969 Op. Att'y Gen. No. 69-413.

36-35-1. Short title.

This chapter shall be known and may be cited as "The Municipal Home Rule Act of 1965."

History.

Ga. L. 1947, p. 1118, § 1; Ga. L. 1951, p. 116, § 1; Ga. L. 1965, p. 298, § 1.

Law reviews.

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For article, "The United States Supreme Court as Home Rule Wrecker," see 34 Mercer L. Rev. 363 (1982).

JUDICIAL DECISIONS

Municipal Home Rule Act of 1965 (this chapter) does not provide sole method by which General Assembly may amend a city charter so as to change city boundaries. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries does not violate the constitutional guarantee of due process of the law because it subjects property owners in the area annexed to taxation by the municipality; nor does the local law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Constitutionality of Municipal Ordinance. — Ordinance providing certain insurance benefits for dependents of city employees who qualified and registered as domestic partners, which defined "dependent" consistent with state law, did not violate the Georgia Constitution or the Municipal Home Rule Act. City of Atlanta v. Morgan, 268 Ga. 586, 492 S.E.2d 193, 1997 Ga. LEXIS 708 (1997).

Existence of prior statutes permitting enlargement of boundaries does not deprive General Assembly of power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Both county governments and municipalities may levy taxes for public purposes connected with administration of county and city governments; as a corollary to this principle, it follows that counties and municipalities may appropriate and expend money for such public purpose. Peacock v. Georgia Mun. Ass'n, 247 Ga. 740, 279 S.E.2d 434, 1981 Ga. LEXIS 851 (1981).

Former Code 1933, § 69-904 et seq. was a "general law" and provided a

method of municipal annexation as contemplated by the Municipal Home Rule Act of 1965 (see now O.C.G.A. § 36-35-1 et seq.). Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864, 1972 Ga. LEXIS 937 (1972).

OPINIONS OF THE ATTORNEY GENERAL

No city acting under this chapter could alter court having jurisdiction over state offenses. 1971 Op. Att'y Gen. No. U71-30.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 106 et seq.

36-35-2. Incorporation, dissolution, merger, and boundary changes by local Act or under general law; annexation of deannexed property.

(a) No municipal corporation shall be incorporated, dissolved, merged, or consolidated with any other municipal corporation, or have its municipal boundaries changed except by local Act of the General Assembly or by such methods as may be provided by general law.

(b) Whenever any local Act of the General Assembly deannexes property lying within the boundaries of a municipal corporation, such property shall not be subject to annexation under Chapter 36 of this title by the municipal corporation from which the property was deannexed for a period of three years from such deannexation.

History.
Ga. L. 1947, p. 1118, § 2; Ga. L. 1951, p. 116, § 2; Ga. L. 1965, p. 298, § 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1983, p. 545, § 1; Ga. L. 1992, p. 2592, § 2.

Law reviews.
For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B. J. 333 (1967).

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Nature of general laws. — Laws operating uniformly throughout the state with respect to the subject matter, but applying only to cities or counties of a common class having a certain number of inhabitants or more, are general statutes as contemplated by this section. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864, 1972 Ga. LEXIS 937 (1972).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries does not violate the constitutional guarantee of due process of the law because the local law subjects property owners in the area annexed to taxation by the municipality; nor does the local law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Local act changing city limits so as to exclude developer's property, thereby vitiating any authority of the city to permit development of the property, was not unconstitutional. Signa Dev.

Corp. v. Fayette County, 259 Ga. 11, 375 S.E.2d 839, 1989 Ga. LEXIS 37, cert. denied, 493 U.S. 814, 110 S. Ct. 63, 107 L. Ed. 2d 30, 1989 U.S. LEXIS 3950 (1989).

This chapter does not provide the sole method by which the General Assembly may amend a city charter so as to change city boundaries. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Existence of prior statutes permitting enlargement of boundaries does not deprive the General Assembly of the power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Altering boundaries by local Act. — There is evidence of intent on the part of the General Assembly to retain authority to alter municipal boundaries through local Acts. 1975 Op. Att'y Gen. No. U75-59.

"Deannexation" of property presently lying within boundaries of municipal corporation may only be accomplished through local legislation amending the corporate charter so as to redefine the corporate boundaries. 1977 Op. Att'y Gen. No. U77-49.

Annexation of state park. — Municipality must have specific legislative approval to annex state park. 1968 Op. Att'y Gen. No. 68-211.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 28 et seq., 71 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 13 et seq., 54, 70 et seq., 104 et seq.

36-35-3. Adoption of ordinances, rules, and regulations; amendment of charters and amendment or repeal of ordinances, rules, and regulations by petition and referendum.

(a) The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto. Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify, or supersede any action taken by a municipal governing authority under this Code section, except as authorized under Code Section 36-35-6.

(b) Except as provided in Code Section 36-35-6, a municipal

corporation may, as an incident of its home rule power, amend its charter by following either of the following procedures:

(1) Municipal charters may be amended by ordinances duly adopted at two regular consecutive meetings of the municipal governing authority, not less than seven nor more than 60 days apart. A notice containing a synopsis of the proposed amendment shall be published in the official organ of the county of the legal situs of the municipal corporation or in a newspaper of general circulation in the municipal corporation once a week for three weeks within a period of 60 days immediately preceding its final adoption. The notice shall state that a copy of the proposed amendment is on file in the office of the clerk or the recording officer of the municipal governing authority and in the office of the clerk of the superior court of the county of the legal situs of the municipal corporation for the purpose of examination and inspection by the public. The recording officer of the municipal governing authority shall furnish anyone, upon written request, a copy of the proposed amendment. No amendment under this paragraph shall be valid to change or repeal an amendment adopted pursuant to a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum as provided in paragraph (2) of this subsection or to change or repeal a local Act of the General Assembly ratified in a referendum by the electors of the municipal corporation unless at least 12 months have elapsed after such referendums. No amendment under this paragraph shall be valid if provision has been made therefor by general law; or

(2)(A) Amendments to charters or amendments to or repeals of ordinances, resolutions, or regulations adopted pursuant to subsection (a) of this Code section may be initiated by a petition, filed with the governing authority of the municipal corporation, containing, in cases of municipal corporations with a population of 5,000 or less, the signatures of at least 25 percent of the electors registered to vote in the last general municipal election; in cases of municipal corporations with a population of more than 5,000 but not more than 100,000, at least 20 percent of the electors registered to vote in the last general municipal election; and in cases of municipal corporations with a population of more than 100,000, at least 15 percent of the electors registered to vote in the last general municipal election. The petition shall specifically set forth the exact language of the proposed amendment or repeal. The governing authority shall determine the validity of such petition within 50 days of its filing with the governing authority. In the event that the governing authority determines that such petition is valid, it shall be the duty of such authority to issue the call for an election for the purpose of submitting such amendment or repeal to the registered

electors of the municipal corporation for their approval or rejection. Such call shall be issued within one week after the determination of the validity of the petition. The governing authority shall set the date of the election as provided in Code Section 21-2-540. The governing authority shall cause a notice of the date of the election to be published in the official organ of the county of the legal situs of the municipal corporation or in a newspaper of general circulation in the municipal corporation once a week for two weeks immediately preceding such date. The notice shall also contain a synopsis of the proposed amendment or repeal and shall state that a copy thereof is on file in the office of the clerk or the recording officer of the municipal governing authority and in the office of the clerk of the superior court of the county of the legal situs of the municipal corporation, for the purpose of examination and inspection by the public. The recording officer of the municipal governing authority shall furnish anyone, upon written request, a copy of the proposed amendment. If more than one-half of the votes cast on the question are for approval of the amendment or the repeal, the same shall become of full force and effect; otherwise it shall be void and of no force and effect. The expense of the election shall be borne by the municipal corporation. It shall be the duty of the governing authority to hold and conduct such election. The election shall be held under the same laws and rules and regulations as govern special elections of the municipal corporation, except as otherwise provided in this subparagraph. It shall be the duty of the governing authority to canvass the returns and to declare and certify the result of the election. It shall be the further duty of the governing authority to certify the result thereof to the Secretary of State. A referendum on any such amendment or repeal shall not be held more often than once each year. No amendment under this subparagraph shall be valid if provision has been made therefor by general law.

(B) In the event that the governing authority determines that the petition is not valid, it shall publish in explicit detail the reasons why such petition is not valid. Such publication shall be in the official organ of the county of the legal situs of the municipal corporation or in a newspaper of general circulation in the municipal corporation, in the week immediately following the date on which the petition is declared to be not valid. In any proceeding in which the validity of the petition is at issue, the tribunal considering such issue shall not be limited by the reasons assigned.

(C) The sponsor of a petition authorized by this paragraph shall obtain copies of all official petitions from the clerk of the governing authority. The clerk of the governing authority shall approve all petitions as to form. The clerk of the governing authority shall

provide a place on each form for the person collecting signatures to provide his or her name, street address, city, county, state, ZIP Code, and telephone number and to swear that he or she is a resident of the municipality affected by the petition and that the signatures were collected inside the boundaries of the affected municipality. The collection of signatures for the petition shall begin on the day the clerk of the governing authority provides official copies to the sponsor of the petition. A petition authorized by subparagraph (A) of this paragraph shall not be accepted by the governing authority for verification if more than 60 days have elapsed since the date the sponsor of the petition first obtained copies of the petition from the clerk of the governing authority. Any petition being circulated pursuant to subparagraph (A) of this paragraph on July 1, 1989, shall be filed with the clerk of the governing authority by not later than July 11, 1989. The clerk of the governing authority shall, within seven days, provide the sponsor with official petitions. The sponsor shall have 60 additional days after obtaining official petitions to collect the remaining number of required signatures. Nothing in this subparagraph shall invalidate otherwise valid signatures collected on or before July 1, 1989.

(c) Any other provisions of this chapter to the contrary notwithstanding, subsection (b) of this Code section shall not apply to any city-county consolidated government in existence on January 1, 1976, and any such city-county consolidated government shall not be authorized to amend its consolidated government charter pursuant to subsection (b) of this Code section.

History.

Ga. L. 1965, p. 298, § 3; Ga. L. 1966, p. 296, § 1; Ga. L. 1976, p. 1429, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1989, p. 1584, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1998, p. 295, § 3.

Law reviews.

For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B. J. 333 (1967).

For article as to the power of Georgia local governments to regulate the trades and occupations of its citizens, see 9 Ga. L. Rev. 115 (1974).

For article, "Extraterritorial Power in Georgia Municipal Law," see 12 Ga. L. Rev. 1 (1977).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For note on the validity of population statutes in Georgia, see 2 Ga. St. B. J. 533 (1966).

For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration
Powers of Municipalities
Validity of Ordinances

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section and under Ga. L. 1927, p. 99 and former Code 1933, § 22-103 are included in the annotations for this Code section.

Municipal corporation is a public corporation, being a subordinate agent of the state, exercising governmental functions in a certain community; and while an ordinance enacted by such governmental agency may in that sense be a law of the state, it is not a law of the state as is contemplated in the Constitution defining the jurisdiction of the Supreme Court and the Court of Appeals. Maner v. Dykes, 183 Ga. 118, 187 S.E. 699, 1936 Ga. LEXIS 178 (1936).

County's election authority. — County's method of not counting abstentions by county commissioners, and therefore not considering abstentions as either affirmative or negative votes, was within the county's authority; thus, a citizen challenging the method of counting votes was not entitled to declaratory relief. Merry v. Williams, 281 Ga. 571, 642 S.E.2d 46, 2007 Ga. LEXIS 126 (2007).

This chapter does not provide sole method by which General Assembly may amend city charter so as to change the city boundaries. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Subsection (b). — Procedure for petition and referendum in subsection (b) of O.C.G.A. § 36-35-3 applies only to amendments to municipal charters. Kemp v. City of Claxton, 269 Ga. 173, 496 S.E.2d 712, 1998 Ga. LEXIS 335 (1998).

Municipality not estopped from attacking local law passed after charter granted. — When a local law vitally affecting the rights and powers granted to a municipality by charter is passed subsequently to the granting of the charter, the municipality is not estopped from attacking the provisions of the local law on the ground that the provisions are unconstitutional and void. City of Moultrie v. Moultrie Banking Co., 175 Ga. 738, 165 S.E. 814, 1932 Ga. LEXIS 321 (1932) (decided under Ga. L. 1927, p. 99).

O.C.G.A. § 36-35-3 is inapplicable when a municipality's obligation to make available to customers sufficient information about electricity rates is at issue. City of Commerce v. Duncan & Godfrey, Inc., 157 Ga. App. 337, 277 S.E.2d 266, 1981 Ga. App. LEXIS 1812 (1981).

City charter provision on term limits for police officers prevailed over police department personnel manual provisions covering the dismissal of police department employees. City of Buchanan v. Pope, 222 Ga. App. 716, 476 S.E.2d 53, 1996 Ga. App. LEXIS 986 (1996).

Quo warranto granted to remove a city attorney improperly appointed by the mayor. — Writ of quo warranto challenging a city mayor's appointment of a city attorney was properly granted because a council member's abstention on a motion to delegate the power of appointment to the mayor was no vote at all; therefore, there was no tie vote on the motion, and the mayor was not authorized to vote in its favor, leaving authority to appoint an attorney with the council, in accordance with the city charter. Jones v. Boone, 297 Ga. 437, 774 S.E.2d 668, 2015 Ga. LEXIS 494 (2015).

Powers of Municipalities

Municipality is a creature of the legislature deriving the municipality's powers and privileges from that body through the municipality's charter. The municipality's ordinances are laws, but only laws of the municipality itself. Maner v. Dykes, 183 Ga. 118, 187 S.E. 699, 1936 Ga. LEXIS 178 (1936) (decided under former law).

Municipalities lawfully may exercise powers necessarily implied from powers expressly granted. Goodman v. City of Atlanta, 246 Ga. 79, 268 S.E.2d 663, 1980 Ga. LEXIS 972 (1980).

In determining the validity of an ordinance, the court must decide whether the city had the power to enact the ordinance and whether the exercise of

Powers of Municipalities (Cont'd)

the city's power is clearly reasonable. City of Atlanta v. McKinney, 265 Ga. 161, 454 S.E.2d 517, 1995 Ga. LEXIS 151 (1995).

Existence of police power dependent on express grant by state. — Police power, while it is an attribute of sovereignty and an inherent power of national and state government because the existence of government as well as the social order, security, life, and health of the individual citizen depend upon it, is a power possessed by municipal corporations only if, where, and to the extent there has been an express grant by the state. Palmer v. Hall, 380 F. Supp. 120, 1974 U.S. Dist. LEXIS 7401 (M.D. Ga. 1974), aff'd in part and rev'd in part, 517 F.2d 705, 1975 U.S. App. LEXIS 13119 (5th Cir. 1975).

Fundamental and substantive changes in city government cannot be made by a municipality under general home rule laws. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876, 1977 Ga. LEXIS 1513 (1977).

Authority to enact new charters including drastic changes in city government reserved in General Assembly. — The General Assembly has reserved the legislative power to enact new charters for existing cities when such charters include drastic changes in the composition and form of city government, and the election and terms of office of the members of the governing authority of cities. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876, 1977 Ga. LEXIS 1513 (1977).

Authority to adopt ordinance amending city charter. — Authority of a municipality to adopt an ordinance amending its city charter cannot be derived from subsection (a), which prohibits the enactment of local ordinances inconsistent with municipal charter provisions. The ordinance must be adopted pursuant to the procedures set out in subsection (b), which establishes one of two methods through which a municipality may amend a municipality's charter without the intervention of the General Assembly. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876, 1977 Ga. LEXIS 1513 (1977).

Power to regulate markets and provide reasonable rules for their conduct, looking to the health and safety of a city or community, is a right within the scope of municipal regulation, and the court will not interfere with the exercise of the discretion granted to municipalities upon the ground of unreasonableness, except in a clear case. Jones v. City of Atlanta, 51 Ga. App. 218, 179 S.E. 922, 1935 Ga. App. LEXIS 635 (1935) (decided under former law).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries does not violate the constitutional guarantee of due process of the law because the local law subjects property owners in the area annexed to taxation by the municipality; nor does the local law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Existence of prior statutes permitting enlargement of boundaries does not deprive General Assembly of power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Liability of municipality for bail policy. — In Georgia, a municipality had power under O.C.G.A. § 36-35-3(a), Ga. Unif. Mun. Ct. R. 18.1, and the municipality's charter to set a bail policy for its municipal court, and its police also had authority under O.C.G.A. §§ 17-6-2(b) and 42-4-1(b); therefore, the municipality could be held liable under 42 U.S.C. § 1983 for constitutional violations relating to the municipality's bail policy. Walker v. City of Calhoun, 901 F.3d 1245, 2018 U.S. App. LEXIS 23570 (11th Cir. 2018), cert. denied, 587 U.S. 918, 139 S. Ct. 1446, 203 L. Ed. 2d 681, 2019 U.S. LEXIS 2446 (2019).

Validity of Ordinances

Ordinance which infringes upon

common or statute law is void. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617, 1956 Ga. App. LEXIS 548 (1956).

Reasonableness of ordinance a question of law. — Ordinances of a municipal body under a power vested in the municipal body are conclusive on the courts unless so unreasonable or oppressive of the rights of the citizen as to constitute an attempted abuse rather than a legitimate use of the power; but the reasonableness of an ordinance is a question of law and municipal ordinances are reviewable by the courts as to reasonableness. If found to be unreasonable, those ordinances will be held void. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617, 1956 Ga. App. LEXIS 548 (1956) (decided under former law).

Legislation by municipal corporation must be put in form of an ordinance, and acts that are done in a ministerial capacity and for temporary purposes may be in the form of a resolution. Allen v. Wise, 204 Ga. 415, 50 S.E.2d 69, 1948 Ga. LEXIS 459 (1948) (decided under former law).

Municipal ordinance contravening usual and ordinary rights of a citizen cannot be legally passed unless the power to do so be plainly conferred by valid and competent legislative grant. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503, 1938 Ga. App. LEXIS 485 (1938) (decided under former law).

Constitutionality of refusal to allow conduct of particular business. — Unless a business may be held to be a nuisance per se, an Act allowing a municipality to refuse the conduct of the same, irrespective of its compliance with any regulations adopted for the proper exercise of such business, is violative of Ga. Const. 1877, Art. I, Sec. I, Para. III and Art. I, Sec. I, Para. II (see now Ga. Const. 1983, Art. I, Sec. I, Paras. I and II). Jones v. City of Atlanta, 51 Ga. App. 218, 179 S.E. 922, 1935 Ga. App. LEXIS 635 (1935) (decided under former law).

No power to declare lawful business nuisance. — Municipality has no authority, by ordinance, to declare a useful and per se perfectly lawful business a nuisance, and provide for the issuance of permits by the city, which may be granted or declined in the discretion of the governing authorities. Jones v. City of Atlanta, 51 Ga. App. 218, 179 S.E. 922, 1935 Ga. App. LEXIS 635 (1935) (decided under former law).

Completeness of annexation statute. — There is no requirement, statutory or otherwise, that the local annexation statute itself make provisions for the myriad adjustments between the annexed territory and the municipality which the annexation necessitates. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876, 1977 Ga. LEXIS 1513 (1977).

Charter amendment needed to abolish city department created by home rule enactment. — City department created by a home rule enactment, once having achieved charter status, can be abolished only by another home rule charter amendment requiring advertisements in advance and adoption by the council at two consecutive regular meetings as required by paragraph (b)(1). Jackson v. Fraternal Order of Police Lodge No. 8, 234 Ga. 906, 218 S.E.2d 633, 1975 Ga. LEXIS 1322 (1975).

Ordinance was properly advertised in advance by publishing synopsis of proposed amendment. Jackson v. Fraternal Order of Police Lodge No. 8, 234 Ga. 906, 218 S.E.2d 633, 1975 Ga. LEXIS 1322 (1975).

Requiring corporation to give bond before transporting goods unauthorized. — City was without authority under the city's charter or the general law to require a corporation to give bond or file a policy of liability insurance as a prerequisite to transporting the corporation's goods from its place of business in an automobile, cart, wagon, or dray. Jewel Tea Co. v. City Council, 59 Ga. App. 260, 200 S.E. 503, 1938 Ga. App. LEXIS 485 (1938) (decided under former law).

Ordinance prohibiting blowing of train whistle. — Municipal ordinance providing without exception that no person operating a locomotive engine shall blow the whistle thereof within the corporate limits of a city is void as being unreasonable, contrary to public interest, public policy, and the general welfare of

Validity of Ordinances (Cont'd)

the public, when it appears without dispute that the ordinance's application at certain grade crossings within the city would prohibit the operator of a locomotive engine from giving adequate warning to persons who may be in, near, or about to enter a place of danger upon the tracks where the locomotive engine is operating. Cruise v. City of Rome, 94 Ga. App. 373, 94 S.E.2d 617, 1956 Ga. App. LEXIS 548 (1956) (decided under former law).

Waste removal ordinance assessing fees for the collection, removal, or disposal of solid wastes against a property owner for apartment units which were neither occupied nor habitable was not authorized by the city charter. Monticello Ltd. v. City of Atlanta, 231 Ga. App. 382, 499 S.E.2d 157, 1998 Ga. App. LEXIS 454 (1998), cert. denied, No. S98C1128, 1998 Ga. LEXIS 758 (Ga. June 26, 1998).

Claim not valid. — City did not assert a valid breach of ordinance claim arising out of a corporation's failure to pay the city additional sums that the city claimed were owed due to a natural gas billing error as: (1) in order to assert a breach of ordinance claim, the city had to show that the ordinance was validly enacted; (2) the city failed to present any evidence showing that an alleged ordinance setting natural gas billing rates was enacted in conformance with the requirements imposed under Lawrenceville, Ga., City Charter §§ 2.22, 2.29; and (3) the city's claim was, in actuality, simply a claim on an account. City of Lawrenceville v. Ricoh Elecs., Inc., 370 F. Supp. 2d 1328, 2005 U.S. Dist. LEXIS 14046 (N.D. Ga. 2005), aff'd, 174 Fed. Appx. 491, 2006 U.S. App. LEXIS 7900 (11th Cir. 2006).

Disregard of parliamentary rule no basis for annulment or invalidation. — While municipal governing bodies usually adopt or recognize parliamentary law as their rules of order and proceeding, courts ordinarily will not annul or invalidate an ordinance enacted in disregard of parliamentary rule, provided the enactment is made in the manner required by statute. The rules of parliamentary practice are merely procedural, and not substantive. South Ga. Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513, 1929 Ga. LEXIS 428 (1929) (decided under former law).

Racial and sexual quotas in contracts void. — City ordinance requiring that certain percentages of contracts be awarded on the basis of race and sex conflicts with the legislative intent and purpose embodied in the bid requirement in the city charter that contracts be awarded without favoritism to obtain reasonable quality at the lowest cost, and is therefore void. Georgia Branch, Associated Gen. Contractors of Am., Inc. v. City of Atlanta, 253 Ga. 397, 321 S.E.2d 325, 1984 Ga. LEXIS 961 (1984).

Provision for full-time fire department. — Proposed municipal charter amendment which would require provision of fire protection and that such fire protection be provided by a city fire department, with full-time, paid personnel, employed by the city, does not violate Ga. Const. 1983, Art. IX, Sec. II, Para. III. Sadler v. Nijem, 251 Ga. 375, 306 S.E.2d 257, 1983 Ga. LEXIS 809 (1983).

Adoption of occupation tax on businesses within corporate limits was not authorized by O.C.G.A. Ch. 35, T. 36. City of Tunnel Hill v. Ridley, 183 Ga. App. 486, 359 S.E.2d 184, 1987 Ga. App. LEXIS 2016 (1987), cert. denied, 183 Ga. App. 905.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions prior to the enactment of this Code section are included in the annotations for this Code section.

City police officer may not arrest one for violation of city ordinances when the police officer is outside city limits. 1954-56 Ga. Op. Att'y Gen. 490 (decided under former law).

Amount of license fees or taxes. — Licensing power of a municipality is

granted by the charter creating the municipality; the amount of license fees or taxes a municipality may levy on a particular business is not regulated by statute, but appellate courts have ruled that a municipal tax on an occupation must be reasonable. 1954-56 Ga. Op. Att'y Gen. 493 (decided under former law).

City may establish personnel department and merit board without the necessity of special Acts of the General Assembly. 1969 Op. Att'y Gen. No. 69-310.

Joint purchase of riot control equipment. — All counties and those municipalities having the requisite charter authority may enter into cooperative agreements with one another for the purchase and use of equipment to be employed in jointly administered riot control programs. 1969 Op. Att'y Gen. No. 69-141.

Governing authority of affected municipality or county has authority to control boxing events in the authority's jurisdiction. 1970 Op. Att'y Gen. No. 70-167.

Effect of failure of prior election on acts validly conducted. — Municipality may treat an election ordered as a result of the failure of a prior election as a continuation of that prior election, recognizing those acts validly conducted. 1976 Op. Att'y Gen. No. 76-23.

Change of election date. — Municipality is not empowered to amend a municipal charter by ordinance with respect to date of a municipal general election. 1977 Op. Att'y Gen. No. 77-33.

City has home rule power to amend a city's charter by ordinance so as to remove from the charter a limitation on the millage rate which the city may use in levying ad valorem taxes. 1983 Op. Att'y Gen. No. U83-19.

Municipal home rule power not violated by World Congress Center's regulations. — O.C.G.A. § 10-9-14 empowering the Geo. L. Smith II Georgia World Congress Center Authority to regulate activities on the sidewalks and streets immediately adjacent to the World Congress Center's projects during an event period do not violate the City of Atlanta's home rule power under subsection (a) of O.C.G.A. § 36-35-3 or Ga. Const. 1983, Art. IX, Sec. II, Para. III(c). 1994 Op. Att'y Gen. No. U94-4.

City authorized to charge rental fee to state. — City of Atlanta may charge the Board of Regents for permitting a fiber optic cable to lie under city owned streets based on city code provisions enacted pursuant to the city's home rule power. 1995 Op. Att'y Gen. No. 95-14.

RESEARCH REFERENCES

Am. Jur. 2d.

42 Am. Jur. 2d, Initiative and Referendum, §§ 6, 24 et seq., 33 et seq., 48. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 27 et seq., 87 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 27, 1099 et seq., 372 et seq.

ALR.

Power of municipal councils to punish for contempt, 8 A.L.R. 1586.

Validity of municipal ordinance prohibiting or regulating keeping of livestock, 32 A.L.R. 1372; 40 A.L.R. 566.

Delegation by municipality of its powers as to building regulations, 43 A.L.R. 834; 46 A.L.R. 88.

Validity of statute or ordinance relating to place of sale of food, 52 A.L.R. 669.

Power to forbid or restrict repair of wooden building within fire limits, 56 A.L.R. 878.

Constitutionality of city manager or commission form of municipal government, 67 A.L.R. 737.

Power to include in municipal contract or proposal therefor, provisions designed to relieve local unemployment, or encourage local industries, 81 A.L.R. 255.

Implied power of municipality to operate nursery, quarry, gravel pit, or other sites for production of material needed for carrying out powers expressly conferred upon it, 104 A.L.R. 1342.

Matters pertaining to police department as within exclusive control of mu-

nicipalities under home rule charters, 105 A.L.R. 259.

Home rule charter as affecting power of legislature in respect of municipal taxation, 106 A.L.R. 1202.

Validity, construction, and application of ordinances prohibiting or regulating "curb service," 111 A.L.R. 131.

Power of municipality to impose chain store license tax, 111 A.L.R. 596.

Statute relating to municipal fire departments as interference with local self-government, 141 A.L.R. 903.

Validity of municipal regulation of solicitation of magazine subscriptions, 9 A.L.R.2d 728.

Conclusiveness of declaration of emergency in ordinance, 35 A.L.R.2d 586.

What constitutes requisite majority of members of municipal council voting on issue, 43 A.L.R.2d 698.

Power of municipality or other governmental unit to make contract or covenant exempting or releasing property from special assessment, 47 A.L.R.2d 1185.

Municipal power as to billboards and outdoor advertising, 58 A.L.R.2d 1314.

Validity of municipal regulation of storage or accumulation of lumber, straw, trash, or similar inflammable material, 64 A.L.R.2d 1040.

Ordinance providing for suspension or revocation of state-issued driver's license as within municipal power, 92 A.L.R.2d 204.

Power of municipal corporation to enact civil rights ordinance, 93 A.L.R.2d 1028.

Validity of municipal ordinance regulating time during which restaurant business may be conducted, 53 A.L.R.3d 942.

Validity and construction of curfew statute, ordinance, or proclamation, 59 A.L.R.3d 321; 83 A.L.R.4th 1056.

Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals, 1 A.L.R.4th 994.

Power of municipal corporation to legislate as to Sunday observance, 10 A.L.R.4th 246.

Validity, construction, and effect of juvenile curfew regulations, 83 A.L.R.4th 1056.

36-35-4. Compensation and benefits for employees and members of governing authority; conditions and requirements governing increases for elective members of governing authority.

(a) The governing authority of each municipal corporation is authorized to fix the salary, compensation, and expenses of its municipal employees and the members of its municipal governing authority and to provide insurance, retirement, and pension benefits, coverage under federal old-age, survivors and disability programs, hospitalization benefits, and workers' compensation benefits for its employees, their dependents, and their survivors and for members of the municipal governing authority, their dependents, and their survivors, when such benefits are provided to municipal employees. Any previous actions to extend insurance, federal old-age, survivors and disability programs, retirement, hospitalization, and workers' compensation benefits to members of the municipal governing authority are validated. With the exception of the provision of insurance, federal old-age, survivors and disability programs, retirement, hospitalization, and workers' compensation benefits, any action to increase the salary or compensation of the elective members of the municipal governing authority shall be subject to the following conditions and requirements:

(1) Any such increase shall not be effective until after the taking of

office of those elected at the next regular municipal election which is held immediately following the date on which the action to increase the compensation was taken;

(2) Such action shall not be taken during the period of time beginning with the date that candidates for election to membership on the municipal governing authority may first qualify as such candidates and ending with the date members of the municipal governing authority take office following their election; and

(3) Such action shall not be taken until notice of intent to take the action has been published in a newspaper of general circulation designated as the legal organ in the county and in the municipal corporation at least once a week for three consecutive weeks immediately preceding the week during which the action is taken.

(b) As used in subsection (a) of this Code section, the phrase "elective members of the municipal governing authority" means, notwithstanding any terminology or designation of a municipal governing authority or governing body contained in any municipal charter, any elective municipal official who exercises any executive or legislative or executive and legislative powers of the municipal corporation, specifically including a mayor, vice-mayor, president or chairman of a municipal council, member of a municipal council, member of a board of aldermen, or member of a board of commissioners. Such phrase shall also include any person who is appointed to fill a vacancy in any such elective office.

(c) As used in subsection (a) of this Code section, the words "salary or compensation," as applied to the elective members of a municipal governing authority, shall include any expense allowance or any form of payment or reimbursement of expenses, except reimbursement for expenses actually and necessarily incurred by members of a municipal governing authority in carrying out their official duties. The governing authority of each municipal corporation shall be authorized to provide by ordinance for the reimbursement of such actual and necessary expenses.

(d) As used in subsection (a) of this Code section, the words "retirement" and "pension" shall mean termination from municipal service with the right to receive a benefit based upon all or part of such municipal service in accordance with the terms of the ordinance or contract pursuant to which the municipality provides for payment of such benefits. The General Assembly declares and affirms that the Act approved April 17, 1981 (Ga. L. 1981, p. 1741) was intended to assure that prior advertisement of actions to provide insurance, federal old-age, survivors and disability programs, retirement, pension, hospitalization, and workers' compensation benefits to elected members of the municipal governing authority, their dependents, and their survivors is not required.

History.

Ga. L. 1965, p. 298, § 5; Ga. L. 1973, p. 778, § 4; Ga. L. 1974, p. 195, § 1; Ga. L. 1975, p. 28, § 1; Ga. L. 1979, p. 645, § 2; Ga. L. 1981, p. 1741, § 1; Ga. L. 1987, p. 1055, § 1.

Law reviews.

For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B. J. 333 (1967).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions prior to enactment of this Code section are included in the annotations for this Code section.

Mayor is not member of "municipal governing authority" and, therefore, the authority of the city council to increase the compensation paid to the office of the mayor is not subject to the strictures of this section. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268, 1978 Ga. LEXIS 1322 (1978).

Meaning of phrase "governing authority". — Generally accepted meaning of the phrase "governing authority" or "governing body," in reference to the operation of city or county governments, is a council or board performing legislative functions. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268, 1978 Ga. LEXIS 1322 (1978).

In determining whether municipal officer is part of governing authority of municipality, the question is whether that municipal officer possesses legislative power. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268, 1978 Ga. LEXIS 1322 (1978).

Fact that mayor of town is presiding officer of council and has power to cast tie-breaking votes does not make the mayor a member of council if the city charter provides that the mayor is not to be a member. Accordingly, even though the president of the city council is the presiding officer of the council and possesses the authority to cast tie-breaking votes, the mayor should not be considered a member of the council, since the city charter expressly provides that the mayor is not to be a member. Therefore, an increase in the mayor's compensation is not subject to this section. Savage v. City of Atlanta, 242 Ga. 671, 251 S.E.2d 268, 1978 Ga. LEXIS 1322 (1978).

City not authorized to pay mayor for services of city manager. — City is not authorized to pay to a city's mayor compensation, over and beyond the sum specified in the charter as the mayor's salary, for services ordinarily rendered by a city manager. Welsch v. Wilson, 217 Ga. 582, 124 S.E.2d 77, 1962 Ga. LEXIS 330 (1962) (decided under former law).

"Retirement benefits" construed. — Benefits provided under a city retirement plan are retirement benefits expressly exempted under subsection (a) of O.C.G.A. § 36-35-4 and not in the nature of a pension or gratuity when the retirement plan allows council members, after a given period of time, to terminate employment and receive partial credit for past years' service toward the total required time for entitlement to a monthly payment for life. Swann v. Board of Trustees, 257 Ga. 450, 360 S.E.2d 395, 1987 Ga. LEXIS 873 (1987).

City ordinance increasing pension plan contribution rate. — Trial court properly granted the city defendants summary judgment on the city employees' claims of breach of contract and unconstitutional impairment of contract regarding an ordinance increasing their pension plan contribution rate because the Georgia General Assembly expressly contemplated that a municipal corporation's provision for employee retirement or pension benefits would be subject to being supplemented by local law. Borders v. City of Atlanta, 298 Ga. 188, 779 S.E.2d 279, 2015 Ga. LEXIS 786 (2015).

No notice required prior to council's consideration of participation in retirement system. — City council is not required by statute to

advertise notice of the council's intent to consider an ordinance extending participation in the Joint Municipal Employees Retirement System pension to the council's own members. City of Marietta v. Holland, 252 Ga. 299, 314 S.E.2d 97, 1984 Ga. LEXIS 689 (1984); Swann v. Board of Trustees, 257 Ga. 450, 360 S.E.2d 395, 1987 Ga. LEXIS 873 (1987).

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Policy behind subsection (a) is to impose restrictions upon the powers of members of municipal governing authorities to increase their own salaries or compensation. 1980 Op. Att'y Gen. No. U80-27.

Subsection (a) does not prohibit increase from applying to whole council after next election when that election involves less than all positions on the governing authority. 1980 Op. Att'y Gen. No. U80-27.

City may set up retirement system for city employees without necessity of amending city charter. 1970 Op. Att'y Gen. No. U70-80.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 182, 199 et seq., 218 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 268 et seq., 279, 284.

Am. Jur. Proof of Facts.

Wrongful Termination of Retirement Benefits, 13 POF2d 531.

C.J.S.

62 C.J.S., Municipal Corporations, § 460 et seq.

36-35-4.1. Reapportionment of election districts for municipal elections.

(a) Subject to the limitations provided by this Code section, the governing authority of any municipal corporation is authorized to reapportion the election districts from which members of the municipal governing authority are elected following publication of the United States decennial census of 1980 or any future such census. Such reapportionment of districts shall be effective for the election of members to the municipal governing authority at the next regular general municipal election following the publication of the decennial census; provided, however, that, if the publication of the decennial census occurs within 120 days of the next general or special municipal election, such reapportionment of districts shall be effective for any subsequent special election and the subsequent general municipal election.

(b) The municipal governing authority shall by ordinance amend its charter pursuant to paragraph (1) of subsection (b) of Code Section 36-35-3 to reapportion the districts in accordance with the following specifications:

(1) Each reapportioned district shall be formed of contiguous territory; and the boundary lines of such district shall be the center lines of streets or other well-defined boundaries;

(2) Variations in population among such districts shall comply with the one person-one vote requirements of the United States Constitution; and

(3) The reapportionment shall be limited to adjusting the boundary lines of the existing districts only to the extent reasonably necessary to comply with the requirements of paragraph (2) of this subsection; and the number of members of the municipal governing body and the manner of electing such members, except for the adjustment of district boundary lines, shall not be changed by the municipal governing authority.

(c) In addition to reapportionment following publication of the decennial census, a municipal governing authority shall reapportion districts pursuant to this Code section if the annexation of additional territory to the corporate boundaries of the municipality has the effect of denying electors residing within the newly annexed territory the right to vote for members of the municipal governing authority on substantially the same basis as the other electors of the municipality vote for members of the municipal governing authority. The reapportionment provided for in this subsection shall meet the criteria specified in subsection (b) of this Code section and shall be further limited to making only those adjustments in district boundary lines as may be reasonably necessary to include the newly annexed territory within such districts. Reapportionment under this subsection shall be effective for the next regular general municipal election following the annexation.

(d) This Code section shall not prohibit the General Assembly from enacting a local law at any time to amend the charter of a municipality to reapportion or otherwise change election districts from which members of the municipal governing authority are elected. If such action is taken by the General Assembly following publication of a decennial census, but before the first regular general municipal election following the publication of such census, the local Act of the General Assembly shall nullify the power given to the municipal governing authority by subsections (a) and (b) of this Code section to reapportion districts following publication of that decennial census. If such action is taken by the General Assembly in conjunction with the annexation, by local Act of the General Assembly, of additional territory to the corporate boundaries of the municipality, the local Act of the General Assembly shall nullify the power and duty given to the municipal governing authority by subsection (c) of this Code section to reapportion districts as a result of that annexation.

(e) In addition to reapportionment following publication of the decennial census, the governing authority of any municipal corporation with a population of 40,000 or more according to the latest United

States decennial census is authorized not more than one time during the ten-year period between the publication of consecutive decennial censuses to reapportion or modify the election districts from which members of the municipal governing authority are elected; provided, however, that (1) no such reapportionment shall result in the redistricting of more than 600 persons, (2) no such reapportionment shall occur within 180 days of a general or special municipal election or primary, and (3) a map reflecting any changes and copies of any communications to or from the United States Department of Justice relating to such changes are furnished to the Secretary of State and the Legislative Reapportionment Office within 30 days after such change or communication. Such reapportionment of districts shall be effective for the election of one or more members to the municipal governing authority at the next regular general municipal election or special municipal election following such reapportionment.

History.

Ga. L. 1981, p. 497, § 2; Ga. L. 1997, p. 864, § 1; Ga. L. 2021, p. 14, § 49/SB 202.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with

long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article surveying developments in Georgia local government law from

mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Effective date of voting district map. — Election challenge for a county commissioner's seat failed because plaintiff's assertion that a 2011 map was in effect and should have been used for the 2023 election was incorrect as the map was never filed with the Secretary of State and clerk of the superior court as required and was, thus, ineffective at the time of the vote. Nelson v. Strickland, 320 Ga. 733, 911 S.E.2d 665, 2025 Ga. LEXIS 9 (2025).

RESEARCH REFERENCES

Am. Jur. 2d.
14 Am. Jur. 2d, Census, § 9. 25 Am. Jur. 2d, Elections, §§ 13 et seq., 23 et seq.

C.J.S.
29 C.J.S., Elections, § 83.

36-35-5. Filing of charter amendments or revisions, notices, and affidavits; publication and distribution of amendments and revisions by Secretary of State.

No amendment or revision of any charter made pursuant to this chapter shall become effective until a copy of the amendment or revision, a copy of the required notice of publication, and an affidavit of a duly authorized representative of the newspaper in which the notice was published, to the effect that the notice has been published as provided in this chapter, has been filed with the Secretary of State and in the office of the clerk of the superior court of the county of the legal situs of the municipal corporation. The Secretary of State shall provide for the publication and distribution of all such amendments and revisions at least annually.

History.
Ga. L. 1965, p. 298, § 6.

Law reviews.
For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B. J. 333 (1967).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Effective date of election map. — Election challenge for a county commissioner's seat failed because the plaintiff's assertion that a 2011 map was in effect and should have been used for the 2023 election was incorrect as the map was never filed with the Secretary of State and the clerk of the superior court as required and was, thus, ineffective at the time of the vote. Nelson v. Strickland, 320

Ga. 733, 911 S.E.2d 665, 2025 Ga. LEXIS 9 (2025).

Mere failure to file ordinance does not make it ineffective charter amendment. — After many months of operation under the ordinance as adopted and filed in the office of the Secretary of State, mere failure to also file the completed ordinance in the office of the clerk of court does not make the ordinance an ineffective charter amendment. Jackson v. Fraternal Order of Police Lodge No. 8, 234 Ga. 906, 218 S.E.2d 633, 1975 Ga. LEXIS 1322 (1975).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 286.

C.J.S.

62 C.J.S., Municipal Corporations, § 338 et seq.

36-35-6. Limitations on home rule powers.

(a) The power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to the following matters or to any other matters which the General Assembly by general law has preempted or may hereafter preempt; but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution:

(1) Action affecting the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members, except as authorized in Chapter 2 of Title 21 or as provided in Code Section 36-35-4.1;

(2)(A) Action defining any offense, which so defined, is also an offense under the criminal laws of Georgia;

(B) Action providing for confinement in excess of six months; and

(C) Action providing for fines and bond forfeitures in excess of $1,000.00;

(3) Action adopting any form of taxation beyond that authorized by law or by the Constitution;

(4) Action affecting the exercise of the power of eminent domain;

(5) Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution;

(6) Action affecting the jurisdiction of any court; and

(7) Action changing charter provisions relating to the establishment and operations of an independent school system.

(b) The power granted in subsections (a) and (b) of Code Section 36-35-3 shall not include the power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.

(c) Nothing in this Code section shall affect Code Sections 36-35-4 and 36-35-5.

History.

Ga. L. 1965, p. 298, § 4; Ga. L. 1966, p. 296, §§ 2, 3; Ga. L. 1970, p. 346, § 1; Ga. L. 1973, p. 778, § 3; Ga. L. 1981, p. 497, § 1; Ga. L. 1983, p. 468, §§ 1, 2; Ga. L. 1984, p. 22, § 36; Ga. L. 1998, p. 295, § 3; Ga. L. 2015, p. 693, § 3-32/HB 233.

Editor's notes.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews.

For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B. J. 333 (1967).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

JUDICIAL DECISIONS

Although the meaning of O.C.G.A. § 36-35-6 (b) is ambiguous, the statute indicates that the state does not wish to give our cities the power to enact a distinctive law of contract. City of Atlanta v. McKinney, 265 Ga. 161, 454 S.E.2d 517, 1995 Ga. LEXIS 151 (1995).

Cities without power to adopt new charters changing form of government. — Under Ga. Const. 1945, Art. XV, Sec. I, Para. I (see now Ga. Const. 1983, Art. IX, Sec. II, Para. II), and this section, cities do not have the power to adopt entirely new charters changing a cities' form of government. Thus, a new charter created by a special law does not contravene Ga. Const. 1945, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV.), which forbids the legislature from adopting a special law covering a subject matter dealt with by an existing general law. Jackson v. Inman, 232 Ga. 566, 207 S.E.2d 475, 1974 Ga. LEXIS 1005 (1974).

Fundamental and substantive changes in city government cannot be made by a municipality under general home rule laws. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876, 1977 Ga. LEXIS 1513 (1977).

General Assembly has reserved legislative power to enact new charters for existing cities when such charters include drastic changes in the composition and form of city government, and the election and terms of office of the members of the governing authority of cities. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876, 1977 Ga. LEXIS 1513 (1977).

Retention by General Assembly of power to extend municipal boundaries. — Existence of prior statutes permitting the enlargement of boundaries does not deprive the General Assembly of the power to alter and extend municipal boundaries without the consent of the persons affected thereby. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Constitutionality of local law extending municipal boundaries. — Local law extending municipal boundaries does not violate the constitutional guarantee of due process of

the law because the law subjects property owners in the area annexed to taxation by the municipality; nor does the law deny to such property owners equal protection of the law within the meaning of U.S. Const., amend. 14. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

Statute does not provide the sole method by which the General Assembly may amend the city charter so as to change city boundaries. Lee v. City of Jesup, 222 Ga. 530, 150 S.E.2d 836, 1966 Ga. LEXIS 543 (1966), cert. denied, 386 U.S. 993, 87 S. Ct. 1307, 18 L. Ed. 2d 337, 1967 U.S. LEXIS 1866 (1967).

There is no requirement, statutory or otherwise, that local annexation statute itself make provisions for myriad adjustments between the annexed territory and the municipality which the annexation necessitates. Bruck v. City of Temple, 240 Ga. 411, 240 S.E.2d 876, 1977 Ga. LEXIS 1513 (1977).

Both county governments and municipalities may levy taxes for public purposes connected with administration of county and city governments; as a corollary to this principle, it follows that counties and municipalities may appropriate and expend money for such public purpose. Peacock v. Georgia Mun. Ass'n, 247 Ga. 740, 279 S.E.2d 434, 1981 Ga. LEXIS 851 (1981).

Statute prohibiting wrecker service from refusing checks and credit cards constitutional. — City code section which made it unlawful for a wrecker service to refuse to accept checks and major credit cards is constitutional, and is not ultra vires under the home rule powers conferred by subsection (a) of O.C.G.A. § 36-35-6. Upton v. City of Atlanta, 260 Ga. 250, 392 S.E.2d 244, 1990 Ga. LEXIS 228 (1990).

Municipal court not improperly divested of jurisdiction. — Establishment by a city council of the Atlanta, Georgia, Bureau of Taxicabs and Vehicles for Hire, and the authorization of an administrative hearing procedure for the enforcement of the regulation of taxicabs was not an ultra vires act because it did not improperly divest the municipal court of jurisdiction to hear such cases under O.C.G.A. § 36-35-6(a)(6); the provisions of the city charter were consistent with the concept of concurrent jurisdiction, and the city had the power to regulate and license vehicles for hire and to create boards and commissions under the city charter. Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta, 281 Ga. 342, 638 S.E.2d 307, 2006 Ga. LEXIS 1030 (2006), overruled in part, Republican Nat. Committee v. Eternal Vigilance Action Case, 2025 Ga. LEXIS 131 (Ga. June 10, 2025), overruled in part, Republican Nat'l Comm. v. Eternal Vigilance Action, Inc., 2025 Ga. LEXIS 131 (Ga. June 10, 2025), overruled in part, State of Ga. v. Eternal Vigilance Action, Inc., No. S25A0362, No. S25A0490, 2025 Ga. LEXIS 131 (Ga. June 10, 2025).

OPINIONS OF THE ATTORNEY GENERAL

Ordinances creating status of domestic partnership. — Municipal ordinances which create the status of domestic partnership are violative of constitutional and statutory provisions precluding municipal legislation relating to legal status and relationship; thus, group health insurance coverage provided pursuant to such ordinances is violative of the public policy of this state. 1993 Op. Att'y Gen. No. 93-26.

City has home rule power to amend a city's charter by ordinance so as to remove from the charter a limitation on the millage rate which the city may use in levying ad valorem taxes. 1983 Op. Att'y Gen. No. U83-19.

City may amend a city's charter by resolution to increase the fines and imprisonment which may be imposed by a recorders court for violations of city ordinances. 1983 Op. Att'y Gen. No. U83-20.

Adding residency requirement for election to governing authority. — Municipality may not under the municipality's home rule powers amend the municipality's charter to impose a

residency requirement for election to the municipal governing authority. 1985 Op. Att'y Gen. No. 85-45.

Date of municipal election may not be altered by municipality. — Date of a municipal general election constitutes an integral aspect of the procedure for election for members of the municipal governing authority, and thus may not be altered by the municipality. 1975 Op. Att'y Gen. No. 75-140.

Municipality is not empowered, by virtue of former § 21-3-51, to amend its charter by ordinance with respect to the date of the municipality's municipal general election. 1977 Op. Att'y Gen. No. 77-33.

Effect of failure of prior election on acts validly conducted. — Municipality may treat an election ordered as a result of the failure of a prior election as a continuation of that prior election, recognizing those acts validly conducted. 1976 Op. Att'y Gen. No. 76-23.

No city acting under this chapter could alter court having jurisdiction over state offenses. 1971 Op. Att'y Gen. No. U71-30.

Garbage collection fee would not violate this section. 1970 Op. Att'y Gen. No. U70-192.

Limit on fine or forfeiture. — O.C.G.A. § 36-35-6 expressly precludes a municipality from providing by either ordinance or charter amendment for a fine or forfeiture in excess of $1,000. 1999 Op. Att'y Gen. No. U99-11.

RESEARCH REFERENCES

Am. Jur. 2d.

20 Am. Jur. 2d, Courts, § 14. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 108 et seq., 121 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 149, 186 et seq., 233 et seq.

ALR.

Certificates by state authorizing operation of motorbus lines over section of highway as affected by its subsequent annexation to city, 154 A.L.R. 1440.

36-35-6.1. Signs for privately owned businesses.

A municipality shall be prohibited from restricting the use of any language other than English on signs for privately owned businesses. This Code section shall not restrict the municipality's right to enact any other restrictions on signs.

History.

Code 1981, § 41-1-10, enacted by Ga. L. 2001, p. 1196, § 5.1; Code 1981, § 36-35-6.1, as redesignated by Ga. L. 2002, p. 415, § 41.

Cross references.

English designated as official language, § 50-3-100.

Editor's notes.

By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia.

36-35-7. Provisions of chapter general law; enactment of local or special laws on subject matters covered by chapter; effect of chapter upon amendment of municipal charters.

It is declared to be the intention of the General Assembly that the provisions of this chapter are general laws within the meaning of

Article III, Section VI, Paragraph IV(a) of the Constitution. No local or special laws shall be enacted on subject matters over which municipal corporations are authorized to act pursuant to this chapter. Any provision of any municipal charter heretofore enacted covering subject matters over which municipal corporations are authorized to act pursuant to this chapter shall be amended, modified, superseded, or repealed only in accordance with subsection (b) of Code Section 36-35-3.

History.

Ga. L. 1972, p. 820, § 1; Ga. L. 1983, p. 3, § 57.

Law reviews.

For article, "The Municipal Home Rule Act of 1965 (this chapter)," see 3 Ga. St. B. J. 333 (1967).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 92, 160 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 133, 136, 142 et seq.

36-35-8. Effect of conflict with Chapter 34.

In the event of a conflict between this chapter and Chapter 34 of this title, this chapter shall control.

CHAPTER 36

ANNEXATION OF TERRITORY

Article 1

General Provisions

Sec.
36-36-1. Applicability of article.
36-36-2. Effective date of annexation.
36-36-3. Report identifying annexed property; maps and surveys; technical assistance to municipalities; preclearance.
36-36-4. Creation of unincorporated islands prohibited; authorization to provide services or functions.
36-36-5. [Reserved] Restriction on annexation of unincorporated islands.
36-36-6. Notice by municipal governing authority to county governing authority of proposed annexation.
36-36-7. Effect of annexation upon county owned property or facilities; notice; acquisition of property or facilities by municipality.
36-36-8. Effect of annexation upon utility service agreements.
36-36-9. Notice requirement.
36-36-10. Legislative intent.
36-36-11. Effect of objection to land use following rezoning; minimum procedures for addressing issues.

Article 1A

Annexation by Local Act of the General Assembly

36-36-15. Used for residential purposes defined.
36-36-16. Procedures for annexation; referendum.

Article 2

Annexation Pursuant to Application by 100 Percent of Landowners

36-36-20. Contiguous area defined.
36-36-21. Annexation upon application of all land owners; filing of identification of annexed property with Department of Community Affairs and county governing authority; effect of annexation.
36-36-22. Deannexation; authority; procedures; identification; status of lands.
36-36-23. Annexation by a municipal corporation into an adjoining county.

Article 3

Annexation Pursuant to Application by Owners of 60 Percent of Land and 60 Percent of Electors

36-36-30. Municipal corporation defined.
36-36-31. "Contiguous area" defined; determination of aggregate external boundary.
36-36-32. Annexation upon application of owners of 60 percent of the land and 60 percent of the resident electors generally; application and signature requirements.
36-36-33. Annexation across county boundary lines prohibited.
36-36-34. Determination of compliance with article; notice upon noncompliance; proceedings upon compliance.
36-36-35. Plans and report for extension of services to area proposed to be annexed.
36-36-36. Public hearing required; notice; withdrawal of consent.
36-36-37. Adoption of annexing ordinance.
36-36-38. Filing of identification of annexed property with county and Department of Community Affairs; applicability of municipal ad valorem taxes to annexed territory; effect of annexation.
36-36-39. Filing of petition for de-

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claratory judgment to determine validity of annexation; judicial review.
36-36-40. Use of municipally owned utilities by residents of annexed territory.

Article 4

Annexation Pursuant to Resolution and Referendum

36-36-50. Purpose of article.
36-36-51. Legislative declaration of policy.
36-36-52. Definitions.
36-36-53. Authorization of annexation generally.
36-36-54. Standards and requirements for area proposed to be annexed.
36-36-55. Determination of compliance with standards and requirements; review of determination by superior court.
36-36-56. Plans and report for extension of services to area proposed to be annexed.
36-36-57. Adoption of annexation resolution; contents of resolutions; approval, availability, and distribution of report relating to extension of services; public hearing.
36-36-58. Referendum for ratification or rejection of annexation resolution generally; procedure; subsequent annexation attempt.
36-36-59. Filing of identification of annexed territory with Department of Community Affairs and county governing authority.
36-36-60. Authorized expenditures relating to annexation.
36-36-61. Restriction on applicability of article.

Article 5

Limitation on Annexation of Areas Furnished Services or Included in Comprehensive Zoning Plan by Certain Counties

36-36-70. Prohibition on annexation
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of county operated airport property by certain municipal corporations absent approval of county governing authority.

Article 6

Annexation of Unincorporated Islands

36-36-90. Definitions.
36-36-91. Area included in determining aggregate external boundary.
36-36-92. Annexation of unincorporated islands; procedures; provision of municipal services.

Article 7

Procedure for Resolving Annexation Disputes

36-36-110. Applicability.
36-36-110.1. Definitions.
36-36-111. Notice of annexation.
36-36-112. Prohibition on a change in zoning or land use.
36-36-113. Objection to annexation; grounds and procedures.
36-36-114. (Effective until January 1, 2026.) Arbitration panel; composition and membership; assistance in formulating record; regulation.
36-36-114. (Effective January 1, 2026.) Arbitration panel; composition and membership; assistance in formulating record; regulation.
36-36-115. (Effective until January 1, 2026.) Meetings of arbitration panel; duties; findings and recommendations; compensation.
36-36-115. (Effective January 1, 2026.) Meetings of arbitration panel; duties; findings and recommendations; compensation.
36-36-116. Appeal.
36-36-117. Annexation after conclusion of procedures; remedies for violations of conditions.
36-36-118. Abandonment of proposed

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annexation; remedies for violations of conditions.
36-36-119. Good faith negotiations; written agreement governing terms of annexation.

Article 8

Municipal Deannexation

36-36-130. Application of statutory provisions.
36-36-131. Application for deannexation; scope; filing of notification of deannexation; reannexation.
36-36-132. Unincorporated islands prohibited.
36-36-133. Debt limitations on deannexation.
36-36-134. Municipal services for deannexed property.

Cross references.

Assignment of annexed areas to retail electric suppliers, § 46-3-7.

Law reviews.

For note, "Annexation by Municipalities in Georgia," see 2 Mercer L. Rev. 423 (1951).

For article tracing the history of municipal annexation, and the General Assembly's role therein, see 2 Ga. L. Rev. 35 (1967).

For article discussing the evolution of municipal annexation law in Georgia in light of Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1970), see 5 Ga. L. Rev. 499 (1971).

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B. J. 58 (1987).

For article, "Municipal De-Annexation: The Ins and the Outs," see 27 Ga. St. B. J. 118 (1991).

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

RESEARCH REFERENCES

ALR.

Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation, 18 A.L.R.2d 1255.

ARTICLE 1

GENERAL PROVISIONS

Cross references.

Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-1. Applicability of article.

The procedures set forth in this article shall apply to all annexations pursuant to this chapter and to annexation by local Act of the General Assembly.

History.

Code 1981, § 36-36-1, enacted by Ga. L. 1992, p. 2592, § 3.

36-36-2. Effective date of annexation.

(a) Except as provided in subsection (c) of this Code section, all annexation other than by local Act shall become effective for ad valorem tax purposes on December 31 of the year during which such annexation occurred and for all other purposes shall become effective on the first day of the month following the month during which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met.

(b) Except as provided in subsection (c) of this Code section, annexation by local Act shall become effective for ad valorem tax purposes on December 31 of the year in which such local Act is approved by the Governor or becomes law without such approval and for all other purposes shall become effective at the time such local Act becomes effective or such later date as provided in such local Act.

(c)(1) Where an independent school system exists within the boundaries of a municipality, other effective dates may be established by the municipality solely for the purpose of determining school enrollment.

(2) Unless otherwise agreed in writing by a county governing authority and the municipal governing authority, where property zoned and used for commercial purposes is annexed into a municipality with an independent school system, the effective date for the purposes of ad valorem taxes levied for educational purposes shall be December 31 of the year after the year in which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met.

History.

Code 1981, § 36-36-2, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 1996, p. 192, § 1; Ga. L. 1998, p. 856, § 1; Ga. L. 2004, p. 69, § 16.

Editor's notes.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews.

For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).

JUDICIAL DECISIONS

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1, 2017 Ga. LEXIS 453 (2017).

Annexation not improper. — Grant of summary judgment to a city in an annexation case was upheld because the annexation met all of the relevant criteria under O.C.G.A. § 36-36-20(a) since the entire annexation area had a sufficiently long border with the existing city limits, the annexation area included only whole

parcels of land, and the annexation area was sufficiently large. Cherokee County v. Inline Communites, LLC, 356 Ga. App. 892, 849 S.E.2d 703, 2020 Ga. App. LEXIS 549 (2020), cert. denied, No. S21C0348, 2021 Ga. LEXIS 349 (Ga. May 17, 2021).

OPINIONS OF THE ATTORNEY GENERAL

Municipal government may not create rules that make annexations effective prior to the time annexations are made effective by O.C.G.A. § 36-36-2. 1998 Op. Att'y Gen. No. U98-1.

36-36-3. Report identifying annexed property; maps and surveys; technical assistance to municipalities; preclearance.

(a) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall file a report identifying any property annexed with the Department of Community Affairs, the Legislative and Congressional Reapportionment Office of the General Assembly, and with the county governing authority of the county in which the property being annexed is located. Such reports shall be filed, at a minimum, not more than 30 days following the last day of the quarter in which the annexation becomes effective but may be filed more frequently. Each report shall include the following:

(1) The legal authority under which the annexation was accomplished, which shall be the ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4, or 6 of this chapter or the Act number if effected by local Act of the General Assembly;

(2) The name of the county in which the property being annexed is located; the total acreage annexed; the enactment date and effective date of the annexation ordinance, resolution, or local Act of the General Assembly;

(3) A letter from the governing authority of any municipality annexing property stating its intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regularly scheduled boundary and annexation survey of the municipality and stating that the survey and map will be completed as instructed and returned to the United States Bureau of the Census;

(4) A list identifying roadways, bridges, and rights of way on state routes that are annexed and, if necessary, the total mileage annexed; and

(5) A digital shapefile of the annexed area.

(b) The submission of a report required under subsection (a) of this Code section shall be made in writing and in electronic format to the

Department of Community Affairs, the Legislative and Congressional Reapportionment Office of the General Assembly, and to others as required by the submitting municipality.

(c)(1) The Department of Community Affairs shall notify the clerk, city attorney, or other person designated by the governing authority of the annexing municipality within 30 days after receipt of a report submitted under subsection (a) of this Code section if it determines the submission to be incomplete. The Legislative and Congressional Reapportionment Office of the General Assembly shall notify the clerk, city attorney, or other person designated by the governing authority of the annexing municipality within 60 days after receipt of a report submitted under subsection (a) of this Code section if it determines the submission to be incomplete. The annexing municipality shall file a corrected report with the department, Legislative and Congressional Reapportionment Office of the General Assembly, and the county governing authority where the annexed property is located within 45 days from the date of the notice of any deficiency.

(2) No annexed area shall be added to the state map until such report has been properly submitted to the Department of Community Affairs and the Legislative and Congressional Reapportionment Office of the General Assembly. The Department of Community Affairs shall not provide a certification of annexation to the United States Census Bureau unless the governing authority of the annexing municipality has filed a completed report as required under subsection (a) of this Code section.

(3) Compliance with the requirements of this Code section shall be construed to be merely ancillary to and not an integral part of the annexation procedure such that an annexation shall, if otherwise authorized by law, become effective even though required filings under this Code section are temporarily delayed.

(d) The Department of Community Affairs may provide technical assistance to any municipality with respect to the requirements of subsection (a) of this Code section.

(e) The Department of Community Affairs shall maintain the annexation reports submitted to it pursuant to this Code section for two years. Annexation reports shall be subject to disclosure and inspection under Article 4 of Chapter 18 of Title 50 while maintained in the possession of the Department of Community Affairs. Two years after receipt of an annexation report from a municipality, the Department of Community Affairs shall transfer possession of such report to the Division of Archives and History for permanent retention.

(f) In the event that any municipality annexing property cannot produce the digital shapefile required by paragraph (5) of subsection (a)

of this Code section by utilizing its own geographic information system, the regional commission established pursuant to Article 2 of Chapter 8 of Title 50 for the county that includes such municipality shall assist such municipality in producing and providing such digital shapefile.

(g) The governing authority of any municipality annexing property shall add all annexed areas to maps provided by the United States Census Bureau during the next regularly scheduled boundary and annexation survey of the municipality, complete the survey and map as instructed, and return them to the United States Census Bureau within the time frame requested.

History.

Code 1981, § 36-36-3, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 1; Ga. L. 2001, p. 811, § 1; Ga. L. 2002, p. 532, § 7; Ga. L. 2011, p. 583, § 10/HB 137; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2015, p. 385, § 6-4/HB 252; Ga. L. 2022, p. 344, § 1/HB 1385.

Editor's notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Administrative rules and regulations.

Data and mapping specifications, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Minimum Standards and Procedures, Standards and Procedures for Regional Planning "Regional Planning Requirements," Rule 110-12-6-.05 et seq.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

36-36-4. Creation of unincorporated islands prohibited; authorization to provide services or functions.

(a) The creation of unincorporated islands as described in paragraph (1), (2), or (3) of this subsection shall be prohibited:

(1) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting the annexing municipality;

(2) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(3) Annexation or deannexation which would result in the creation of an unincorporated area to which the county would have no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.

(b) When requested by resolution of the county governing authority, a municipality is authorized to provide any service or exercise any function within an unincorporated island. Such authority shall be in

addition to any other authority of the municipality to provide extraterritorial services or functions. As used in this subsection, the term "unincorporated island" shall have the same meaning as set forth in Code Section 36-36-90.

(c) The prohibition contained in subsection (a) of this Code section shall not apply to a local Act providing for deannexation of territory from a municipality that would create an unincorporated island where another local Act annexing the same territory into another municipality takes effect on the same date as the local Act providing for deannexation of such territory.

History.

Code 1981, § 36-36-4, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 2; Ga. L. 2015, p. 1345, § 1/HB 432; Ga. L. 2025, p. 1029, § 36(9)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, rewrote the last sentence of subsection (b), which read: "For purposes of this subsection, 'unincorporated island' shall have the same meaning as contained in paragraph (3) of Code Section 36 36 90.".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "subsection" was substituted for "Code section" in subsection (a), and "subsection" was substituted for "subparagraph" in subsection (b).

Law reviews.

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For annual survey of zoning and land use law, see 58 Mercer L. Rev. 477 (2006).

JUDICIAL DECISIONS

Annexation not improper. — Strip of land excepted from annexation by a city was excepted not in an effort to evade the "entire parcel" requirement of O.C.G.A. § 36-36-20(a)(2), but to annex the property without creating an unincorporated island in violation of O.C.G.A. § 36-36-4(a); there was no showing that the landowner subdivided the property to evade the requirements of O.C.G.A. § 36-36-20(a)(2), and the appellate court affirmed a trial court's refusal to enter a judgment declaring that a city's annexation was null and void, declining to reach a finding that would, in effect, have left the landowner no way of having the landowner's property annexed. Fayette County v. Steele, 268 Ga. App. 13, 601 S.E.2d 403, 2004 Ga. App. LEXIS 824 (2004).

By annexing a portion of a larger unincorporated area that was already qualified as an "unincorporated island," a city did not "create" a newly-formed unincorporated island in violation of O.C.G.A. § 36-36-4(a)(1), but simply reduced the size of a previously-existing island. Calloway v. City of Fayetteville, 296 Ga. App. 200, 674 S.E.2d 66, 2009 Ga. App. LEXIS 178 (2009).

Annexation challenge rendered moot by city's annexation of additional property. — Taxpayer's challenge to a city's 2007 annexation of property based on the creation of an illegal unincorporated island within the new municipal boundaries, in violation of O.C.G.A. § 36-36-4, was moot under O.C.G.A. § 5-6-48(b)(3) because the city later remedied the violation by also annexing the unincorporated island. Scarbrough Group v. Worley, 290 Ga. 234, 719 S.E.2d 430, 2011 Ga. LEXIS 935 (2011).

36-36-5. [Reserved] Restriction on annexation of unincorporated islands.

History.
Ga. L. 1992, p. 2592, § 3; repealed by Ga. L. 2000, p. 164, § 3, effective March 17, 2000.

Editor's notes.
Ga. L. 2000, p. 164, § 3 repealed and reserved this Code section, effective March 17, 2000.

36-36-6. Notice by municipal governing authority to county governing authority of proposed annexation.

Upon accepting an application for annexation pursuant to Code Section 36-36-21 or a petition for annexation pursuant to Code Section 36-36-32, or upon adopting a resolution calling for an annexation referendum pursuant to Code Section 36-36-57, the governing authority of the annexing municipality shall within 30 days give written notice of the proposed annexation to the governing authority of the county wherein the area proposed for annexation is located. Such notice shall include a map or other description of the site proposed to be annexed sufficient to identify the area. Where the proposed annexation is to be effected by a local Act of the General Assembly, a copy of the proposed legislation shall be provided by the governing authority of the municipality to the governing authority of the county in which the property proposed to be annexed is located following the receipt of such notice by the governing authority of the municipality under subsection (b) of Code Section 28-1-14.

History.
Code 1981, § 36-36-6, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 4; Ga. L. 2002, p. 985, § 3; Ga. L. 2004, p. 69, § 17; Ga. L. 2022, p. 367, § 2/HB 1461.

Editor's notes.
Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews.
For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).

36-36-7. Effect of annexation upon county owned property or facilities; notice; acquisition of property or facilities by municipality.

(a) Upon receiving notice of a proposed annexation pursuant to Code Section 36-36-6, the county governing authority shall notify the governing authority of the municipality within five business days of receipt of such notice if any county owned public facilities are located in the area proposed to be annexed.

(b) Except as otherwise provided in this Code section, ownership and control of county owned public properties and facilities are not diminished or otherwise affected by annexation of the area in which the county owned public property or facility is located.

(c) Whenever a municipality annexes land on both sides of a county road right of way, the annexing municipality shall assume the ownership, control, care, and maintenance of such right of way unless the municipality and the county agree otherwise by joint resolution.

(d) Whenever county owned property or a county owned facility within an area annexed by a municipality is no longer usable for service to the unincorporated area of the county as a result of the annexation, the annexing municipality shall be required to acquire said property from the county governing authority under the following conditions:

(1) The annexation must be final;

(2) The county property or facility must be funded by revenues derived from the unincorporated areas of the county and must be used to provide services solely to the unincorporated areas of the county;

(3) The county adopts a resolution declaring that the property or facility is no longer usable for service to the unincorporated area of the county as a result of the annexation; and

(4) Unless otherwise provided by mutual agreement, the county shall be compensated in an amount equal to the fair market value of the property or facility which is no longer usable for service to the unincorporated area. If the county and municipality fail to agree as to the fair market value of the property or facility within 180 days following adoption of the resolution required by paragraph (3) of this subsection, the question of fair market value shall be submitted to a special master appointed by the superior court of the county in which the property or facility is located for determination of value.

History.

Code 1981, § 36-36-7, enacted by Ga. L. 1992, p. 2592, § 3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "of this subsection" was inserted in the last sentence of paragraph (d)(4).

Law reviews.

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

JUDICIAL DECISIONS

Construction with O.C.G.A. § 36-34-5. — In a dispute concerning a city's desire to access water lines owned by a county but located in an area annexed by the city, it was determined, upon discerning the interplay between O.C.G.A. §§ 36-34-5 and 36-36-7(b), that the city was not permitted access to the line in question absent compliance with one of the three methods enumerated in O.C.G.A. § 36-34-5, namely by gift, purchase, or the exercise of the right of eminent domain. Cobb County v. City of Smyrna, 270 Ga. App. 471, 606 S.E.2d 667, 2004 Ga. App. LEXIS 1505 (2004).

Statute did not encompass easements owned by the county within city limits. — O.C.G.A. § 36-36-7, providing for the automatic transfer of ownership of roads and rights

of way from counties to new municipalities, does not encompass property interests generally and did not operate to transfer detention pond easements owned by Fulton County to the City of Sandy Springs when the city incorporated; therefore, the county was required to maintain the ponds as long as the county owned the easements. Fulton County v. City of Sandy Springs, 295 Ga. 16, 757 S.E.2d 123, 2014 Ga. LEXIS 255 (2014).

County that held an easement over a drainage system located on commercial property that was initially located in the county but was later annexed by the city had the responsibility to repair and maintain the drainage system even after the property was annexed by the city. Although the Service Delivery Agreement provided that the city would perform stormwater services within the city's boundary, the city performed repairs at the right of way, not on private property. City of Norcross v. Gwinnett County, 355 Ga. App. 662, 843 S.E.2d 31, 2020 Ga. App. LEXIS 367 (2020), cert. denied, 310 Ga. 851, 854 S.E.2d 682, 2021 Ga. LEXIS 31 (2021).

36-36-8. Effect of annexation upon utility service agreements.

No annexation shall invalidate any utility service agreement between a county and an annexing municipality in effect on July 1, 1992, except by mutual written consent.

History.
Code 1981, § 36-36-8, enacted by Ga. L. 1992, p. 2592, § 3.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "July 1, 1992" was substituted for "the effective date of this chapter".

36-36-9. Notice requirement.

All notices to a municipal or county governing authority required pursuant to this chapter shall be sent by certified mail or statutory overnight delivery, return receipt requested.

History.
Code 1981, § 36-36-9, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 1589, § 3.

36-36-10. Legislative intent.

It is the express intent of the General Assembly in enacting the provisions of this chapter to provide for alternative methods for annexing or deannexing an area or areas into or from the corporate limits of a municipality. Except as otherwise expressly provided in this chapter, no provision of this chapter relating to annexation or deannexation by any such alternate method is intended to or shall be construed to in any way restrict, limit, or otherwise impair the authority of the General Assembly to annex or deannex by local Act.

History.
Code 1981, § 36-36-10, enacted by Ga. L. 1997, p. 540, § 1.

JUDICIAL DECISIONS

Constitutionality. — Provisions of former O.C.G.A. §§ 36-36-11 and 36-70-24(4)(c), pertaining to the establishment of a dispute resolution process when a bona fide land use dispute arises between a city and county over the use of land which is the subject of annexation, do not violate Ga. Const. 1983, Art. IX, Sec. II, Para. IV. Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39, 2000 Ga. LEXIS 819 (2000), superseded by statute as stated in Coweta County v. City of Newnan, 374 Ga. App. 702, 913 S.E.2d 841, 2025 Ga. App. LEXIS 114 (2025) (decided prior to 2004 amendment of O.C.G.A. §§ 36-36-11 and 36-70-24.).

Authority of municipality to annex during referendum process. — Trial court properly held that a municipality did not have the authority under O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly designated for annexation to another municipality, subject to a referendum, before the referendum took place; thus, a city was prohibited from attempting to annex property during the referendum process. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33, 2014 Ga. App. LEXIS 684 (2014), cert. denied, No. S15C0400, 2015 Ga. LEXIS 173 (Ga. Mar. 2, 2015).

Municipality without authority to annex land during referendum process. — Municipality does not have the authority pursuant to O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly has designated for annexation to another municipality, subject to a referendum, before the referendum takes place. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33, 2014 Ga. App. LEXIS 684 (2014), cert. denied, No. S15C0400, 2015 Ga. LEXIS 173 (Ga. Mar. 2, 2015).

Georgia General Assembly did not intend the alternative methods of annexation under O.C.G.A. § 36-36-10 to establish a system for municipalities to race the legislature to annex land that it already had designated for annexation under local law. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33, 2014 Ga. App. LEXIS 684 (2014), cert. denied, No. S15C0400, 2015 Ga. LEXIS 173 (Ga. Mar. 2, 2015).

36-36-11. Effect of objection to land use following rezoning; minimum procedures for addressing issues.

(a) The intent of this Code section is to provide a mechanism to resolve disputes over land use arising out of the rezoning of property to a more intense land use in conjunction with or subsequent to annexation in order to facilitate coordinated planning between counties and municipalities particularly with respect to areas contiguous to municipal boundaries; provided, however, that, on and after September 1, 2007, such dispute resolutions shall be governed by the provisions of Article 7 of this chapter and the provisions of this Code section shall be limited to proceedings initiated prior to such date.

(b) As used in this Code section, the term "objection" means an objection to a proposed change in land use which results in a substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use.

(c)(1) When an initial zoning of property is sought pursuant to subsection (d) of Code Section 36-66-4 or when the rezoning of annexed property is sought within one year of the effective date of the

annexation, the municipal corporation shall give notice to the county governing authority within seven calendar days of the filing of the application for initial zoning or rezoning. Upon receipt of such notice, the county governing authority shall have seven calendar days to notify the municipality in writing of its intent to raise an objection to the proposed zoning or rezoning of the property and shall specify the basis for the objection. If the county governing authority serves notice of its intent to object, then the county governing authority shall have ten calendar days from the date of the county's notice to document in writing the nature of the objection specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the municipal corporation may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration.

(2) Commencing with the date of receipt by the municipality of the county's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.

(3) If the representatives of the municipal corporation and the county fail to reach agreement on the objections and mitigating measures within the 21 calendar day period, either the governing authority of the municipal corporation or the governing authority of the county may insist upon appointment of a mediator within seven calendar days after the end of the 21 day period to assist in resolving the dispute. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the municipality and the county insist on mediation, the expenses of mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the municipal corporation and the county agree on alternatives to resolve the objections, the municipal corporation may proceed in accordance with the mediated agreement.

(4) If the objections are not resolved by the end of the 28 day period, the municipal governing authority or the county governing authority may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. The citizen review panel shall be an independent body comprised of one resident of the municipal corporation appointed by the municipal governing authority, one resident of the county appointed by the county governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the municipal and county appointees to the citizen review panel. No elected or appointed officials or employees, contractors, or vendors of a municipality or county may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizen review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the county and the municipality concerning the objections and proposed mitigating measures and shall issue its own recommendations.

(5) The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

(6) Following receipt of the recommendations of the citizen review panel, the municipal corporation may:

(A) Zone or rezone all or parts of the property under review;

(B) Zone or rezone all or parts of the property under review with mitigating measures;

(C) Deny the zoning or rezoning of all or parts of the property under review; or

(D) Any combination of the foregoing.

Where an initial zoning is proposed concurrent with annexation, the

municipality may also approve, deny, or abandon the annexation of all or parts of the property under review.

(7) At any time during the process set forth in this Code section, the county or municipality may file a petition in superior court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures.

(8) Unless otherwise agreed, a zoning or rezoning decision made pursuant to this Code section shall not be effective until 28 calendar days following the completion of the process authorized by this Code section and the zoning or rezoning vote by the municipal governing authority.

(9) During the process set forth in this Code section, the municipal corporation may proceed with notice, hearings, and other requirements for zoning or rezoning in accordance with the municipality's zoning ordinance.

(d) If the annexation, zoning, or rezoning is denied or abandoned based in whole or in part on the county's objections, the county shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property which had been objected to by the county pursuant to this Code section for a one-year period after the denial or abandonment.

(e) The process set forth in subsection (c) of this Code section specifies minimum procedures for addressing objections. However, a county and a municipality may agree to additional procedures by resolution of the county and municipal governing authorities. Notwithstanding subsections (c) and (d) of this Code section, any agreement to resolve county objections to a proposed land use of an area to be annexed into a municipality which agreement was in effect on January 1, 2004, and which includes a provision whereby the county and a municipality agree to be bound by the recommendations of an annexation appeals board shall remain in effect until the parties agree otherwise.

History.
Code 1981, § 36-36-11, enacted by Ga. L. 1998, p. 856, § 2; Ga. L. 2004, p. 69, § 18; Ga. L. 2007, p. 292, § 1/HB 2; Ga. L. 2025, p. 1029, § 36(10)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in subsection (a).
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, paragraphs (1) through (9) of subsection (b) were redesignated as subsection (c), subsections (c) and (d) were redesignated as subsections (d) and (e), and "calendar" was substituted for "calender" in paragraph (c)(1).
Editor's notes.
Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"
Law reviews.
For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).
For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).
For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).
For annual survey of zoning and land use law, see 60 Mercer L. Rev. 457 (2008).
For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).
For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).
For annual survey on zoning and land use law, see 74 Mercer L. Rev. 313 (2022).

JUDICIAL DECISIONS

Failure to comply with dispute resolution procedures does not invalidate annexation. — In an annexation dispute, the ruling in favor of the city on the county's declaratory judgment claim was upheld because the county's contention that the annexation at issue was void on the ground that the city failed to comply with the statutory dispute resolution procedures was rejected as nothing in Georgia Annexation Act, O.C.G.A. § 36-36-110 et seq., stated that failure to comply with the statutory process resulted in the annexation being invalid. Coweta County v. City of Newnan, 374 Ga. App. 702, 913 S.E.2d 841, 2025 Ga. App. LEXIS 114 (2025).

ARTICLE 1A

ANNEXATION BY LOCAL ACT OF THE GENERAL ASSEMBLY

36-36-15. Used for residential purposes defined.

As used in this article, the term "used for residential purposes" means any lot or tract five acres or less in size on which is constructed a habitable dwelling unit.

History.
Code 1981, § 36-36-15, enacted by Ga. L. 1996, p. 192, § 2.

36-36-16. Procedures for annexation; referendum.

(a) Local Acts of the General Assembly proposing annexation of any

area composed of more than 50 percent by acreage of property used for residential purposes shall be adopted pursuant to the procedures of this article.

(b) Such bill may include a requirement for referendum approval of the annexation under such terms and conditions as specified in such local law; provided, however, that, if the number of residents in the area to be annexed exceeds 3 percent of the population of the municipal corporation or 500 people, whichever is less, as determined by the most recent United States decennial census, referendum approval shall be required in the area to be annexed. The cost of holding the referendum required by this article shall be paid from funds of the municipality proposing the annexation.

History.
Code 1981, § 36-36-16, enacted by Ga. L. 1996, p. 192, § 2; Ga. L. 2002, p. 985, § 4; Ga. L. 2020, p. 493, § 36/SB 429; Ga. L. 2025, p. 1029, § 36(11)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in subsection (b).

ARTICLE 2

ANNEXATION PURSUANT TO APPLICATION BY 100 PERCENT OF LANDOWNERS

Cross references.
Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-20. Contiguous area defined.

(a) As used in this article, the term "contiguous area" means, at the time the annexation procedures are initiated, any area that meets the following conditions:

(1) At least one-eighth of the aggregate external boundary or 50 feet of the area to be annexed, whichever is less, either abuts directly on the municipal boundary or would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be annexed;

(2) The entire parcel or parcels of real property owned by the person seeking annexation is being annexed; provided, however, that lots shall not be subdivided in an effort to evade the requirements of this paragraph; and

(3) The private property annexed, excluding any right of way of a railroad or other public service corporation, complies with the annexing municipality's minimum size requirements, if any, to construct a building or structure occupiable by persons or property under the policies or regulations of the municipal development, zoning, or subdivision ordinances.

(b) Notwithstanding the limitations of subsection (a) of this Code section, an area may be annexed by agreement between the municipal corporation and the governing body of the county in which the territory proposed to be annexed is located.

(c) If, at the time annexation procedures are initiated, the entire area to be annexed is owned by the municipal governing authority to which the area is to be annexed and if the annexation of municipally owned property is approved by resolution of the governing authority of the county wherein the property is located, then the term "contiguous area" shall mean any area which, at the time annexation procedures are initiated, abuts directly on the municipal boundary or which would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or by the definite width or by the length of:

(1) Any street or street right of way;

(2) Any creek or river; or

(3) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be annexed; provided, however, that an annexation by the length of paragraphs (1) through (3) of this subsection shall also be approved by a majority of the qualified voters of such county voting on a referendum to approve such annexation.

History.

Ga. L. 1962, p. 119, § 2; Ga. L. 1976, p. 1011, § 1; Code 1981, § 36-36-1; Code 1981, § 36-36-20, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 5; Ga. L. 2025, p. 476, § 2A-1/HB 155, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, added the proviso at the end of paragraph (c)(3).

Editor's notes.

Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section

36-36-1 as present Code Section 36-36-20.

Law reviews.

For article discussing municipal annexation and the concept of contiguity, see 9 Ga. L. Rev. 167 (1974).

For article questioning the constitutionality of this Code section, see 10 Ga. L. Rev. 169 (1975).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

For annual survey of zoning and land use law, see 58 Mercer L. Rev. 477 (2006).

JUDICIAL DECISIONS

Annexation not improper. — Strip of land excepted from annexation by a city was excepted not in an effort to evade the "entire parcel" requirement of O.C.G.A. § 36-36-20(a)(2), but to annex the property without creating an unincorporated island in violation of O.C.G.A. § 36-36-4(a); there was no showing that the landowner subdivided the property to evade the requirements of O.C.G.A. § 36-36-20(a)(2), and the appellate court affirmed a trial court's refusal to enter a judgment declaring that a city's annexation was null and void, declining to reach a finding that would, in effect, have left the landowner no way of having the landowner's property annexed. Fayette County v. Steele, 268 Ga. App. 13, 601 S.E.2d 403, 2004 Ga. App. LEXIS 824 (2004).

County estopped to oppose annexation. — County was estopped from challenging a city's annexation of county roads by the county's failure to oppose the annexation for 20 years. The county had approved the annexation, and the city, with the county's knowledge, maintained the roads, patrolled the roads, set speed limits, and otherwise exercised control over the roads. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644, 2009 Ga. App. LEXIS 822 (2009), cert. denied, No. S09C2029, 2009 Ga. LEXIS 769 (Ga. Nov. 9, 2009), cert. denied, No. S09C2028, 2009 Ga. LEXIS 773 (Ga. Nov. 9, 2009).

Annexation not ultra vires. — City's failure to finalize the city's annexation of county roads by adopting an ordinance, preparing a survey, and filing the annexation with the Georgia Secretary of State were errors of omission, not ultra vires actions contrary to former O.C.G.A. §§ 36-36-1 and 36-36-2 (see now O.C.G.A. §§ 36-36-20 and 36-36-21) which the city had no power to take. Therefore, O.C.G.A. § 45-6-5 did not preclude the city from contending that the county was estopped from challenging the annexation. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644, 2009 Ga. App. LEXIS 822 (2009), cert. denied, No. S09C2029, 2009 Ga. LEXIS 769 (Ga. Nov. 9, 2009), cert. denied, No. S09C2028, 2009 Ga. LEXIS 773 (Ga. Nov. 9, 2009).

Limited applicability of section. — Obvious purpose of this definition of "contiguous" is to explain the Ga. L. 1962, p. 119, § 1 (see now O.C.G.A. § 36-36-21) provision for annexing to the existing corporate limits unincorporated areas "contiguous to the existing corporate limits." This provision has no reference to any lands where the owners sign no application to annex. The law's sole purpose is to say that although a road, creek, river, interstate highway, railroad, or even other municipal property of another political subdivision passes between the lands of "A" and the corporate boundary, "A's" land is contiguous for the purpose of annexing the land when "A" signs an application therefor. City of Adel v. Georgia Power Co., 224 Ga. 232, 161 S.E.2d 297, 1968 Ga. LEXIS 724 (1968).

OPINIONS OF THE ATTORNEY GENERAL

Property of one of owners must abut directly upon municipal boundary. — Upon consideration of Ga. L. 1962, p. 119, § 2 (see now O.C.G.A.

§ 36-36-20) in conjunction with Ga. L. 1962, p. 119, § 1 (see now O.C.G.A. § 36-36-21), in order for a municipal corporation to annex property, at least one of the owners of the property to be annexed must have property which abuts directly on the municipal boundary, or which would otherwise abut directly on the municipal boundary except for the fact that the property is separated by a street, street right of way, creek, river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state. Right of way for a state-aid road which is owned by the state would qualify as lands owned by the State of Georgia. 1968 Op. Att'y Gen. No. 68-49.

It is necessary for owner of road to sign or consent to petition for annexation; neither the State Transportation Board nor the commissioner of transportation has authority to consent for such annexation. 1969 Op. Att'y Gen. No. 69-81.

Signing of petition. — Neither State Highway Board (now State Transportation Board) nor director of State Highway Department (now Commissioner of Transportation) has authority to sign petition for annexation of right of way of state-aid road as part of the corporate limits of a municipality of this state. 1968 Op. Att'y Gen. No. 68-217.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 50 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 60 et seq.

ALR.

What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 A.L.R.3d 589.

36-36-21. Annexation upon application of all land owners; filing of identification of annexed property with Department of Community Affairs and county governing authority; effect of annexation.

Authority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas contiguous to the existing corporate limits at the time of such annexation, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be annexed, containing a complete description of the lands to be annexed. Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, annexed to the municipal corporation, an identification of the property so annexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. When so

annexed, such lands shall constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly. Except as provided in subsection (c) of Code Section 36-36-20, nothing in this article shall be construed to authorize annexation of the length of any public right of way except to the extent that such right of way adjoins private property otherwise annexed by the municipal corporation.

History.

Ga. L. 1962, p. 119, § 1; Ga. L. 1969, p. 504, § 1; Code 1981, § 36-36-2; Code 1981, § 36-36-21, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 6.

Law reviews.

For article questioning the constitutionality of this Code section, see 10 Ga. L. Rev. 169 (1975).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For comment, "Hamlets: Expanding the Fair Share Doctrine Under Strict Home Rule Constitutions," see 49 Emory L.J. 255 (2000).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

JUDICIAL DECISIONS

Analysis

General Consideration
Land Subject to Annexation

General Consideration

General Assembly intended that a liberal policy apply in this area. Powers v. City of Cordele, 143 Ga. App. 363, 238 S.E.2d 721, 1977 Ga. App. LEXIS 2320 (1977).

No intent to race for annexation. — Georgia General Assembly did not intend the alternative methods of annexation under O.C.G.A. § 36-36-10 to establish a system for municipalities to race the legislature to annex land that it already had designated for annexation under local law. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33, 2014 Ga. App. LEXIS 684 (2014), cert. denied, No. S15C0400, 2015 Ga. LEXIS 173 (Ga. Mar. 2, 2015).

General Assembly is authorized to delegate power of annexation to municipalities under O.C.G.A. § 36-36-21. Cooper v. City of Gainesville, 248 Ga. 269, 282 S.E.2d 322, 1981 Ga. LEXIS 985 (1981).

Purpose of statute in delegating limited power of annexation to municipalities is to permit municipalities to make a self-determination in this regard. Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868, 1970 Ga. LEXIS 381 (1970), superseded by statute as stated in Powers v. Cordele, 143 Ga. App. 363, 238 S.E.2d 721, 1977 Ga. App. LEXIS 2320 (1977) (see O.C.G.A. § 36-36-21).

Limitations on power of annexation. — When the municipality exercises the delegated power of annexation the municipality is exercising the legislative power of the General Assembly and is limited only by the terms of the delegation itself and by the rule that the municipality's exercise must be lawful and reasonable and not in violation of any constitutional inhibition. Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868, 1970 Ga. LEXIS 381 (1970), superseded by statute as stated in Powers v. Cordele, 143

General Consideration (Cont'd)

Ga. App. 363, 238 S.E.2d 721, 1977 Ga. App. LEXIS 2320 (1977).

Municipality without authority to annex property during referendum process. — Trial court properly held that a municipality did not have the authority under O.C.G.A. § 36-36-21 to annex land that the Georgia General Assembly designated for annexation to another municipality, subject to a referendum, before the referendum took place; thus, a city was prohibited from attempting to annex property during the referendum process. City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33, 2014 Ga. App. LEXIS 684 (2014), cert. denied, No. S15C0400, 2015 Ga. LEXIS 173 (Ga. Mar. 2, 2015).

Comparison of 100 percent and 60 percent methods of annexation. — Requirements of the 100 percent method and the 60 percent method are different. In the 100 percent method, the land being annexed need only abut the municipal boundaries. In the 60 percent method, the land being annexed must coincide with the municipal boundaries on one-eighth of the municipality's aggregate external boundary. City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894, 1976 Ga. LEXIS 1292 (1976).

Applicability to counties of 100,000 or more. — Municipalities either wholly or partly within county having population of 100,000 or more persons cannot annex territory. Jones v. City of College Park, 223 Ga. 778, 158 S.E.2d 384, 1967 Ga. LEXIS 693 (1967).

Limited applicability of definition of contiguous area. — Obvious purpose of the definition of "contiguous" in Ga. L. 1962, p. 119, § 2 (see now O.C.G.A. § 36-36-20) is to explain the provision of Ga. L. 1962, p. 119, § 1 (see now O.C.G.A. § 36-36-21) for annexing to the existing corporate limits unincorporated areas "contiguous to the existing corporate limits." This provision has no reference to any lands when the owners sign no application to annex. This provision's sole purpose is to say that although a road, creek, river, interstate highway, railroad, or even other municipal property of another political subdivision passes between the lands of "A" and the corporate boundary, "A's" land is contiguous for the purpose of annexing the land when "A" signs an application therefor. City of Adel v. Georgia Power Co., 224 Ga. 232, 161 S.E.2d 297, 1968 Ga. LEXIS 724 (1968).

Word "owner" is defined to mean "the record title holder of the fee simple title, or his legal representative." City of Cartersville v. Bartow County School Dist., 145 Ga. App. 129, 243 S.E.2d 293, 1978 Ga. App. LEXIS 1890 (1978).

Failure of annexation voids subsequently related annexation. — Failure of city's annexation of railroad right of way due to applicant's lack of fee simple ownership also invalidated subsequent annexation of property which became contiguous to city only by virtue of the earlier annexation of the right of way. City of Jefferson v. Town of Pendergrass, 176 Ga. App. 769, 337 S.E.2d 343, 1985 Ga. App. LEXIS 2526 (1985).

Annexation voided when procedures not followed. — Defendants attempt to annex certain properties into the corporate limits of the city and establish a new zoning district was voided because the procedural requirements of O.C.G.A. § 36-66-4 (a) and (b) and O.C.G.A. § 36-36-21 were not met. City of Byron v. Betancourt, 242 Ga. App. 71, 528 S.E.2d 841, 2000 Ga. App. LEXIS 90 (2000).

County estopped to oppose annexation. — County was estopped from challenging a city's annexation of county roads by the county's failure to oppose the annexation for 20 years. The county had approved the annexation, and the city, with the county's knowledge, maintained the roads, patrolled the roads, set speed limits, and otherwise exercised control over the roads. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644, 2009 Ga. App. LEXIS 822 (2009), cert. denied, No. S09C2029, 2009 Ga. LEXIS 769 (Ga. Nov. 9, 2009), cert. denied, No. S09C2028, 2009 Ga. LEXIS 773 (Ga. Nov. 9, 2009).

Annexation not ultra vires. — City's failure to finalize the city's annexation of county roads by adopting an ordinance, preparing a survey, and filing the

annexation with the Georgia Secretary of State were errors of omission, not ultra vires actions contrary to former O.C.G.A. §§ 36-36-1 and 36-36-2 (see O.C.G.A. §§ 36-36-20 and 36-36-21) which the city had no power to take. Therefore, O.C.G.A. § 45-6-5 did not preclude the city from contending that the county was estopped from challenging the annexation. City of Holly Springs v. Cherokee County, 299 Ga. App. 451, 682 S.E.2d 644, 2009 Ga. App. LEXIS 822 (2009), cert. denied, No. S09C2029, 2009 Ga. LEXIS 769 (Ga. Nov. 9, 2009), cert. denied, No. S09C2028, 2009 Ga. LEXIS 773 (Ga. Nov. 9, 2009).

Land Subject to Annexation

Under this method of annexation the only property involved is that of the owner who applies for annexation. This section merely gives the owner a free election as to whether to have the land within or without the municipality, provided the land is contiguous to an area of the city and the city is willing to annex. Paulding County v. City of Hiram, 240 Ga. 220, 240 S.E.2d 71, 1977 Ga. LEXIS 1455 (1977).

Annexation in steps. — Municipality, utilizing the 100 percent method of annexation may annex a street, then annex tracts abutting upon that street. Such areas of land meet the requirement of being "contiguous to the existing corporate limits" when they adjoin and abut directly on a street or highway which has been made a part of the corporate limits. City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894, 1976 Ga. LEXIS 1292 (1976).

Inclusion of all property. — This section imposes no requirement that all of the property located within the outer perimeter of such area be included within the annexation. City of Cartersville v. Bartow County School Dist., 145 Ga. App. 129, 243 S.E.2d 293, 1978 Ga. App. LEXIS 1890 (1978).

Whole parcels of land. — Grant of summary judgment to a city in an annexation case was upheld because the annexation met all of the relevant criteria under O.C.G.A. § 36-36-20(a) since the entire annexation area had a sufficiently long border with the existing city limits, the annexation area included only whole parcels of land, and the annexation area was sufficiently large. Cherokee County v. Inline Communites, LLC, 356 Ga. App. 892, 849 S.E.2d 703, 2020 Ga. App. LEXIS 549 (2020), cert. denied, No. S21C0348, 2021 Ga. LEXIS 349 (Ga. May 17, 2021).

Presumption of dedication of land for public streets. — When the owner of a tract of land subdivides the land into lots, and records a map or plat showing such lots with designated streets, and sells lots with reference to such map or plat, the owner will be presumed to have expressly dedicated the streets designated on the map to the public. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474, 1966 Ga. LEXIS 453 (1966).

How acceptance by municipality shown. — When an owner of land makes an express dedication of a particular portion thereof for use as a public street, its acceptance may be shown by any act of the municipality recognizing the existence of the street as such, and treating it as one of the streets of the city. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474, 1966 Ga. LEXIS 453 (1966).

Grantor estopped to deny grantees right to use streets. — When a grantor sells lots of land, and in the grantor's deeds describes the lots as bounded by streets, not expressly mentioned in the deeds, but shown upon a plat therein referred to as laid out in a subdivision of the grantor's land, the grantor is estopped to deny the grantee's right to use the streets delineated in such plat. Those claiming under such conveyances are estopped from denying the existence of the streets so delineated upon the plat of the subdivision and given as boundaries of lots acquired by these and others from the grantor or those claiming under the grantor. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474, 1966 Ga. LEXIS 453 (1966).

Dedication cannot be abandoned by nonuser. — When land is dedicated to and accepted by a city for street purposes, such dedication inures to the benefit of the public and abutting property owners who bought abutting property by reference to plats showing such streets. Such dedication cannot be abandoned by the

dedicatee by mere nonuser. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474, 1966 Ga. LEXIS 453 (1966).

Validity of proposed annexation not justiciable. — City's declaratory judgment action seeking to determine the validity of a proposed annexation, to which the county objected based on a local constitutional amendment creating the industrial district sought to be annexed which prohibited annexation, presented no justiciable controversy because the annexation was merely proposed. Fulton County v. City of Atlanta, 299 Ga. 676, 791 S.E.2d 821, 2016 Ga. LEXIS 596 (2016).

Sale does not revoke dedication. — After an owner of land has made a dedication of designated land for public streets, and the public authorities have accepted the dedication, the owner cannot revoke the dedication by a sale of the land. Young v. Sweetbriar, Inc., 222 Ga. 262, 149 S.E.2d 474, 1966 Ga. LEXIS 453 (1966).

Preemption based on authority of Public Service Commission. — Regulation of the construction of electric power substations by municipalities was preempted based on the authority given to the Georgia Public Service Commission under O.C.G.A. § 46-2-20. City of Buford v. Ga. Power Co., 276 Ga. 590, 581 S.E.2d 16, 2003 Ga. LEXIS 475 (2003).

OPINIONS OF THE ATTORNEY GENERAL

It is necessary for owner of road to sign or consent to petition for annexation; neither the State Transportation Board nor the commissioner of transportation has authority to consent for such annexation. 1969 Op. Att'y Gen. No. 69-81.

Property of one owner must abut directly upon municipal boundary. — Upon consideration of Ga. L. 1962, p. 119, § 2 (see now O.C.G.A. § 36-36-20), in conjunction with Ga. L. 1962, p. 119, § 1 (see now O.C.G.A. § 36-36-21), in order for a municipal corporation to annex property, at least one of the owners of the property to be annexed must have property which abuts directly on the municipal boundary, or which would otherwise abut directly on the municipal boundary except for the fact that the property is separated by a street, street right of way, creek, river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state. Right of way for a state-aid road which is owned by the state would qualify as lands owned by the state. 1968 Op. Att'y Gen. No. 68-49.

Annexation of state park. — Municipality must have specific legislative approval to annex state park. 1968 Op. Att'y Gen. No. 68-211.

Consent referred to in this section would have to come from the General Assembly. 1968 Op. Att'y Gen. No. 68-211.

Signing of petition. — Neither State Highway Board (now State Transportation Board) nor director of State Highway Department (now commissioner of transportation) has authority to sign petition for annexation of right of way of state-aid road as part of the corporate limits of a municipality of this state. 1968 Op. Att'y Gen. No. 68-217.

Requirements for inclusion of boundary street in annexation ordinance. — Under the particular annexation ordinances adopted by a city, in which one boundary of the area to be annexed is a public street, such public street is not itself included within the corporate boundaries unless the annexation ordinance specifically includes the street within such boundaries, and the city police are not authorized to patrol or to make cases on any such street which lies outside the municipal boundary. 1975 Op. Att'y Gen. No. U75-64.

"Owners" includes transferors of deeds to secure debt. — This section providing for the annexation of certain lands includes within "owners" the transferors of deeds to secure debt, rather than the grantees in such deeds. 1972 Op. Att'y Gen. No. U72-105.

Use of adjective "public" preceding "streets" necessarily applies to other ways mentioned. 1974 Op. Att'y Gen. No. U74-75.

Filing of copy of annexation ordinance with Secretary of State is for

informational purposes only. 1981 Op. Att'y Gen. No. 81-21.

Requirement that copy of annexation ordinance be filed with Secretary of State is ancillary to annexation procedure rather than integral. 1981 Op. Att'y Gen. No. 81-21.

Time of filing ordinance does not affect time annexation takes effect. Municipal annexation of property takes effect even though filing of copy of ordinance with Secretary of State, as required by O.C.G.A. § 36-36-21, is delayed or omitted. 1981 Op. Att'y Gen. No. 81-21.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 35 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 57 et seq., 70 et seq.

ALR.

Power to extend boundaries of municipal corporations, 64 A.L.R. 1335.

Estoppel to question validity of proceedings extending boundaries of municipality, 101 A.L.R. 581.

Power to detach land from municipal corporations, towns, or villages, 117 A.L.R. 267.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 A.L.R.2d 1279; 17 A.L.R.5th 195.

What zoning regulations are applicable to territory annexed to a municipality, 41 A.L.R.2d 1463.

Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners, 7 A.L.R.4th 732.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 A.L.R.5th 195.

36-36-22. Deannexation; authority; procedures; identification; status of lands.

Authority is granted to the governing bodies of the several municipal corporations of this state to deannex an area or areas of the existing corporate limits thereof, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be deannexed, containing a complete description of the lands to be deannexed and the adoption of a resolution by the governing authority of the county in which such property is located consenting to such deannexation. Lands to be deannexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, deannexed from the municipal corporation, an identification of the property so deannexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. When so deannexed, such lands shall cease to constitute a part of the lands within the corporate limits of the municipal corporation as

completely and fully as if the limits had been marked and defined by local Act of the General Assembly.

History. Code 1981, § 36-36-22, enacted by Ga. L. 1994, p. 652, § 1; Ga. L. 2000, p. 164, § 7.

36-36-23. Annexation by a municipal corporation into an adjoining county.

(a) Annexation pursuant to this article by a municipal corporation into an adjoining county in which the municipality is not already located shall be accomplished in accordance with this Code section. Within ten business days of receiving an application for annexation, the municipal corporation shall provide written notice to the county governing authority of the adjoining county of its intent to annex into the county. Such notice shall include a map or other description of the land proposed for annexation sufficient for the county to identify the location of the proposed annexation. A meeting between the county governing authority and municipal governing authority shall be held to discuss the proposed annexation if the county governing authority files a written request for such meeting with the municipal governing authority within 15 days of receipt of the notice of the proposed annexation. The requested meeting shall be held within 15 days of the request by the county unless otherwise agreed to by the county and the municipality.

(b) No municipality may annex into an adjoining county in which the municipality is not already located unless otherwise agreed to by the county governing authority of the adjoining county. Such annexation shall be deemed approved, unless the county governing authority adopts a resolution opposing the annexation within 30 days following the earlier of:

(1) The completion of the meeting between the municipal and county governing authorities, if any, pursuant to subsection (a) of this Code section; or

(2) Thirty days after notice of the proposed annexation from the municipal corporation to the county governing authority, if no meeting is requested by the county governing authority.

(c) In making its decision, the county governing authority shall consider the following factors:

(1) Whether the annexation ordinance is reasonable for the long-range economic and overall well-being of the counties, school districts, and municipalities affected by the annexation;

(2) Whether the health, safety, and welfare of property owners and

citizens of the county, municipalities, and area proposed to be annexed will be negatively affected by the annexation;

(3) Whether the proposed annexation has any negative fiscal impact on the county, school districts, and other municipalities that have not been mitigated by an agreement; and

(4) The interests of the property owner seeking annexation.

(d) If the county governing authority disapproves the annexation, the municipal corporation may challenge the disapproval by filing a complaint in the superior court of the adjoining county into which such annexation has been proposed. The challenge shall be heard by either a judge or senior judge who is not from the circuit in which either the county or the municipality is located. If the court finds by a preponderance of the evidence that the determination by the county based upon the factors enumerated in subsection (c) of this Code section is correct, then the denial by the county shall be sustained. If the denial is not sustained, the annexation may proceed.

History.
Code 1981, § 36-36-23, enacted by Ga. L. 2000, p. 164, § 8.

ARTICLE 3

ANNEXATION PURSUANT TO APPLICATION BY OWNERS OF 60 PERCENT OF LAND AND 60 PERCENT OF ELECTORS

Editor's notes.
Former Code Section 36-36-22.1, relating to limitation on annexation by certain municipalities, was repealed pursuant to subsection (c) thereof, effective July 1, 1991. The former Code section was based on Ga. L. 1984, p. 976, § 1; Ga. L. 1986, p. 284, § 1; and Ga. L. 1990, p. 1396, § 1.

Cross references.
Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-30. Municipal corporation defined.

As used in this article, the term "municipal corporation" means a municipal corporation which has a population of 200 or more persons according to the United States decennial census of 1960 or any future such census.

History.
Ga. L. 1966, p. 409, § 7; Code 1981, § 36-36-20; Code 1981, § 36-36-30, as redesignated by Ga. L. 1992, p. 2592, § 3.

Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-20 as present Code Section 36-36-30.

JUDICIAL DECISIONS

City failed to comply with publishing requirements. — Trial court properly granted summary judgment in favor of a county because the city failed to publish a notice as required by O.C.G.A. § 36-36-36(a) that accurately described the property to be annexed; thus, the city failed to comply, or to substantially comply, with the requirements of that statute. City of Lovejoy v. Clayton County, 335 Ga. App. 881, 783 S.E.2d 395, 2016 Ga. App. LEXIS 105 (2016).

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 21 et seq.

36-36-31. "Contiguous area" defined; determination of aggregate external boundary.

(a) As used in this article, the term "contiguous area" means any area of which at least one-eighth of the aggregate external boundary, at the time annexation procedures are initiated, directly abuts the municipal boundary. Any area shall also be a "contiguous area" if at least one-eighth of its aggregate external boundary would directly abut the municipal boundary if not otherwise separated, in whole or in part, from the municipal boundary by lands owned by the municipal corporation, by lands owned by a county, or by lands owned by this state or by the definite width of (1) any street or street right of way, (2) any creek or river, or (3) any right of way of a railroad or other public service corporation.

(b) For purposes of determining an area's aggregate external boundary, all real property which, at the time annexation procedures are initiated, (1) is owned by the same person who owns real property in the area to be annexed, (2) adjoins to any extent such owner's real property in the area to be annexed, (3) is in the same county as the real property in the area to be annexed, and (4) is not included within the boundaries of any municipal corporation shall have its area included in determining the aggregate external boundary of the area to be annexed.

History.
Ga. L. 1966, p. 409, § 5; Ga. L. 1971, p. 399, § 1; Ga. L. 1976, p. 1011, § 2; Code 1981, § 36-36-21; Code 1981, § 36-36-31, as redesignated by Ga. L. 1992, p. 2592, § 3.
Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-21 as present Code Section 36-36-31.
Law reviews.
For article discussing municipal annexation and the concept of contiguity, see 9 Ga. L. Rev. 167 (1974).

JUDICIAL DECISIONS

Contiguous property not found. — Parcel which the city attempted to annex and which was separated from the city boundary by three parcels: one owned by the county, one owned by the power company, and one over which the Georgia Department of Transportation had a right of way, was not a contiguous area since the power company property did not fall within any of the exceptions of O.C.G.A. § 36-36-31(a). Since the power company property was owned in fee simple by the power company, the power company had the ability to grant the property to another party at any time thereby potentially allowing the subject property to become an isolated municipal island precluding annexation of the subject parcel. City of Buford v. Gwinnett County, 262 Ga. App. 248, 585 S.E.2d 122, 2003 Ga. App. LEXIS 797 (2003), cert. denied, No. S03C1696, 2003 Ga. LEXIS 978 (Ga. Nov. 10, 2003).

RESEARCH REFERENCES

ALR.

What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 A.L.R.3d 589.

36-36-32. Annexation upon application of owners of 60 percent of the land and 60 percent of the resident electors generally; application and signature requirements.

(a) Authority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas which are contiguous to the existing corporate limits at the time of such annexation, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed application of not less than 60 percent of the electors resident in the area included in any such application and of the owners of not less than 60 percent of the land area, by acreage, included in such application. The authority granted in this Code section is in addition to existing authority and is intended to provide a cumulative method of annexing territory to municipal corporations in addition to those methods provided by present law.

(b) Each such application shall contain a complete description of the land proposed to be annexed. Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits.

(c) Each person signing an application for annexation shall also print or type thereon his name, address, and the date of signature. In addition, he shall indicate whether he is a landowner within the area to be annexed, an elector, or both.

(d) For the purpose of determining the percentage of electors signing such application, the municipal governing body shall obtain a list of electors residing in such area from the board of registrars of the county

or counties in which the area lies. The list shall be compiled by the board of registrars and provided to the municipal governing body in accordance with Code Section 21-2-227. The municipal governing body shall bear the expense of the preparation of the list in the manner prescribed by such Code section.

(e) For the purpose of determining ownership of the property included within such application, the record titleholder of the fee simple title or his legal representative shall be considered the "owner" of the property.

(f) Signatures of owners of public roads and other public land within the area to be annexed shall not be required in satisfying the requirements of subsection (a) of this Code section and the acreage of such public properties shall be excluded from acreage calculations pertaining to the landowner approval required by subsection (a) of this Code section. This subsection applies only where the public properties are included in the area to be annexed.

(g) The necessary number of signatures of landowners and electors shall be obtained within one calendar year following the date of the first signature obtained. Failure to collect the required number within the one-year period shall invalidate previously collected signatures. Nothing in this subsection shall prohibit collection of signatures from the same persons on subsequent applications for annexation.

History.

Ga. L. 1966, p. 409, § 1; Code 1981, § 36-36-22; Code 1981, § 36-36-32, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 1993, p. 91, § 36; Ga. L. 1994, p. 1443, § 27.

Law reviews.

For article questioning the constitutionality of this section, see 10 Ga. L. Rev. 169 (1975).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

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Statute is not unconstitutional on the theory that the section attempts to delegate "legislative power," including the right to change municipal boundaries, to local governments. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864, 1972 Ga. LEXIS 937 (1972).

Ga. L. 1966, p. 409, § 1 (see now O.C.G.A. § 36-36-32) is a "general law" and provides a method of municipal annexation as contemplated by Ga. L. 1965, p. 298, § 2 (see now O.C.G.A. § 36-35-2). Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864, 1972 Ga. LEXIS 937 (1972).

Best interest determinations. — Although finding that a city had not made a best interest determination as required by O.C.G.A. § 36-36-37(a), a trial court never held that the determination had to be made on the record; since the city's annexation evidence under O.C.G.A. § 36-36-35 was inadequate to assist the citizens in participating intelligently in the public hearing, the county was entitled to summary judgment under

O.C.G.A. § 9-11-56. City of Riverdale v. Clayton County, 263 Ga. App. 672, 588 S.E.2d 845, 2003 Ga. App. LEXIS 1289 (2003), cert. denied, No. S04C0402, 2004 Ga. LEXIS 161 (Ga. Feb. 16, 2004).

Comparison of 100 percent and 60 percent methods of annexation. — Requirements of the 100 percent method and the 60 percent method are different. In the 100 percent method, the land being annexed need only abut the municipal boundaries. In the 60 percent method, the land being annexed must coincide with the municipal boundaries on one-eighth of the municipality's aggregate external boundary. City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894, 1976 Ga. LEXIS 1292 (1976).

Involvement of only one landowner does not prohibit use of 60 percent method. — When the procedures that must be followed in using the "60 percent method" were followed by the city in effecting an annexation, the fact that there was only one landowner involved and no electors involved in this annexation did not prohibit use of the "60 percent method" prescribed by statute. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864, 1972 Ga. LEXIS 937 (1972).

The 60 percent method of annexation may be used in areas with no registered voters. Niskey Lake Water Works, Inc. v. Garner, 228 Ga. 864, 188 S.E.2d 864, 1972 Ga. LEXIS 937 (1972).

Removal of persons "resident in the area". — City had two options when the city found that 36 people were no longer "resident in the area." It could have challenged the names of the 36 people the city determined to be nonresidents and had the names removed from the list, or it could have sought others who were "resident in the area." City Council v. Richmond County, 259 Ga. 161, 377 S.E.2d 851, 1989 Ga. LEXIS 162 (1989).

When city discovered that 34 electors had moved and that two were no longer living in the area sought to be annexed, the city could not just subtract the 36 names that the city determined to be "nonresident in the area" from the total to arrive at the requisite 60 percent. City Council v. Richmond County, 259 Ga. 161, 377 S.E.2d 851, 1989 Ga. LEXIS 162 (1989).

City failed to comply with publishing requirements. — Trial court properly granted summary judgment in favor of a county because the city failed to publish a notice as required by O.C.G.A. § 36-36-36(a) that accurately described the property to be annexed; thus, the city failed to comply, or to substantially comply, with the requirements of that statute. City of Lovejoy v. Clayton County, 335 Ga. App. 881, 783 S.E.2d 395, 2016 Ga. App. LEXIS 105 (2016).

Attempted annexation was untimely and invalid. — Trial court did not retroactively redraw a city's boundaries as the house bill incorporated the neighborhood into the city when the bill was signed into law on April 26, 2016; thus, the larger city's effort to annex the neighborhood was untimely and invalid; as a result, the neighborhood was incorporated into the city before the referendum, was included in the referendum vote, and could only have left the city had the referendum failed. Harris v. City of S. Fulton, 358 Ga. App. 788, 856 S.E.2d 361, 2021 Ga. App. LEXIS 132 (2021).

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1, 2017 Ga. LEXIS 453 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Correctional institution site and adjoining property may be annexed by city in one procedure, upon application of appropriate persons, when property adjoining correctional institution abuts city limits. 1981 Op. Att'y Gen. No. 81-37.

Intent of General Assembly in referring to "the record title holder of the fee simple title" was to give the grantor of a security deed the right to decide upon the question of annexation. Thus, in determining ownership of land for the purpose of determining the eligibility of a landowner to sign an application for annexation to a municipality, it should be done without regard to whether such land is encumbered by an outstanding deed to secure debt. 1967 Op. Att'y Gen. No. 67-16.

It is the apparent legislative scheme to place decision as to annexation upon persons residing in area, rather than upon persons holding mere security interests in the property. 1972 Op. Att'y Gen. No. U72-105.

Need for voice of property owner to be heard. — Legislature did not intend for any property to be annexed to a municipal corporation without the owner of the property at least being allowed a voice on the question of such annexation. Of course, if the county or State School Building Authority (now Georgia Education Authority (Schools)) or some other governmental entity chooses not to make application for annexation, but at least 60 percent of the other owners of property in the area making application for annexation do apply, the statutory requirements are met irrespective of the wishes of some owners. 1967 Op. Att'y Gen. No. 67-236.

Governing body of a municipality does not have authority to annex a lesser included portion of territory described in an original application. 1967 Op. Att'y Gen. No. 67-253.

Landowners may withdraw their consent to any annexation petition at any time through the date of the public hearing on such petition. If these withdrawals result in a reduction of the percentage of the land represented below 60 percent of the total area of land to be annexed, the petition is thereby invalidated, and the municipality into which the land was to be annexed has no authority to continue with the annexation. 1975 Op. Att'y Gen. No. U75-62.

Municipal governing body must request a list of electors registered in particular area making application for annexation. When preparing the list, the board of registrars should determine those electors within that area as of the date on which the application for annexation was presented by the electors and property owners to the municipal governing body. 1967 Op. Att'y Gen. No. 67-236.

Annexation of state park. — Municipality must have specific legislative approval to annex state park. 1968 Op. Att'y Gen. No. 68-211.

Acreage of railroad rights of way, county owned property, creeks and rivers, and other similar land must be included in calculation of total acreage for which application for annexation is made. 1967 Op. Att'y Gen. No. 67-236.

Department of Offender Rehabilitation (now Corrections) lacks authority to apply for or consent to annexation of state owned real property. 1981 Op. Att'y Gen. No. 81-37.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 35 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, §§ 57 et seq., 70 et seq.

ALR.

Power to extend boundaries of municipal corporations, 64 A.L.R. 1335.

Power to detach land from municipal corporations, towns, or villages, 117 A.L.R. 267.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 A.L.R.2d 1279; 17 A.L.R.5th 195.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 A.L.R.5th 195.

36-36-33. Annexation across county boundary lines prohibited.

There shall be no annexation across the boundary lines of any county under this article.

History.
Ga. L. 1966, p. 409, § 5; Ga. L. 1971, p. 399, § 1; Ga. L. 1976, p. 1011, § 2; Code 1981, § 36-36-23; Code 1981, § 36-36-33, as redesignated by Ga. L. 1992, p. 2592, § 3.

Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-23 as present Code Section 36-36-33.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 50 et seq.

C.J.S.
62 C.J.S., Municipal Corporations, § 60 et seq.

36-36-34. Determination of compliance with article; notice upon noncompliance; proceedings upon compliance.

Whenever the governing body of a municipal corporation receives an application pursuant to Code Section 36-36-32, it shall, after investigation, determine whether such application complies with the requirements of this article. If it is determined that the application does not comply with this article, the governing body shall notify in writing the persons presenting the application, stating wherein the application is deficient. If it is determined that the application does comply with this article, the municipal governing body shall proceed to act on the application in accordance with Code Section 36-36-36.

History.
Ga. L. 1966, p. 409, § 2; Code 1981, § 36-36-24; Code 1981, § 36-36-34, as redesignated by Ga. L. 1992, p. 2592, § 3.

36-36-35. Plans and report for extension of services to area proposed to be annexed.

(a) A municipal corporation exercising authority under this article shall make plans for the extension of services to the area proposed to be annexed and, prior to the public hearing provided for in Code Section 36-36-36, shall prepare a report setting forth its plans to provide services to the area.

(b) The report required in subsection (a) of this Code section shall include:

(1) A map or maps of the municipality and adjacent territory, showing the present and proposed boundaries of the municipal corporation, the present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and

outfalls as required in paragraph (2) of subsection (c) of this Code section; and

(2) A statement setting forth the plans of the municipal corporation for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(c) The plans required in subsection (a) of this Code section shall:

(1) Provide for extending police protection, fire protection, garbage collection, and street maintenance services to the area to be annexed, on the date of annexation, on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation prior to annexation; but if a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as water lines are made available in the area under existing municipal policies for the extension of water lines; and

(2) Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed within 12 months of the effective date of annexation, so that when such lines are constructed property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots or subdivisions.

(d) The report required in subsection (a) of this Code section shall be prepared and made available to the public at least 14 days prior to the public hearing required by Code Section 36-36-36.

History.

Ga. L. 1966, p. 409, § 6; Code 1981, § 36-36-25; Code 1981, § 36-36-35, as redesignated by Ga. L. 1992, p. 2592, § 3.

Law reviews.

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Adequacy of evidence. — Although finding that a city had not made a best interest determination as required by O.C.G.A. § 36-36-37(a), a trial court never held that the determination had to be made on the record; since the city's annexation evidence under O.C.G.A. § 36-36-35 was inadequate to assist the citizens in participating intelligently in the public hearing, the county was entitled to summary judgment under O.C.G.A. § 9-11-56. City of Riverdale v. Clayton County, 263 Ga. App. 672, 588 S.E.2d 845, 2003 Ga. App. LEXIS 1289 (2003), cert. denied, No. S04C0402, 2004 Ga. LEXIS 161 (Ga. Feb. 16, 2004).

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, §§ 87, 88.
ALR.
Liability of municipality for injury to lateral support in grading street, 44 A.L.R. 1494.
Duty of public utility to duplicate service, 52 A.L.R. 1111.

36-36-36. Public hearing required; notice; withdrawal of consent.

(a) The municipal governing body shall hold a public hearing on any application which has been determined to meet the requirements of this article. The hearing shall be held not less than 15 nor more than 45 days from the time the governing body makes a determination that the petition is valid. Notice of the time and place of the hearing shall be given in writing to the persons presenting the application and shall be advertised once a week for two consecutive weeks immediately preceding the hearing in a newspaper of general circulation in the municipal corporation and in the area proposed for annexation. Written notice of the time and place of the hearing shall also be sent by mail to the mailing address reflected in the property tax records for each property owner whose property is in the area proposed for annexation. The written notice required under this subsection shall be mailed not less than 15 nor more than 45 days before the date of the hearing required by this subsection.

(b) At the public hearing all persons resident or owning property in the municipal corporation or in the area proposed for annexation may be heard on the question of the annexation of the area by the municipal corporation.

(c) Any property owner or elector may withdraw his consent in writing postmarked or received within three business days after the public hearing required by this Code section.

History.
Ga. L. 1966, p. 409, § 3; Code 1981, § 36-36-26; Code 1981, § 36-36-36, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2022, p. 367, § 3/HB 1461.

JUDICIAL DECISIONS

Subsection (c) of O.C.G.A. § 36-36-26 (see now O.C.G.A. § 36-36-36) does not prohibit electors from changing their minds. City Council v. Richmond County, 259 Ga. 161, 377 S.E.2d 851, 1989 Ga. LEXIS 162 (1989).

City failed to comply with publishing requirements. — Trial court properly granted summary judgment in favor of a county because the city failed to publish a notice as required by O.C.G.A. § 36-36-36(a) that accurately described the property to be annexed; thus, the city failed to comply, or to substantially comply, with the requirements of that statute. City of

Lovejoy v. Clayton County, 335 Ga. App. 881, 783 S.E.2d 395, 2016 Ga. App. LEXIS 105 (2016).

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1, 2017 Ga. LEXIS 453 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Landowners may withdraw their consent to any annexation petition at any time through the date of public hearing on such petition. If these withdrawals result in a reduction of the percentage of the land represented below 60 percent of the total area of land to be annexed, the petition is thereby invalidated and the municipality into which the land was to be annexed has no authority to continue with the annexation. 1975 Op. Att'y Gen. No. U75-62.

Method of withdrawing signatures from petition. — Landowners wishing to withdraw their signatures from petitions requesting that a municipality annex a certain area may do so by timely notifying the governing authorities of the municipality in any manner reasonably calculated to inform those authorities of their decision to do so. 1975 Op. Att'y Gen. No. U75-66.

RESEARCH REFERENCES

ALR.

Estoppel to question validity of proceedings extending boundaries of municipality, 101 A.L.R. 581.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-36-37. Adoption of annexing ordinance.

(a) If, after the public hearing, the governing body determines that the annexation to the municipal corporation of the area proposed in the application would be in the best interest of the residents and property owners of the area proposed for annexation and of the citizens of the municipal corporation, the area may be annexed to the municipal corporation by the adoption of an annexing ordinance.

(b) The annexing ordinance authorized by subsection (a) of this Code section shall be adopted within 60 days following validation of the signature of the applicants.

History.

Ga. L. 1966, p. 409, § 4; Code 1981, § 36-36-27; Code 1981, § 36-36-37, as redesignated by Ga. L. 1992, p. 2592, § 3.

Law reviews.

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1, 2017 Ga. LEXIS 453 (2017).

36-36-38. Filing of identification of annexed property with county and Department of Community Affairs; applicability of municipal ad valorem taxes to annexed territory; effect of annexation.

(a) When an application pursuant to Code Section 36-36-32 is acted upon by the municipal authorities and the land, by ordinance, is annexed to the municipal corporation, an identification of the annexed property shall be filed with the Department of Community Affairs and with the county in which the property is located in accordance with Code Section 36-36-3.

(b) Municipal ad valorem taxes shall not apply to property within the annexed territory until January 1 of the following year.

(c) When so annexed, such lands shall constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly.

History.
Ga. L. 1966, p. 409, § 7; Code 1981, § 36-36-28; Code 1981, § 36-36-38, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 9.

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, §§ 82 et seq., 101 et seq.

36-36-39. Filing of petition for declaratory judgment to determine validity of annexation; judicial review.

(a) Within 30 days of the effective date of the ordinance annexing land to the municipal corporation, any resident elector of the area so annexed or of the municipal corporation or any property owner of such area or of the municipal corporation may bring a petition for declaratory judgment, in the superior court of the county of the legal situs of the annexing municipal corporation, to determine the validity, in accordance with this article, of the application and the municipal corporation's action thereon. Whenever such a petition is filed, the

municipal governing body shall file with the court the record of their official actions in regard to such application and a certified copy of the annexing ordinance.

(b) The judgment of the court on any such petition may declare the annexation ordinance null and void upon a finding that the application and the municipal corporation's action thereon are not in substantial compliance with this article. Upon a finding that procedural defects or defects in the plan for service to the annexed area exist, the court, where possible, shall frame a judgment to perfect such defect and uphold the ordinance.

(c) Actions provided for in this Code section shall be in accordance with Chapter 4 of Title 9.

(d) Any aggrieved party may obtain a review of a final judgment under this Code section as is provided by law in other cases.

History.
Ga. L. 1966, p. 409, § 9; Code 1981, § 36-36-29; Code 1981, § 36-36-39, as redesignated by Ga. L. 1992, p. 2592, § 3.
Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-29 as present Code Section 36-36-39.

JUDICIAL DECISIONS

Boards of education do not come within category of persons barred from attacking ordinances after 30 days. Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868, 1970 Ga. LEXIS 381 (1970), superseded by statute as stated in Powers v. Cordele, 143 Ga. App. 363, 238 S.E.2d 721, 1977 Ga. App. LEXIS 2320 (1977); City of Marietta v. Cobb County Sch. Dist., 237 Ga. 518, 228 S.E.2d 894, 1976 Ga. LEXIS 1292 (1976).

Annexations properly invalidated. — Judgment invalidating the City of Atlanta's attempted annexation of five areas was affirmed because the trial court correctly held that the annexations were invalid since at the time the annexations would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and, thus, ineligible for annexation by Atlanta. City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1, 2017 Ga. LEXIS 453 (2017).

RESEARCH REFERENCES

C.J.S.
26 C.J.S., Declaratory Judgments, §§ 99, 100.
ALR.
Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation, 18 A.L.R.2d 1255.

36-36-40. Use of municipally owned utilities by residents of annexed territory.

Nothing within this article shall prohibit the municipal corporation from requiring the residents of the newly annexed area to use utilities owned by the municipal corporation when they are available.

History.
Ga. L. 1966, p. 409, § 8; Code 1981, § 36-36-30; Code 1981, § 36-36-40, as redesignated by Ga. L. 1992, p. 2592, § 3.
Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-30 as present Code Section 36-36-40.

JUDICIAL DECISIONS

City may under proper authority annex territory under conditions applicable only to newly annexed territory. City of Midway v. Midway Nursing & Convalescent Ctr., Inc., 230 Ga. 77, 195 S.E.2d 452, 1973 Ga. LEXIS 817 (1973).

RESEARCH REFERENCES

ALR.
Duty of public utility to duplicate service, 52 A.L.R. 1111.

ARTICLE 4

ANNEXATION PURSUANT TO RESOLUTION AND REFERENDUM

Cross references.
Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-50. Purpose of article.

It is declared to be the intention of the General Assembly in enacting this article to provide a method for annexing to municipal corporations areas which meet the legislative standards established by Code Section 36-36-54. This article is not intended to affect or restrict the present authority of the General Assembly to legislate regarding the annexation of any area contiguous to any municipal corporation in this state, nor to limit in any way the authority of the General Assembly to provide alternative methods for extending municipal boundaries. This article shall not affect legislation pending on July 1, 1970.

History.
Ga. L. 1970, p. 426, § 10; Code 1981, § 36-36-40; Code 1981, § 36-36-50, as redesignated by Ga. L. 1992, p. 2592, § 3.

Law reviews.
For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 10 et seq. (see now O.C.G.A. §§ 36-36-50 and 36-36-61 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

Authority to annex noncontiguous property. — Since the authority of the General Assembly to annex municipal property is limited only by the state and federal constitutions, the General Assembly's annexation of municipal property which was not contiguous to lands owned by a city was valid, and, therefore, the city's annexation of property which was contiguous to that property was also valid. City of Fort Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186, 1997 Ga. LEXIS 36 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Annexation by local Act. — There is evidence of intent on part of General Assembly to retain authority to alter municipal boundaries through local Acts. 1975 Op. Att'y Gen. No. U75-59.

36-36-51. Legislative declaration of policy.

It is declared to be the policy in this state:

(1) That municipal corporations are created for the purpose of providing local governmental services and for ensuring the health, safety, and welfare of persons and the protection of property in areas being used primarily for residential, commercial, industrial, and institutional purposes;

(2) That the orderly growth of municipal corporations, based on the need for municipal services and the ability of the municipal corporation to serve, is essential to the economic progress of the state and to the well-being of its urban citizens;

(3) That the extension of municipal boundaries to accomplish orderly growth should be in accordance with standards established by the General Assembly; and

(4) That any areas included within municipal boundaries under this article should receive all services provided by the annexing municipal corporation as soon as possible after coming within its boundaries.

History.

Ga. L. 1970, p. 426, § 1; Ga. L. 1971, p. 398, § 1; Code 1981, § 36-36-41; Code 1981, § 36-36-51, as redesignated by Ga. L. 1992, p. 2592, § 3.

Editor's notes.

Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-41 as present Code Section 36-36-51.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 28 et seq.

C.J.S.
62 C.J.S., Municipal Corporations, § 54.

36-36-52. Definitions.

As used in this article, the term:

(1) "Contiguous area" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the municipal corporation or some other political subdivision, or lands owned by this state.

(2) "Used for residential purposes" refers to any lot or tract five acres or less in size on which is constructed a habitable dwelling unit.

History.
Ga. L. 1970, p. 426, § 8; Code 1981, § 36-36-42; Code 1981, § 36-36-52, as redesignated by Ga. L. 1992, p. 2592, § 3.

Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-42 as present Code Section 36-36-52.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 50 et seq.

C.J.S.
62 C.J.S., Municipal Corporations, § 60 et seq.

36-36-53. Authorization of annexation generally.

The governing body of any municipal corporation may extend the corporate limits of the municipal corporation to include any area which meets the standards of Code Section 36-36-56, under the conditions and procedure provided in this article and in accordance with the procedures provided in Article 1 of this chapter.

History.
Ga. L. 1970, p. 426, § 2; Ga. L. 1971, p. 398, § 2; Code 1981, § 36-36-43; Code 1981, § 36-36-53, as redesignated by Ga. L. 1992, p. 2592, § 3.

Law reviews.
For article suggesting that Ga. L. 1970, p. 426 (see now O.C.G.A. § 36-36-40 et seq.) is not a satisfactory vehicle for urban annexation, see 10 Ga. L. Rev. 169 (1975).

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 32, 37 et seq., 59 et seq.
C.J.S.
62 C.J.S., Municipal Corporations, § 54 et seq.
ALR.
Facts warranting extension or reduction of municipal boundaries, 62 A.L.R. 1011.

Power to extend boundaries of municipal corporations, 64 A.L.R. 1335.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 A.L.R.2d 1279; 17 A.L.R.5th 195.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 A.L.R.5th 195.

36-36-54. Standards and requirements for area proposed to be annexed.

(a) A municipal governing body may extend the municipal corporate limits to include any area:

(1) Which meets the general standards of subsection (b) of this Code section; and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d) of this Code section.

(b) The total area to be annexed must meet the following standards on the date of the adoption of the resolution:

(1) It must be adjacent or contiguous to the municipal corporation's boundaries at the time the annexation proceeding is begun;

(2) At least one-eighth of the aggregate external boundaries of the area must coincide with the municipal boundary;

(3) No part of the area shall be included within the boundary of another municipal corporation or county; and

(4) No part of the area shall, at the time notice of public hearing is

given in accordance with Code Section 36-36-57, be receiving either water service or sewer service, or both, and also either police protection or fire protection from any unit of government other than the municipal corporation proposing annexation. This requirement may be waived by written agreement of the municipal corporation proposing annexation and of the other unit of government affected. Where a waiver of this requirement is applicable, a copy of the agreement shall be made a part of the report required by Code Section 36-36-56. Where contracts exist between counties and municipal corporations, both government entities must agree by mutual consent prior to annexation.

(c) Except as provided in subsection (d) of this Code section, the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which, on the date of the adoption of the annexation resolution, has a total resident population equal to at least two persons for each acre of land included within its boundaries and is subdivided into lots and tracts such that at least 60 percent of the total acreage consists of lots and tracts five acres or less in size and such that at least 60 percent of the total number of lots and tracts are one acre or less in size.

(d) In addition to areas developed for urban purposes, a governing body may include in the area to be annexed any area which does not meet the requirements of subsection (c) of this Code section if such area lies between the municipal boundary and an area developed for urban purposes such that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipal corporation without extending services and water and sewer lines through the sparsely developed area and, if such area is adjacent, on at least 60 percent of its external boundary to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c) of this Code section.

(e) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features, such as ridge lines, streams, and creeks, as boundaries. If a street is used as a boundary, the governing body shall, wherever practical, include within the municipal corporation land on both sides of the street; such outside boundary may not extend more than 200 feet beyond the right of way of the street, except to include all of a lot or parcel of land partially within 200 feet of the right of way.

History.
Ga. L. 1970, p. 426, § 4; Code 1981, § 36-36-44; Code 1981, § 36-36-54, as redesignated by Ga. L. 1992, p. 2592, § 3.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

Amount of land annexed. — Removal of a small portion of the land to be annexed to a city did not void the county's approval with respect to the remaining land. H-B Props., Ltd. v. City of Roswell, 247 Ga. App. 851, 545 S.E.2d 37, 2001 Ga. App. LEXIS 63 (2001).

Boundaries of annexed area. — Annexed territory need conform to suggested boundaries only "whenever practical," which indicates that such limitations on the establishment of boundaries are more directory than mandatory; thus, the fact that the boundaries of an annexed area did not correspond to natural topographic features and that a portion of the annexed area bounded by two roads did not encompass both sides of the street did not violate the statute as the annexation boundaries were based on voting precincts, which satisfied practical concerns with regard to identifying persons eligible to vote in the referendum and also a desire to annex land by neighborhoods. H-B Props., Ltd. v. City of Roswell, 247 Ga. App. 851, 545 S.E.2d 37, 2001 Ga. App. LEXIS 63 (2001).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 46 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 60 et seq.

ALR.

What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 A.L.R.3d 589.

36-36-55. Determination of compliance with standards and requirements; review of determination by superior court.

In determining population and degree of land subdivision for purposes of meeting the requirements of Code Section 36-36-54, the municipal corporation shall use methods calculated to provide reasonably accurate results. In determining, on appeal to the superior court, whether the standards set forth in Code Section 36-36-54 have been met, the reviewing court shall accept the estimates of the municipal corporation:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in the area or in the county or counties of which the area is a part, as determined by the last preceding federal census or based on a new enumeration carried out under reasonable rules and regulations by the annexing municipal corporation, provided that the court shall not

accept such estimates if the petitioner on appeal demonstrates that the estimates are in error in the amount of 10 percent or more;

(2) As to total area, if the estimate is based on an actual survey, on county tax maps or records, on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioner on appeal demonstrates that the estimates are in error in the amount of 5 percent or more; and

(3) As to degree of land subdivision, if the estimates are based on an actual survey, on county tax maps or records, on aerial photographs, or on some other reasonably reliable source, unless the petitioner on appeal shows that the estimates are in error in the amount of 5 percent or more.

History.
Ga. L. 1970, p. 426, § 9; Code 1981, § 36-36-45; Code 1981, § 36-36-55, as redesignated by Ga. L. 1992, p. 2592, § 3.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

36-36-56. Plans and report for extension of services to area proposed to be annexed.

(a) A municipal corporation exercising authority under this article shall make plans for the extension of services to the area proposed to be annexed and, prior to the public hearing provided for in Code Section 36-36-57, shall prepare a report setting forth its plans to provide services to such area.

(b) The report required in subsection (a) of this Code section shall include:

(1) A map or maps of the municipal corporation and adjacent territory, showing the present and proposed boundaries of the municipal corporation, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls as required in paragraph (3) of this subsection, and the general land use pattern in the area to be annexed;

(2) A statement showing that the area to be annexed meets the requirements of Code Section 36-36-54; and

(3) A statement setting forth the plans of the municipal corpora-

tion for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(c) The plans required in subsection (a) of this Code section shall:

(1) Provide for extending police protection, fire protection, garbage collection, and street maintenance services to the area to be annexed, on the date of annexation, on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the plans must call for reasonable, effective fire protection services until such time as water lines are made available in such area under existing municipal policies for the extension of water lines;

(2) Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions;

(3) If extension of major trunk water mains and sewer outfall lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains and outfalls as soon as possible following the effective date of annexation. In any event, the plans shall call for contracts to be let and construction to begin within 18 months following the effective date of annexation; and

(4) Set forth the methods under which the municipal corporation plans to finance extension of services into the area to be annexed.

History.
Ga. L. 1970, p. 426, § 3; Code 1981, § 36-36-46; Code 1981, § 36-36-56, as redesignated by Ga. L. 1992, p. 2592, § 3.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "subsection" was substituted for "Code section" in paragraph (b)(1).

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

RESEARCH REFERENCES

C.J.S.
28 C.J.S., Drains, § 16 et seq. 62 C.J.S., Municipal Corporations, §§ 60 et seq., 73.

36-36-57. Adoption of annexation resolution; contents of resolutions; approval, availability, and distribution of report relating to extension of services; public hearing.

(a) Any municipal governing body desiring to annex territory pursuant to this article shall first pass a resolution stating the intent of the municipal corporation to consider annexation. The resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation. The date for the public hearing shall be not less than 30 days and not more than 60 days following passage of the resolution. The notice of the public hearing shall (1) fix the date, hour, and place of a public hearing, (2) describe clearly the boundaries of the area under consideration, and (3) state that the report required in Code Section 36-36-56 will be available at the office of the municipal clerk at least 14 days prior to the date of the public hearing. The notice shall be given by publication in a newspaper having general circulation in the municipality once a week for three successive weeks prior to the date of the hearing. The date of the last publication shall be not more than seven days preceding the date of public hearing. If there is no such newspaper, the municipal corporation shall post the notice in at least three public places within the municipality and in at least three public places in the area to be annexed for 30 days prior to the date of the public hearing.

(b) At least 14 days before the date of the public hearing, the governing body shall approve the report provided for in Code Section 36-36-56 and shall make it available to the public at the office of the municipal clerk. In addition, the municipal corporation may prepare a summary of the full report for public distribution.

(c) At the public hearing, a representative of the municipal corporation shall first make an explanation of the report required in Code Section 36-36-56. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

History.
Ga. L. 1970, p. 426, § 5; Code 1981, § 36-36-47; Code 1981, § 36-36-57, as redesignated by Ga. L. 1992, p. 2592, § 3.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

Area to be annexed as set forth in initial resolution. — Use of "under

consideration" in the statute weighs against a finding that the statute requires that the area to be annexed must be set forth in finality when an initial resolution is passed. H-B Props., Ltd. v. City of Roswell, 247 Ga. App. 851, 545 S.E.2d 37, 2001 Ga. App. LEXIS 63 (2001).

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 55 et seq.

C.J.S.

62 C.J.S., Municipal Corporations, § 70 et seq.

ALR.

Estoppel to question validity of proceedings extending boundaries of municipality, 101 A.L.R. 581.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-36-58. Referendum for ratification or rejection of annexation resolution generally; procedure; subsequent annexation attempt.

The municipal corporation shall issue a call for a referendum to ratify or reject the adoption of the annexation resolution. The referendum shall be held not less than 30 days nor more than 60 days after the date of the public hearing required by Code Section 36-36-57. The referendum shall be held, insofar as possible, under the procedures set forth in Chapter 2 of Title 21 for special elections. Only those persons registered to vote for members of the General Assembly residing, on the date of the adoption of the resolution, in the proposed area to be annexed shall vote in the referendum. If a majority of those voting vote in favor of annexation, the area shall become a part of the corporate limits of the municipality, but not otherwise. If a majority of those voting vote against the annexation, a period of two years must elapse before annexation of the same area or any portion thereof may be attempted again under authority of this article.

History.

Ga. L. 1970, p. 426, § 12; Code 1981, § 36-36-48; Code 1981, § 36-36-58, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 1998, p. 295, § 3.

Cross references.

Elections, § 21-2-1 et seq.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 79 et seq. 82 C.J.S., Statutes, §§ 134 et seq., 150 et seq.

36-36-59. Filing of identification of annexed territory with Department of Community Affairs and county governing authority.

Whenever the limits of a municipal corporation are enlarged in accordance with this article, it shall be the duty of the clerk, city attorney, or other person designated by the governing authority of the municipal corporation to cause an identification of the annexed territory to be filed with the Department of Community Affairs, the Legislative and Congressional Reapportionment Office of the General Assembly, and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3.

History.
Ga. L. 1970, p. 426, § 6; Code 1981, § 36-36-49; Code 1981, § 36-36-59, as redesignated by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 10; Ga. L. 2022, p. 344, § 2/HB 1385.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "is" was deleted following "territory".

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 101 et seq.

36-36-60. Authorized expenditures relating to annexation.

Any municipal corporation initiating annexations under this article is authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and annexation of unincorporated territory adjacent to the municipal corporation. In addition, following final passage of the annexation ordinance, the annexing municipal corporation shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose

calculated to bring services into the annexed area in an effective and expeditious manner prior to the effective date of annexation.

History.
Ga. L. 1970, p. 426, § 7; Code 1981, § 36-36-50; Code 1981, § 36-36-60, as redesignated by Ga. L. 1992, p. 2592, § 3.
Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-50 as present Code Section 36-36-60.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 101 et seq.

36-36-61. Restriction on applicability of article.

This article shall not apply to any territory which has been a part of a municipal corporation for three years immediately preceding July 1, 1970, and which has been or is in the process of being deannexed from the corporate limits of any such municipal corporation.

History.
Ga. L. 1970, p. 426, § 11; Code 1981, § 36-36-51; Code 1981, § 36-36-61, as redesignated by Ga. L. 1992, p. 2592, § 3.
Editor's notes.
Ga. L. 1992, p. 2592, § 3, effective July 1, 1992, renumbered former Code Section 36-36-51 as present Code Section 36-36-61.

JUDICIAL DECISIONS

Authority to pass local Acts. — Provisions of Ga. L. 1970, p. 426, § 1 et seq. (see now O.C.G.A. § 36-36-50 et seq.) do not take away legislative authority to pass local Acts annexing territory to municipal corporations. These sections provide an alternative method to the continuing power of the General Assembly to extend or diminish the corporate limits of a municipality. Ballentine v. Willingham, 237 Ga. 60, 226 S.E.2d 593, 1976 Ga. LEXIS 1150 (1976).

ARTICLE 5

LIMITATION ON ANNEXATION OF AREAS FURNISHED SERVICES OR INCLUDED IN COMPREHENSIVE ZONING PLAN BY CERTAIN COUNTIES

Cross references.
Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

36-36-70. Prohibition on annexation of county operated airport property by certain municipal corporations absent approval of county governing authority.

A municipality that contains more than 85 square miles within its corporate limits shall not annex any territory on which a public airport operated by a county is located unless the governing authority of such county adopts a resolution approving such annexation within 90 days prior to the governing authority of the municipality holding a vote on such annexation.

History.
Code 1981, § 36-36-70, enacted by Ga. L. 2021, p. 673, § 1/HB 459.
Editor's notes.
Former Code Section 36-36-70, relating to approval by governing authority in certain counties for annexation of areas furnished services or included in comprehensive zoning plan, was based on Ga. L. 1971, p. 4112, §§ 1, 2; Ga. L. 1980, p. 4357, § 1; Ga. L. 1981, p. 4237, § 1; Code 1981, § 36-36-70, enacted by Ga. L. 1982, p. 2107, § 39; Ga. L. 1989, p. 153, § 1; Ga. L. 1992, p. 2592, § 3; Ga. L. 2002, p. 1473, § 1, and repealed by Ga. L. 2004, p. 398, § 1, effective May 13, 2004.

ARTICLE 6

ANNEXATION OF UNINCORPORATED ISLANDS

Cross references.
Time limit for reannexing property which has been deannexed by the General Assembly, § 36-35-2(b).

JUDICIAL DECISIONS

Unincorporated areas divided by railroad right-of-way. — When there was no evidence that railroad right-of-way dividing two large unincorporated areas had been annexed to the city by a local statute of the General Assembly or under applicable general statutes, it was an unincorporated strip of land and the two unincorporated areas it traversed formed an unincorporated area in excess of fifty acres which the city could not lawfully annex by an ordinance passed under O.C.G.A. § 36-36-90 et seq. Culpepper v. City of Cordele, 212 Ga. App. 890, 443 S.E.2d 642, 1994 Ga. App. LEXIS 418 (1994).

36-36-90. Definitions.

As used in this article, the term:

(1) "Contiguous area" means any unincorporated area which, on or

after January 1, 1999, had an aggregate external boundary directly abutting a municipal boundary. Any area shall be considered "contiguous" if the aggregate external boundary would directly abut the municipal boundary if not otherwise separated, in whole or in part, from the municipal boundary by lands owned by the municipal corporation, by lands owned by a county, or by lands owned by this state or by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation.

(2) "Municipal corporation" means a municipal corporation which has a population of 200 or more persons according to the United States decennial census of 1980 or any future such census.

(3) "Unincorporated island" means:

(A) An unincorporated area in existence on January 1, 1991, with its aggregate external boundaries abutting the annexing municipality;

(B) An unincorporated area in existence as of January 1, 1991, with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(C) An unincorporated area in existence as of January 1, 1991, which the county governing authority has by resolution adopted not later than 90 days following July 1, 1992, that identifies any unincorporated area of the county to which the county has no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.

History. Code 1981, § 36-36-90, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 2000, p. 164, § 11.

36-36-91. Area included in determining aggregate external boundary.

For the purposes of determining the aggregate external boundary of an unincorporated area, all real property in the area to be annexed, which at the time the annexation procedures are initiated, (1) is unincorporated, and (2) is in the same county as the annexing municipal corporation, shall have its area included in determining the aggregate external boundary.

History.
Code 1981, § 36-36-91, enacted by Ga. L. 1992, p. 2592, § 3.

36-36-92. Annexation of unincorporated islands; procedures; provision of municipal services.

(a) The governing body of each municipal corporation of the state may annex to the existing corporate limits thereof all or any portion of unincorporated islands which are contiguous to the existing limits at the time of such annexation upon compliance with the procedures set forth in this article and in accordance with the procedures provided in Article 1 of this chapter.

(b) Annexation of unincorporated islands as authorized in subsection (a) of this Code section shall be accomplished by ordinance at a regular meeting of the municipal governing authority within 30 days after written notice of intent to annex such property is mailed to the owner of such property at the last known address for such owner as it appears on the ad valorem tax records of the county in which such property is located. After the adoption of the annexation ordinance, an identification of the property annexed shall be filed with the Department of Community Affairs, the Legislative and Congressional Reapportionment Office of the General Assembly, and with the governing authority of the county in which the property is located, in accordance with Code Section 36-36-3.

(c) Annexation of an unincorporated island as authorized by subsection (a) of this Code section, which unincorporated island directly abuts more than one municipality, shall be by the municipality which abuts the unincorporated island along the greatest percentage of its external boundary as provided in this Code section, unless otherwise agreed to by the affected municipalities.

(d) Annexations under this article shall be at the sole discretion of the governing body of each municipality.

(e) Municipal services to the annexed area shall be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation; provided, however, that the extension of water and sewer services shall be according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots and subdivisions.

(f) The provisions of this article with regard to annexation of unincorporated islands are severable as to each city and to the annexation of each unincorporated island therein.

History.

Code 1981, § 36-36-92, enacted by Ga. L. 1992, p. 2592, § 3; Ga. L. 1995, p. 840, § 1; Ga. L. 2000, p. 164, § 12; Ga. L. 2015, p. 385, § 6-5/HB 252; Ga. L. 2019, p. 1056, § 36/SB 52; Ga. L. 2022, p. 344, § 3/HB 1385.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, "city" was substituted for "City" in the first sentence of subsection (f).

Editor's notes.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Law reviews.

For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005).

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).

JUDICIAL DECISIONS

Notice. — Owners of property annexed by a city did not show, under O.C.G.A. § 36-36-92(b), that the owners did not receive proper notice of the public meeting at which the annexation ordinance was adopted because the statute required that annexation occur no later than 30 days after notice was mailed to the owners, rather than no less than 30 days, as the owners argued, and the owners clearly received notice of the annexation within the required 30-day period. Bradley Plywood Corp. v. Mayor & Aldermen of Savannah, 271 Ga. App. 828, 611 S.E.2d 105, 2005 Ga. App. LEXIS 182 (2005).

City complied with O.C.G.A. § 36-36-92(b) by adopting the city's annexation ordinances within 30 days of the city's formal notice of annexation. Earlier notices stating the formal notice of annexation required by § 36-36-92(b) would follow at a later date were nothing more than "courtesy" notices that did not trigger the running of the 30 days time-limit, and, as such, did not invalidate the annexation ordinances that were adopted within 30 days of the later formal notice. Calloway v. City of Fayetteville, 296 Ga. App. 200, 674 S.E.2d 66, 2009 Ga. App. LEXIS 178 (2009).

Annexation held proper. — By annexing a portion of a larger unincorporated area that was already qualified as an "unincorporated island," a city did not "create" a newly-formed unincorporated island in violation of O.C.G.A. § 36-36-4(a)(1), but rather simply reduced the size of a previously-existing island. Calloway v. City of Fayetteville, 296 Ga. App. 200, 674 S.E.2d 66, 2009 Ga. App. LEXIS 178 (2009).

ARTICLE 7

PROCEDURE FOR RESOLVING ANNEXATION DISPUTES

36-36-110. Applicability.

The procedures of this article shall apply to all annexations pursuant to this chapter but shall not apply to annexations by local Acts of the General Assembly.

History.

Code 1981, § 36-36-110, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.

JUDICIAL DECISIONS

Failure to comply with dispute resolution procedures does not invalidate annexation.— In an annexation dispute, the ruling in favor of the city on the county's declaratory judgment claim was upheld because the county's contention that the annexation at issue was void on the ground that the city failed to comply with the statutory dispute resolution procedures was rejected as nothing in O.C.G.A. § 36–36–110 stated that failure to comply with the statutory process resulted in the annexation being invalid. Coweta County v. City of Newnan, 374 Ga. App. 702, 913 S.E.2d 841, 2025 Ga. App. LEXIS 114 (2025).

Validity of proposed annexation not justiciable. — City was not prevented from adopting an annexation ordinance by the statutory process of O.C.G.A. § 36-36-110 et seq., that in the absence of a declaration regarding the ordinance's alleged unconstitutionality was required to be completed before the city attempted to exercise the city's legislative power of annexation, because the parties agreed the process did not apply; therefore, the city's mere proposal of annexation, and the county's objection, did not present a justiciable controversy. Fulton County v. City of Atlanta, 299 Ga. 676, 791 S.E.2d 821, 2016 Ga. LEXIS 596 (2016).

Injunctive relief claim moot. — In an annexation dispute, the dismissal of the county's claim for injunctive relief as moot was upheld because by the time the county's petition to temporarily restrain the city from proceeding with the proposed annexation was heard, the city had passed the annexation ordinance; thus, the activity sought to be enjoined had in fact been completed. Coweta County v. City of Newnan, 374 Ga. App. 702, 913 S.E.2d 841, 2025 Ga. App. LEXIS 114 (2025).

36-36-110.1. Definitions.

As used in this article, the term:

(1) "Cost" or "costs" means expenses incurred by a county, municipality, and property owner or owners whose property is at issue, including, but not limited to, per diems, venue rental, teleconference charges, the use of court reporters or hearing officers, and arbitrators' fees and expenses.

(2) "Department" means the Department of Community Affairs.

(3) "Impacted school system" means a county or independent school system operating or providing services to the territory to be annexed or which would operate or provide services in a territory to be annexed.

(4) "Notice" or "notify" means a letter that includes a description of the property to be annexed, a description of the proposed zoning classification and land use of the area to be annexed, and pursuant to Code Section 36-36-4, information on the time and place of the public hearing on zoning of the property to be annexed.

(5) "Verifiable delivery" means hand delivery, electronic mail, certified mail, or statutory overnight delivery, provided that the means of delivery allows for verification of the delivery of such notice.

History.
Code 1981, § 36-36-110.1, enacted by Ga. L. 2022, p. 367, § 1/HB 1461.

36-36-111. Notice of annexation.

Within 30 days of a municipal corporation's acceptance of a petition of annexation, the municipal corporation shall notify the governing authority of the county and any impacted school system in which the territory to be annexed is located by verifiable delivery. Such notice shall include a copy of the annexation petition which shall include the proposed zoning and land use for such area. The municipal corporation shall take no final action on such annexation except as otherwise provided in this article.

History.
Code 1981, § 36-36-111, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.

36-36-112. Prohibition on a change in zoning or land use.

If no objection is received as provided in Code Section 36-36-113, the annexation may proceed as otherwise provided by law; provided, however, that, as a condition of the annexation, the municipal corporation shall not change the zoning or land use plan relating to the annexed property to a more intense density than that stated in the notice provided for in Code Section 36-36-111 for one year after the effective date of the annexation unless such change is made in the service delivery agreement or comprehensive plan and is adopted by the affected city and county and all required parties.

History.
Code 1981, § 36-36-112, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461; Ga. L. 2025, p. 1029, § 36(12)/SB 153, effective July 1, 2025.
Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in this Code section.

36-36-113. Objection to annexation; grounds and procedures.

(a) The county governing authority may by majority vote, as defined by applicable general or local law, object to the annexation because of a material increase in burden upon the county directly related to any one or more of the following:

(1) The proposed change in zoning or land use;

(2) Proposed increase in density; and

(3) Infrastructure demands related to the proposed change in zoning or land use.

(b) Delivery of services may not be a basis for a valid objection but may be used in support of a valid objection if directly related to one or more of the subjects enumerated in paragraphs (1), (2), and (3) of subsection (a) of this Code section.

(c) The objection provided for in subsection (a) of this Code section shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection and shall be delivered to the municipal governing authority and the department by verifiable delivery to be received not later than the end of the forty-fifth calendar day following receipt of the notice provided for in Code Section 36-36-111.

(d) In order for an objection pursuant to this Code section to be valid, the proposed annexation must:

(1) Result in:

(A) A substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use; or

(B) A use which significantly increases the net cost of infrastructure or significantly diminishes the value or useful life of a capital outlay project, as such term is defined in Code Section 48-8-110, which is furnished by the county to the area to be annexed; and

(2) Authorize or result in a land use that differs substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning ordinance or its land use ordinances.

History. Code 1981, § 36-36-113, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.

36-36-114. (Effective until January 1, 2026.) Arbitration panel; composition and membership; assistance in formulating record; regulation.

(a) Not later than the fifteenth calendar day following the date the department received the first objection provided for in Code Section 36-36-113, an arbitration panel shall be appointed as provided in this Code section.

(b) The arbitration panel shall be composed of five members to be selected as provided in this subsection. The department shall develop three pools of arbitrators, one pool which consists of persons who are currently or within the previous six years have been municipal elected officials, one pool which consists of persons who are currently or within the previous six years have been county elected officials, and one pool

which consists of persons with a master's degree or higher in public administration or planning and who are currently employed by an institution of higher learning in this state, other than the Carl Vinson Institute of Government of the University of Georgia. The pool shall be sufficiently large to ensure as nearly as practicable that no person shall be required to serve on more than four panels in any one calendar year and serve on no more than one panel in any given county in any one calendar year. The department is authorized to coordinate with the Georgia Municipal Association, the Association County Commissioners of Georgia, the Council of Local Governments, and similar organizations in developing and maintaining such pools.

(c) Upon receiving notice of a disputed annexation, the department shall choose at random four names from the pool of municipal officials, four names from the pool of county officials, and three names from the pool of academics; provided, however, that none of such selections shall include a person who is a resident of the county which has interposed the objection or any municipal corporation located wholly or partially in such county, and further provided that none of such selections shall include a person who has already served on four other arbitration panels in the then-current calendar year. The municipal corporation shall be permitted to strike or excuse two of the names chosen from the county officials pool; the county shall be permitted to strike or excuse two of the names chosen from the municipal officials pool; and the county and municipal corporation shall each be permitted to strike or excuse one of the names chosen from the academic pool.

(d) Prior to being eligible to serve on any of the three pools, persons interested in serving on such panels shall receive joint training in alternative dispute resolution together with zoning and land use training, which may be designed and overseen by the Carl Vinson Institute of Government of the University of Georgia in conjunction with the Association County Commissioners of Georgia and the Georgia Municipal Association, provided such training is available. Provided that the General Assembly appropriates sufficient funds in an applicable fiscal year, the Carl Vinson Institute of Government of the University of Georgia shall provide at least one training program per year to train new potential panel members.

(e) At the time any person is selected to serve on a panel for any particular annexation dispute, he or she shall sign the following oath: "I do solemnly swear or affirm that I will faithfully perform my duties as an arbitrator in a fair and impartial manner without favor or affection to any party, and that I have not and will not have any ex parte communication regarding the facts and circumstances of the matters to be determined, other than communications with my fellow arbitrators, and will only consider, in making my determination, those matters which may lawfully come before me."

(f) The department shall develop and maintain a list of court reporters and hearing officers that may be employed by the department at the request of an arbitration panel to assist the panel in formulating the record before the panel. An arbitration panel may by majority vote of its members elect to employ court reporters and hearing officers from such list. Any costs or charges related to the employment of court reporters and hearing officers pursuant to this subsection shall be evenly divided between the city and the county.

(g) The department shall promulgate rules and regulations to provide for uniform procedures and operations of arbitration panels established pursuant to this article. Notwithstanding any provision of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the contrary, such proposed rules and regulations shall be submitted to the chairperson of the House Governmental Affairs Committee and the Senate Committee on State and Local Government Operations.

History.
Code 1981, § 36-36-114, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.
Delayed effective date.
Code Section 36-36-114 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.
Law reviews.
For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).
For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

36-36-114. (Effective January 1, 2026.) Arbitration panel; composition and membership; assistance in formulating record; regulation.

(a) Not later than the twentieth business day following the date that the department first receives an objection of a proposed annexation as provided for in Code Section 36-36-113, a panel of five arbitrators shall be appointed by the department using the selection process detailed in subsection (c) of this Code section.

(b)(1) The department shall develop and maintain three pools of potential arbitrators, comprised as follows:

(A) One pool which consists of persons who are currently or within the previous six years have been municipal elected officials, managers, or administrators;

(B) One pool which consists of persons who are currently or within the previous six years have been county elected officials, managers, or administrators; and

(C) One pool which consists of persons with a master's degree or higher in public administration or planning and who are currently employed by an institution of higher learning in this state, other

than the Carl Vinson Institute of Government of the University of Georgia.

(2) Each pool shall be sufficiently large to ensure as nearly as practicable that no person shall be required to serve on more than four panels in any one calendar year and serve on no more than one panel in any given county in any one calendar year.

(3) The department is authorized to coordinate with the Georgia Municipal Association, the Association County Commissioners of Georgia, and similar organizations in developing and maintaining such pools.

(c)(1) Within 15 business days of the date that the department first receives an objection of a proposed annexation as provided for in Code Section 36-36-113, the department shall submit to the county and municipal corporations a list of 11 potential arbitrators consisting of four potential arbitrators randomly selected by the department from the pool of municipal officials, four potential arbitrators randomly selected by the department from the pool of county officials, and three potential arbitrators randomly selected by the department from the pool of academics; provided, however, that the department shall ensure that none of such selections shall include a person who:

(A) Is a resident of the county which has interposed the objection or any municipal corporation located wholly or partially in such county;

(B) Actively seeks employment in the county which has interposed the objection or any municipal corporation located wholly or partially in such county;

(C) Is or has been employed within the preceding six years by the county which has interposed the objection or any municipal corporation located wholly or partially in such county; or

(D) Has already served on four other arbitration panels in the then-current calendar year.

(2) Until noon on the twentieth business day following the date that the department receives the notice of disputed annexation:

(A) The municipal corporation shall be permitted to strike or excuse up to two of the four arbitrators that were randomly selected by the department from the county officials pool by submitting written notice of any such strikes to the department;

(B) The county shall be permitted to strike or excuse up to two of the four arbitrators that were randomly selected by the department from the municipal officials pool by submitting written notice of any such strikes to the department; and

(C) The county and municipal corporations shall each be permitted to strike or excuse one of the three arbitrators that were randomly selected by the department from the academic pool by submitting written notice of any such strikes to the department.

(3) At the close of the period for permitted strikes as allowed in paragraph (2) of this subsection, the department shall finalize the arbitration panel for the given annexation dispute by appointing:

(A) Two arbitrators from the county officials subset identified in subparagraph (A) of paragraph (2) of this subsection who were not stricken;

(B) Two arbitrators from the municipal officials subset identified in subparagraph (B) of paragraph (2) of this subsection who were not stricken; and

(C) One arbitrator from the academic subset identified in subparagraph (C) of paragraph (2) of this subsection who was not stricken.

(4) In the event that more than the required number of arbitrators remains within any given subset, the department shall randomly appoint the number of arbitrators needed for such subset from among those arbitrators remaining within such subset.

(5) In the event that an arbitrator refuses or becomes unable to serve on a given panel to which he or she has been appointed pursuant to paragraph (3) of this subsection, the department shall randomly appoint a new arbitrator to such panel by randomly selecting an eligible arbitrator from the specific pool of arbitrators from which the original arbitrator was randomly selected under paragraph (1) of this subsection; provided, however, that such new arbitrator shall not have been previously stricken by the county or municipality.

(d) Prior to being eligible to serve on any of the three pools, persons interested in serving on such panels shall receive joint training in alternative dispute resolution together with zoning and land use training, which may be designed and overseen by the Carl Vinson Institute of Government of the University of Georgia in conjunction with the Association County Commissioners of Georgia and the Georgia Municipal Association, provided such training is available. Provided that the General Assembly appropriates sufficient funds in an applicable fiscal year, the Carl Vinson Institute of Government of the University of Georgia shall provide at least one training program per year to train new potential panel members.

(e) At the time any person is selected to serve on a panel for any particular annexation dispute, he or she shall sign the following oath: "I

do solemnly swear or affirm that I will faithfully perform my duties as an arbitrator in a fair and impartial manner without favor or affection to any party, and that I have not and will not have any ex parte communication regarding the facts and circumstances of the matters to be determined, other than communications with my fellow arbitrators, and will only consider, in making my determination, those matters which may lawfully come before me."

(f) The department shall develop and maintain a list of court reporters and hearing officers that may be employed by the department at the request of an arbitration panel to assist the panel in formulating the record before the panel. An arbitration panel may by majority vote of its members elect to employ court reporters and hearing officers from such list. Any costs or charges related to the employment of court reporters and hearing officers pursuant to this subsection shall be evenly divided between the city and the county.

(g) The department shall promulgate rules and regulations to provide for uniform procedures and operations of arbitration panels established pursuant to this article. Notwithstanding any provision of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the contrary, such proposed rules and regulations shall be submitted to the chairperson of the House Governmental Affairs Committee and the Senate Committee on State and Local Government Operations.

History.

Code 1981, § 36-36-114, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461; Ga. L. 2025, p. 476, § 1-1/HB 155, effective January 1, 2026.

Delayed effective date.

Code Section 36-36-114 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2025 amendment, effective January 1, 2026, rewrote subsections (a), (b), and (c), which read: "(a) Not later than the fifteenth calendar day following the date the department received the first objection provided for in Code Section 36-36-113, an arbitration panel shall be appointed as provided in this Code section.

"(b) The arbitration panel shall be composed of five members to be selected as provided in this subsection. The department shall develop three pools of arbitrators, one pool which consists of persons who are currently or within the previous six years have been municipal elected officials, one pool which consists of persons who are currently or within the previous six years have been county elected officials, and one pool which consists of persons with a master's degree or higher in public administration or planning and who are currently employed by an institution of higher learning in this state, other than the Carl Vinson Institute of Government of the University of Georgia. The pool shall be sufficiently large to ensure as nearly as practicable that no person shall be required to serve on more than four panels in any one calendar year and serve on no more than one panel in any given county in any one calendar year. The department is authorized to coordinate with the Georgia Municipal Association, the Association County Commissioners of Georgia, the Council of Local Governments, and similar organizations in developing and maintaining such pools.

"(c) Upon receiving notice of a disputed annexation, the department shall choose at random four names from the pool of municipal officials, four names from the pool of county officials, and three names

from the pool of academics; provided, however, that none of such selections shall include a person who is a resident of the county which has interposed the objection or any municipal corporation located wholly or partially in such county, and further provided that none of such selections shall include a person who has already served on four other arbitration panels in the then-current calendar year. The municipal corporation shall be permitted to strike or excuse two of the names chosen from the county officials pool; the county shall be permitted to strike or excuse two of the names chosen from the municipal officials pool; and the county and municipal corporation shall each be permitted to strike or excuse one of the names chosen from the academic pool."

36-36-115. (Effective until January 1, 2026.) Meetings of arbitration panel; duties; findings and recommendations; compensation.

(a)(1)(A) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as soon after appointment as practicable and shall receive evidence and argument from the municipal corporation, the county, and the applicant or property owner and shall by majority vote render a decision which shall be binding on all parties to the dispute as provided for in this article not later than 60 days following such appointment, provided that the chairperson of the arbitration panel shall be authorized to extend such deadline one time for a period of up to ten business days. Notwithstanding anything in this subparagraph to the contrary, the municipal corporation and county may by mutual agreement, postpone the arbitration procession for a period of up to 180 days to negotiate a potential settlement, and such postponement shall stay the 60 day deadline provided herein.

(B) Meetings of the panel may occur in person, virtually, or via teleconference. The meetings of the panel in which evidence is submitted or arguments of the parties are made, whether such meeting is in person, virtual, or via teleconference, shall be open to the public pursuant to Chapter 14 of Title 50.

(C) The panel shall first determine the validity of the grounds for objection as specified in the objection. If an objection involves the financial impact on the county as a result of a change in zoning or land use or the provision of maintenance of infrastructure, the panel shall quantify such impact in terms of cost. As to any objection which the panel has determined to be valid, the panel, in its findings, may establish reasonable zoning, land use, or density conditions applicable to the annexation and propose any reasonable mitigating measures as to an objection pertaining to infrastructure demands.

(2) In arriving at its determination, the panel shall consider:

(A) The existing comprehensive land use plans of both the county and city;

(B) The existing land use patterns in the area of the subject property;

(C) The existing zoning patterns in the area of the subject property;

(D) Each jurisdiction's provision of infrastructure to the area of the subject property and to the areas in the vicinity of the subject property;

(E) Whether the county has approved similar changes in intensity or allowable uses on similar developments in other unincorporated areas of the county;

(F) Whether the county has approved similar developments in other unincorporated areas of the county which have a similar impact on infrastructure as complained of by the county in its objection; and

(G) Whether the infrastructure or capital outlay project which is claimed adversely impacted by the county in its objection was funded by a county-wide tax.

(3) The county shall provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the subject property, which may include, but not be limited to, adopted planning documents and capital or infrastructure plans.

(4) The cost of the arbitration shall be equally divided between the city and the county; provided, however, that, if the panel determines that any party has advanced a position that is not valid, the costs shall be borne by the party or parties that have advanced such position.

(5) The reasonable costs of participation in the arbitration process of the property owner or owners whose property is at issue shall be borne by the county and the city in the same proportion as costs are apportioned under paragraph (4) of this subsection.

(6) The panel shall deliver its findings and recommendations to the parties and the department by verifiable delivery. The department shall maintain a data base and record of arbitration panel results and at least annually publish a report on such decisions and make such report freely available on the department's website.

(b) If the decision of the panel contains zoning, land use, or density conditions, the findings and recommendations of the panel shall be recorded in the deed records of the county with a caption describing the name of the current owner of the property, recording reference of the current owner's acquisition deed and a general description of the

property, and plainly showing the expiration date of any restrictions or conditions.

(c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and recommendations but may be reconvened as provided in Code Section 36-36-116.

(d) Notwithstanding the provisions of subsection (b) of Code Section 45-7-21, the members of the arbitration panel shall receive the same per diem, expenses, and allowances for their service on the panel as authorized by law for members of the General Assembly.

(e) If the panel so agrees, any one or more additional annexation disputes which may arise between the parties prior to the panel's initial meeting may be consolidated for the purpose of judicial economy if there are similar issues of location or similar objections raised to such other annexations or the property to be annexed in such other annexations is within 2,500 feet of the subject property.

History.

Code 1981, § 36-36-115, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461; Ga. L. 2025, p. 1029, § 36(13)/SB 153, effective July 1, 2025.

Delayed effective date.

Code Section 36-36-115 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in paragraph (a)(4).

36-36-115. (Effective January 1, 2026.) Meetings of arbitration panel; duties; findings and recommendations; compensation.

(a)(1)(A) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as soon after appointment as practicable and shall receive evidence and argument from the municipal corporation, the county, and the applicant or property owner and shall by majority vote render a decision which shall be binding on all parties to the dispute as provided for in this article not later than 60 days following such appointment, provided that the chairperson of the arbitration panel shall be authorized to extend such deadline one time for a period of up to ten business days; provided, however, that the municipal corporation and county may by mutual agreement, postpone the arbitration procession for a period of up to 180 days to negotiate a potential settlement, and such postponement shall stay the 60 day deadline provided herein.

(B) Meetings of the panel may occur in person, virtually, or via teleconference. The meetings of the panel in which evidence is submitted or arguments of the parties are made, whether such

meeting is in person, virtual, or via teleconference, shall be open to the public pursuant to Chapter 14 of Title 50.

(C) The panel shall first determine the validity of the grounds for objection as specified in the objection. If an objection involves the financial impact on the county as a result of a change in zoning or land use or the provision of maintenance of infrastructure, the panel shall quantify such impact in terms of cost. As to any objection which the panel has determined to be valid, the panel, in its findings, may establish reasonable zoning, land use, or density conditions applicable to the annexation and propose any reasonable mitigating measures as to an objection pertaining to infrastructure demands.

(2) In arriving at its determination, the panel shall consider:

(A) The existing comprehensive land use plans of both the county and city;

(B) The existing land use patterns in the area of the subject property;

(C) The existing zoning patterns in the area of the subject property;

(D) Each jurisdiction's provision of infrastructure to the area of the subject property and to the areas in the vicinity of the subject property;

(E) Whether the county has approved similar changes in intensity or allowable uses on similar developments in other unincorporated areas of the county;

(F) Whether the county has approved similar developments in other unincorporated areas of the county which have a similar impact on infrastructure as complained of by the county in its objection; and

(G) Whether the infrastructure or capital outlay project which is claimed adversely impacted by the county in its objection was funded by a county-wide tax.

(3) The county shall provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the subject property, which may include, but not be limited to, adopted planning documents and capital or infrastructure plans.

(4) The cost of the arbitration shall be equally divided between the city and the county; provided, however, that, if the panel determines that any party has advanced a position that is not valid, the costs

shall be borne by the party or parties that have advanced such position.

(5) The reasonable costs of participation in the arbitration process of the property owner or owners whose property is at issue shall be borne by the county and the city in the same proportion as costs are apportioned under paragraph (4) of this subsection.

(6) The panel shall deliver its written findings and recommendations to the parties and the department by verifiable delivery. The written findings and recommendations shall include a signed statement for each panel member as to whether or not he or she voted in support of or against such findings and recommendations. The department shall maintain a data base and record of arbitration panel results and at least annually publish a report on such decisions and make such report freely available on the department's website.

(b) If the decision of the panel contains zoning, land use, or density conditions, the findings and recommendations of the panel shall be recorded in the deed records of the county with a caption describing the name of the current owner of the property, recording reference of the current owner's acquisition deed and a general description of the property, and plainly showing the expiration date of any restrictions or conditions.

(c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and recommendations but may be reconvened as provided in Code Section 36-36-116.

(d) Notwithstanding the provisions of subsection (b) of Code Section 45-7-21, the members of the arbitration panel shall receive the same per diem, expenses, and allowances for their service on the panel as authorized by law for members of the General Assembly plus $100.00 in total for all days of service for serving on an arbitration panel.

(e) If the panel so agrees, any one or more additional annexation disputes which may arise between the parties prior to the panel's initial meeting may be consolidated for the purpose of judicial economy if there are similar issues of location or similar objections raised to such other annexations or the property to be annexed in such other annexations is within 2,500 feet of the subject property.

History.

Code 1981, § 36-36-115, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461; Ga. L. 2025, p. 1029, § 36(13)/SB 153, effective July 1, 2025; Ga. L. 2025, p. 476, § 1-2/HB 155, effective January 1, 2026; Ga. L. 2025, p. 1029, § 36(13)/SB 153, effective July 1, 2025.

Delayed effective date.

Code Section 36-36-115 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The first 2025 amendment, effective

January 1, 2026, substituted "ten business days; provided, however, that the municipal" for "ten business days. Notwithstanding anything in this subparagraph to the contrary, the municipal" in subparagraph (a)(1)(A); in paragraph (a)(6), inserted "written" in the first sentence and added the second sentence; and, in subsection (d), added "plus $100.00 in total for all days of service for serving on an arbitration panel" at the end.

The second 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "however, that," for "however, that" in paragraph (a)(4).

36-36-116. Appeal.

The municipal or county governing authority or an applicant for annexation may appeal the decision of the arbitration panel by filing an action in the superior court of the county within ten calendar days from receipt of the panel's findings and recommendations. The sole grounds for appeal shall be to correct errors of fact or of law, the bias or misconduct of an arbitrator, or the panel's abuse of discretion. The superior court shall schedule an expedited appeal and shall render a decision within 20 days from the date of filing. If the court finds that an error of fact or law has been made, that an arbitrator was biased or engaged in misconduct, or that the panel has abused its discretion, the court shall issue such orders governing the proposed annexation as the circumstances may require, including remand to the panel. Any unappealed order shall be binding upon the parties. The appeal shall be assigned to a judge who is not a judge in the circuit in which the county is located.

History.

Code 1981, § 36-36-116, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

36-36-117. Annexation after conclusion of procedures; remedies for violations of conditions.

If the annexation is completed after final resolution of any objection, whether by agreement of the parties, act of the panel, or court order as a result of an appeal, the municipal corporation shall not change the zoning, land use, or density of the annexed property for a period of two years unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. Following the conclusion of the dispute resolution process outlined in this article, the municipal corporation and an applicant for annexation may either accept the recommendations of the arbitration panel and proceed with the remaining annexation process or abandon the annexation proceeding. A violation of the conditions set

forth in this Code section may be enforced thereafter at law or in equity until such conditions have expired as provided in this Code section.

History.
Code 1981, § 36-36-117, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.

JUDICIAL DECISIONS

Failure to comply with dispute resolution procedures does not invalidate annexation. — In an annexation dispute, the ruling in favor of the city on the county's declaratory judgment claim was upheld because the county's contention that the annexation at issue was void on the ground that the city failed to comply with the statutory dispute resolution procedures was rejected as nothing in Georgia Annexation Act, O.C.G.A. § 36-36-110 et seq., stated that failure to comply with the statutory process resulted in the annexation being invalid. Coweta County v. City of Newnan, 374 Ga. App. 702, 913 S.E.2d 841, 2025 Ga. App. LEXIS 114 (2025).

36-36-118. Abandonment of proposed annexation; remedies for violations of conditions.

If at any time during the proceedings the municipal corporation or applicant abandons the proposed annexation, the county shall not change the zoning, land use, or density affecting the property for a period of one year unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. A violation of the conditions set forth in this Code section may be enforced thereafter at law or in equity until such period has expired. After final resolution of any objection, whether by agreement of the parties, act of the panel, or any appeal from the panel's decision, the terms of such decision shall remain valid for the two-year period and such annexation may proceed at any time during the two years without any further action or without any further right of objection by the county.

History.
Code 1981, § 36-36-118, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.

36-36-119. Good faith negotiations; written agreement governing terms of annexation.

The county, the municipal governing authorities, and the property owner or owners shall negotiate in good faith throughout the annexation proceedings provided by this article and may at any time enter into a written agreement governing the annexation. Such agreement may provide for changing the zoning, land use, or density of the annexed property during a period of less than two years. If such agreement is reached after the arbitration panel has been appointed and before its dissolution, such agreement shall be adopted by the panel as its findings and recommendations. If such agreement is reached after an

appeal is filed in the superior court and before the court issues an order, such agreement shall be made a part of the court's order. Any agreement reached as provided in this Code section shall be recorded as provided in Code Section 36-36-115. Copies of such agreement shall also be provided by the parties to the department in the same manner as the findings and recommendations of an arbitration panel.

History.
Code 1981, § 36-36-119, enacted by Ga. L. 2007, p. 292, § 2/HB 2; Ga. L. 2022, p. 367, § 1/HB 1461.

Law reviews.
For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

ARTICLE 8

MUNICIPAL DEANNEXATION

Effective date.
This article became effective May 2, 2023.

36-36-130. Application of statutory provisions.

The procedures of this article shall apply to deannexations pursuant to this article but shall not apply to deannexations by local Acts of the General Assembly.

History.
Code 1981, § 36-36-130, enacted by Ga. L. 2023, p. 411, § 3/HB 374, effective May 2, 2023.

36-36-131. Application for deannexation; scope; filing of notification of deannexation; reannexation.

(a) Authority is granted to the governing authority of any municipality to deannex an area or areas of the existing corporate limits thereof, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be deannexed, containing a complete description of the lands to be deannexed; provided, however, that no more than ten parcels of property may be deannexed in one action and only upon the adoption of a resolution by the governing authority of the county in which such property is located consenting to such deannexation. If the governing authority of the county consents to the deannexation and the deannexation conforms with the requirements of this article, the governing authority of the municipal corporation shall approve such deannexation unless it finds that the deannexation would be detrimental to the health, safety, and

welfare of the residents and property owners of the area to be deannexed or to the area remaining within the municipality.

(b) Lands to be deannexed at any one time under this article shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipality when any one part of the entire body abuts such limits; provided, however, that at least one-eighth of the aggregate external boundary or 50 feet of the area to be deannexed, whichever is less, either abuts directly on the municipal boundary or would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or by the definite width of:

(1) Any street or street right of way;

(2) Any creek or river; or

(3) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be deannexed.

(c) When such application is acted upon by the municipal governing authority and the land is, by ordinance, deannexed from the municipality, an identification of the property so deannexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3.

(d) When so deannexed, such lands shall cease to constitute a part of the lands within the corporate limits of the municipality as completely and fully as if the limits had been marked and defined by local Act of the General Assembly.

(e)(1) Except as provided in paragraph (2) of this subsection and Code Section 36-36-133, when so deannexed, the land shall be deannexed from the municipality effective for ad valorem tax purposes on December 31 of the year during which such application is submitted and for all other purposes on the first day of the next calendar quarter that begins at least one month after the month during which the requirements of this article have been met.

(2) Unless otherwise agreed in writing by the governing authority of the county and a municipal governing authority, where property zoned and used for commercial purposes is deannexed from a municipality with an independent school system, the effective date for the purposes of ad valorem taxes levied for educational purposes shall be December 31 of the year after the year in which the requirements of this article have been met.

(f) Property that has been deannexed from a municipality under this article shall not be annexed again until at least two calendar years after the effective date of such deannexation unless such annexation is accomplished by local Act of the General Assembly.

History. Code 1981, § 36-36-131, enacted by Ga. L. 2023, p. 411, § 3/HB 374, effective May 2, 2023.

36-36-132. Unincorporated islands prohibited.

There shall be no deannexation under this article that results in the formation of one or more unincorporated islands or in part of the area remaining in the municipal corporation no longer being a contiguous area of such municipal corporation.

History. Code 1981, § 36-36-132, enacted by Ga. L. 2023, p. 411, § 3/HB 374, effective May 2, 2023.

36-36-133. Debt limitations on deannexation.

In the event that a municipality has outstanding general obligation bond or revenue bond indebtedness, property in such municipality is ineligible for deannexation pursuant to this article.

History. Code 1981, § 36-36-133, enacted by Ga. L. 2023, p. 411, § 3/HB 374, effective May 2, 2023.

36-36-134. Municipal services for deannexed property.

In the event of a deannexation pursuant to this article, a municipality may, but is not required to, continue to provide any services to the property which it was providing immediately prior to the deannexation, provided that the county and municipality have agreed to terms and conditions for the municipality continuing to provide such services.

History. Code 1981, § 36-36-134, enacted by Ga. L. 2023, p. 411, § 3/HB 374, effective May 2, 2023.

CHAPTER 37

ACQUISITION AND DISPOSITION OF REAL AND PERSONAL PROPERTY GENERALLY

Sec.	
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36-37-2.	Acceptance of donations or gifts of property generally.
36-37-3.	Municipal corporations as trustees for donated or gifted property generally.
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36-37-6.	Disposition of municipal property generally.
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36-37-9.	Ballot language for election on disposition of public utility plant or property.
36-37-10.	Determination of results for election to dispose of public utility plant or property.

Cross references.
Disposition of property no longer needed for public road purposes, § 32-7-1 et seq.

36-37-1. Devises, gifts, and grants of property for parks or other public purposes.

(a) By appropriate conveyance, any person may devise, give, or grant to any municipal corporation of this state, in fee simple or in trust, or to other persons as trustees, lands dedicated by such conveyance in perpetuity to the public use as a park, pleasure ground, or for other public purpose. By such conveyance, any person may also devise, give, or grant in perpetuity to such corporations or persons other property, real or personal, for the development, improvement, and maintenance of such property.

(b) Any municipal corporation or other persons, natural or artificial, as trustees, to whom such devise, gift, or grant is made may accept the same in behalf of and for the benefit of the public. The municipal corporation or trustees shall have the right to improve, embellish, and ornament the land so granted as a public park or for other public use. Every municipal corporation to which such conveyance is made shall have the power, by appropriate police provision, to protect the public in the use and enjoyment thereof.

History.
Ga. L. 1905, p. 117, §§ 1, 2; Civil Code 1910, §§ 890, 891; Code 1933, §§ 69-504, 69-505.
Cross references.
Further provisions regarding gifts of property or money to counties and municipalities for playground or recreation purposes, § 36-64-6.
Law reviews.
For comment on Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966), see 2 Ga. St. B. J. 487 (1966).
For comment on Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634 (1970), as to reversion of a charitable trust designed to operate on a segregated basis rather than application of cy pres, see 22 Mercer L. Rev. 493 (1971).

JUDICIAL DECISIONS

Public character of a park requires that the park be treated as a public institution subject to the command of U.S. Const., amend. 14. Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373, 1966 U.S. LEXIS 2530 (1966) (For comment, see 2 Ga. St. B.J. 487 (1966)).
When the testator's intent to create racially segregated city park could not legally be carried out, application of cy pres doctrine reverting land to heirs was not unconstitutional. Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634, 1970 U.S. LEXIS 3133 (1970) (For comment, see 22 Mercer L. Rev. 493 (1971)).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 459 et seq. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, §§ 6, 7.
C.J.S.
63 C.J.S., Municipal Corporations, §§ 1114, 1117, 1121.
ALR.
Power of municipal corporation or other political body to accept and administer trust, 10 A.L.R. 1368.
Validity and effect of gift for charitable purposes which excludes otherwise qualified beneficiaries because of their race or religion, 25 A.L.R.3d 736.
Construction of highway through park as violation of use to which park property may be devoted, 60 A.L.R.3d 581.

36-37-2. Acceptance of donations or gifts of property generally.

Each municipal corporation is authorized to receive any donations or gifts of real or personal property which may be made to it by deed of gift, will, or otherwise, subject to such conditions as may be specified in the instrument giving or donating the property, if the governing body of the municipal corporation approves of such conditions.

History.
Ga. L. 1892, p. 104, § 1; Civil Code 1895, § 740; Civil Code 1910, § 887; Code 1933, § 69-501.
Law reviews.
For article, "Cities and Towns in Georgia: A Distinction with a Difference?," see 14 Mercer L. Rev. 385 (1963).

JUDICIAL DECISIONS

Bequests for charitable purposes. — Incorporated city of this state is authorized, under former Civil Code 1910, §§ 887 and 888 (see now O.C.G.A.

§§ 36-37-2 and 36-37-3), to receive and apply bequest for charitable purposes. Moss v. Youngblood, 187 Ga. 188, 200 S.E. 689, 1938 Ga. LEXIS 794 (1938).

Any condition on the gift might be imposed by persons making donation that would not conflict with either constitutional or general law of state. Tillman v. Mayor of Athens, 206 Ga. 289, 56 S.E.2d 624, 1949 Ga. LEXIS 456 (1949).

Governing body of municipality receiving gift must approve conditions imposed by persons making gift; this is the sole restriction of this section. Tillman v. Mayor of Athens, 206 Ga. 289, 56 S.E.2d 624, 1949 Ga. LEXIS 456 (1949).

OPINIONS OF THE ATTORNEY GENERAL

Deed containing reversionary clause. — Georgia Historical Commission (now Department of Natural Resources) cannot accept deed from city containing reversionary clause for land on which state funds to be used. 1962 Ga. Op. Att'y Gen. 395.

Reimbursement by petition sponsor for referendum costs. — Municipalities are not authorized to receive funds from the sponsor of a petition calling for a referendum on the question of the sale of distilled spirits by the drink to reimburse the municipality for the costs and expense of holding the referendum. 1984 Op. Att'y Gen. No. 84-36.

Sale of donated property exempted from bid process. — Disposition of real property donated to a municipality upon the approved condition for use as a hospital is excepted by O.C.G.A. § 36-37-2 from the sealed bid or auction procedure of O.C.G.A. § 36-37-6; however, the city officials must exercise the utmost good faith, fidelity and integrity to obtain the best price in any sale of the property. 1984 Op. Att'y Gen. No. U84-20.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 459.

ALR.

Power of municipal corporation or other political body to accept and administer trust, 10 A.L.R. 1368.

36-37-3. Municipal corporations as trustees for donated or gifted property generally.

Municipal corporations may act as trustees under any conveyance or will donating or giving property for charitable or eleemosynary purposes.

History.

Ga. L. 1892, p. 104, § 2; Civil Code 1895, § 741; Civil Code 1910, § 888; Code 1933, § 69-502.

JUDICIAL DECISIONS

Bequests for charitable purposes. — Incorporated city of this state is authorized, under former Civil Code 1910, §§ 887 and 888 (see now O.C.G.A. §§ 36-37-2 and 36-37-3), to receive and apply bequest for charitable purposes. Moss v. Youngblood, 187 Ga. 188, 200 S.E. 689, 1938 Ga. LEXIS 794 (1938).

Devises for parks. — Georgia cities and towns are authorized to accept devises of property for establishment and preservation of "parks and pleasure grounds" and to hold the property thus received in charitable trust for the exclusive benefit of the class of persons named by the testator. Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634, 1970 U.S. LEXIS 3133 (1970).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 461, 470.
C.J.S.
63 C.J.S., Municipal Corporations, § 1113.
ALR.
Power of municipal corporation or other political body to accept and administer trust, 10 A.L.R. 1368.
Liability of township trustees for loss of public funds, 18 A.L.R. 982.

36-37-4. Receipt of cemetery or burial lots in trust; annual returns; commissions.

Any person may convey to the mayor and council of any municipal corporation in this state any money or property to be held by the mayor and council in trust, the corpus or increase thereof to be expended, as directed by such conveyance, in the improvement or preservation and care of any cemetery or of the burial lots of such owner therein. The mayor and council shall receive and hold the property and execute such trusts, according to the terms thereof, as other trusts are executed under the laws of this state. They shall make annual returns to the judge of the probate court and shall be entitled to such commissions as are paid to other trustees, but they shall not be required to give bond.

History.
Ga. L. 1889, p. 178, § 1; Civil Code 1895, § 742; Civil Code 1910, § 889; Code 1933, § 69-503.

RESEARCH REFERENCES

Am. Jur. 2d.
14 Am. Jur. 2d, Cemeteries, § 17 et seq.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 460.
ALR.
Validity and reasonableness of rules and regulations of cemetery company or association as to improvement or care of lots, 32 A.L.R. 1406; 47 A.L.R. 70.
Injunction against removal of, or interference with, remains interred in burial lot, 33 A.L.R. 1432.
Cemetery property and cemetery lots as subject to assessment for public improvement, in absence of express exemption, 71 A.L.R. 322.

36-37-5. Municipal corporation as trustee of funds donated to cemetery.

Any municipal corporation of this state may act as trustee of any funds donated to any cemetery within the limits of the municipal corporation.

History.
Ga. L. 1953, Jan.-Feb. Sess., p. 34, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 461, 470.

ALR.
Power of municipal corporation or other political body to accept and administer trust, 10 A.L.R. 1368.

36-37-6. Disposition of municipal property generally.

(a)(1) Except as otherwise provided in subsections (b) through (j) of this Code section, the governing authority of any municipal corporation disposing of any real or personal property of such municipal corporation shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Any such municipal corporation shall have the right to reject any and all bids or to cancel any proposed sale. The governing authority of the municipal corporation shall cause notice to be published once in the official legal organ of the county in which the municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a general description of the property to be sold if the property is personal property or a legal description of the property to be sold if the property is real property. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened. The provisions of this subsection shall not apply to any transactions authorized in subsections (c) through (j) of this Code section.

(2)(A) Municipal corporations may retain the services of a Georgia licensed real estate broker to assist in the disposition of surplus real property; said brokerage services shall be procured by request for proposals in response to an issued solicitation. The proposal shall include the minimum stated broker qualifications and experience.

(B) In the event a municipal corporation does retain the services of a qualified and experienced Georgia licensed real estate broker

to assist in the disposition of surplus real property, the broker so retained shall:

(i) Represent the municipal corporation and comply with the requirements of this Code section, including, but not limited to, issuing a call or request for sealed bids from the public and causing notice to be published once in the official legal organ of the county in which the municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a legal description of the real property to be sold. The notice shall also contain a request for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids;

(ii) Actively market the disposition of the real property;

(iii) Comply with all federal, state, and local laws;

(iv) Create a website which posts the request for sealed bids; questions submitted by interested parties; responses to submitted questions as prepared by the municipal corporation; dates the real property will be made available for public inspection; public information regarding the property; and other related communication and marketing information;

(v) Immediately forward the sealed bids to the governing authority of the municipal corporation, which shall open such bids at the specified date, time, and place;

(vi) Only serve in the capacity of a broker engaged by a seller as provided for in Code Section 10-6A-5. A real estate broker representing a municipal corporation shall be prohibited from working with or aiding a prospective buyer in connection with the disposition of real property for which the real estate broker was contracted; and

(vii) Agree to accept the agreed upon sales commission based on the highest responsive bid received as so adjudicated by the governing authority of the municipal corporation, in its sole discretion.

(C) In the event the municipal corporation decides to reject all bids and not award the sale to any of the bidders, the broker shall agree to accept the minimum payment in lieu of the commission as so agreed upon by the parties in an engagement contract.

(b) The governing authority of any municipal corporation is autho-

rized to sell personal property belonging to the municipal corporation which has an estimated value of $500.00 or less and lots from any municipal cemetery, regardless of value, without regard to subsection (a) of this Code section. Such sales may be made in the open market without advertisement and without the acceptance of bids. The estimation of the value of any such personal property to be sold shall be in the sole and absolute discretion of the governing authorities of the municipal corporation or their designated agent.

(c) Nothing in this Code section shall prevent a municipal corporation from trading or exchanging real property belonging to the municipal corporation for other real property where the property so acquired by exchange shall be of equal or greater value than the property previously belonging to the municipal corporation; provided, however, that, within six weeks preceding the closing of any such proposed exchange of real property, a notice of the proposed exchange of real property shall be published in the official organ of the municipal corporation once a week for four weeks. The value of both the property belonging to the municipal corporation and that to be acquired through the exchange shall be determined by appraisals and the value so determined shall be approved by the proper authorities of said municipal corporation.

(d) The governing authority of any municipal corporation is authorized to sell real property in established municipal industrial parks or in municipally designated industrial development areas for industrial development purposes without regard to subsection (a) or (b) of this Code section.

(e)(1) This Code section shall not apply to any municipal corporation which has a municipal charter provision setting forth procedures for the sale of municipal property and existing as of January 1, 1976, so long as such charter provision thereafter remains unchanged and as long as such charter provision contains the minimum notice requirements as set forth in subsection (a) of this Code section.

(2) This Code section shall not apply to the disposal of property:

(A) Which is acquired by deed of gift, will, or donation and is subject to such conditions as may be specified in the instrument giving or donating the property;

(B) Which is received from the United States government or from this state pursuant to a program which imposes conditions on the disposal of such property;

(C) Which is disposed of pursuant to the powers granted in Chapter 61 of this title, the "Urban Redevelopment Law," or a homesteading program;

(D) Which is sold or transferred to another governing authority or government agency for public purposes; or

(E) Which is no longer needed for public road purposes and which is disposed of pursuant to Code Section 32-7-4.

(f) Notwithstanding any provision of this Code section or of any other law or any ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell real property within its corporate limits for museum purposes to either a public authority or a nonprofit corporation which is classified as a public foundation (not a private foundation) under the United States Internal Revenue Code, for the purpose of building, erecting, and operating thereon a museum or facility for the development or practice of the arts. Such sale may be made in the open market or by direct negotiations without advertisement and without the acceptance of bids. The estimation of the value of any property to be sold shall be in the sole and absolute discretion of the governing authority of the municipality or its designated agent; provided, however, that nothing shall prevent a municipality from trading or swapping property with another property owner if such trade or swap is deemed to be in the best interest of the municipality.

(g) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, the governing authority of any municipal corporation is authorized to sell and convey parcels of narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property without first submitting the sale or conveyance to the process of an auction or the solicitation of sealed bids; provided, however, that each abutting property owner shall be notified of the availability of the property and shall have the opportunity to purchase said property under such terms and conditions as set out by ordinance.

(h) Notwithstanding any provision of this Code section to the contrary or any other provision of law or ordinance to the contrary, whenever any municipal corporation determines that the establishment of a facility of the state or one of its authorities or other instrumentalities or of a bona fide nonprofit resource conservation and development council would be of benefit to the municipal corporation, by way of providing activities in an area in need of redevelopment, by continuing or enhancing local employment opportunities, or by other means or in other ways, such municipal corporation may sell or grant any of its real or personal property to the state or to any of its authorities or instrumentalities or to a bona fide nonprofit resource

conservation and development council and, further, may sell or grant such lesser interests, rental agreements, licenses, easements, and other dispositions as it may determine necessary or convenient. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way.

(i)(1) As used in this subsection, the term "lake" means an impoundment of water in which at least 1,000 acres of land were to be submerged.

(2) Notwithstanding any provision of this Code section or any other law to the contrary, whenever any municipality has acquired property for the creation or development of a lake, including but not limited to property the acquisition of which was reasonably necessary or incidental to the creation or development of that lake, and the governing authority of such municipality thereafter determines that all or any part of the property or any interest therein is no longer needed for such purposes because of changed conditions, that municipality is authorized to dispose of such property or interest therein as provided in this subsection.

(3) In disposing of property, as authorized under this subsection, the municipality shall notify the owner of such property at the time of its acquisition or, if the tract from which the municipality acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the municipality acquired its property. The notice shall be in writing delivered to the appropriate owner or by publication if such owner's address is unknown; and such owner shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the municipality where the property is located.

(4) When an entire parcel acquired by the municipality or any interest therein is being disposed of, it may be acquired under the right created in paragraph (3) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition. When only remnants or portions of the original acquisition are being disposed of, they may be acquired for the market value thereof at the time the municipality decides the property is no longer needed.

(5) If the right of acquisition is not exercised within 60 days after due notice, the municipality shall proceed to sell such property as provided in subsection (a) of this Code section. The municipality shall thereupon have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(j)(1) As used in this subsection, the term:

(A) "Conservation easement" shall have the same meaning as set forth in Code Section 44-10-2.

(B) "Holder" shall have the same meaning as set forth in Code Section 44-10-2.

(2) Notwithstanding any provision of this Code section or of any other law or ordinance to the contrary, whenever the governing authority of any municipal corporation determines that the establishment of a conservation easement would be of benefit to the municipal corporation and to its citizens, such governing authority may sell or grant to any holder a conservation easement over any of its real property, including but not limited to any of its real property set aside for use as a park. These powers shall be cumulative of other powers and shall not be deemed to limit their exercise in any way; provided, however, that a conservation easement may not be created, granted, or otherwise conveyed for the purpose of preventing, frustrating, or interfering with the exercise of the power of eminent domain by any public utility or other entity authorized to exercise the power of eminent domain.

(k)(1) Notwithstanding any provision of this Code section or any other law to the contrary, the General Assembly by local Act may authorize the governing authority of any municipal corporation to lease or enter into a contract for a valuable consideration for the operation and management, and renewals and extensions thereof, of any real or personal property comprising fairgrounds, ballfields, golf courses, swimming pools, or other like property used primarily for recreational purposes for a period not to exceed five years to a nonprofit corporation which is qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 that will covenant to use and operate the property for annual regional fair purposes or to continue the recreational purpose for which the property was formerly used and intended on a nondiscriminatory basis for the use and benefit of all citizens of the community; provided, however, that nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or that would cause the divesting of title to property dedicated to public use and not subsequently abandoned; and provided further, that the lessee or contractee under a management contract shall not mortgage or pledge the property as security for any debt or incur any encumbrance that could result in a lien or claim of lien against the property. The lease or management contract may provide for options to renew such lease or management contract for not more than three renewal periods and each such renewal period shall not be greater

than the original length of such lease or management contract. As a condition of any lease or management contract, the lessee or contractee shall provide and maintain in force and effect throughout the term of such lease or management contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured; shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of such person while on the property; and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by such person. As an additional condition of any such lease or management contract, the lessee or contractee shall provide to and maintain with the municipality a current copy of the liability insurance policy, including any changes in such policy or coverages as such changes occur, and shall provide proof monthly in writing to the municipality that the lessee or contractee has in force and effect the liability insurance required by this paragraph which the municipality shall retain on file. As a further condition of any lease or management contract, the lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvements to such property. When the lessee or contractee charges any person to enter or go upon the land for the purpose of attending the annual regional fair or for attending or participating in recreational purposes, the consideration received by the municipal corporation for the lease or management contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(2) Any governing authority entering into a lease as provided in paragraph (1) of this subsection shall have the right unilaterally to terminate such lease after giving three months' notice of its intention to do so.

(3) Any lease entered into as provided in paragraph (1) of this subsection shall be automatically terminated upon conviction of the lessee or contractee for any offense involving the conduct of unlawful activity. In such event, any improvements to the property made by the lessee shall be forfeited. The municipality shall not be liable in any manner or subject to suit for any indebtedness or other obligations of the lessee or contractee associated with any such improvements to the property and shall take such improvements free and clear of any such indebtedness or other obligations.

(l)(1) Where not otherwise authorized by its charter or other applicable law, the governing authority of any municipal corporation may lease or enter into a contract for valuable consideration for the use,

operation, or management of any real or personal property of the municipal corporation pursuant to the power granted by this subsection. The authority of any municipal corporation granted pursuant to its charter or other applicable law to enter into leases or contracts for the use, operation, or management of any real or personal property of the municipal corporation shall not be affected by this subsection and it shall not apply to any contracts or leases entered into pursuant to such authority. Where a municipal charter or other applicable law provides no authorization for leasing or contracting for the use, operation, or management of any real or personal property of the municipal corporation and this subsection is to be used as authorization for that purpose, the following shall apply:

(A) Any lease or contract for the use, operation, or management of any real or personal property for longer than 30 days shall be by sealed bids or by auction as provided in subsection (a) of this Code section. Easements and licenses for the use of municipal property in connection with construction projects of a municipal corporation shall be exempt from this subparagraph, provided that their term is less than one year;

(B) Nothing in this subsection shall have the effect of authorizing alienation of title to such property in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or shall cause the divesting of title to property dedicated to public use and not subsequently abandoned; and

(C) The lessee or contractee shall not mortgage or pledge the property, lease or contract the property as security for any debt, or incur any encumbrance that could result in a lien or claim of lien against the property, lease, or contract.

(2) Any lease or contract for the use, operation, or management of any real or personal property entered into pursuant to this subsection and for longer than 30 days shall contain the following terms:

(A) The lessee or contractee shall provide and maintain in force in effect throughout the term of such lease or contract sufficient liability insurance, in an amount not less than $1 million per claim, no aggregate, naming the municipality as a named insured;

(B) The lessee or contractee shall assume sole responsibility for or incur liability for any injury to person or property caused by any act or omission of any person while on the property and shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand made by any person; and

(C) The lessee or contractee shall agree to indemnify the municipality and hold it harmless from any claim, suit, or demand

arising out of any improvements to the property or any indebtedness or obligations incurred by the lessee or contractee in making any such improvement to such property.

(3)(A) The initial term of a lease or contract for the use of real property entered into pursuant to this subsection shall be no longer than five years and there may be one renewal period of no longer than five years, after which the lease or contract shall again be subject to sealed bids or auction.

(B) When the lessee or contractee charges any person to enter or go upon the real property for recreational purposes, the consideration received by the municipal corporation for the lease or contract shall not be deemed a charge within the meaning of Article 2 of Chapter 3 of Title 51.

(C) Where real property is leased pursuant to this Code section for the erection of telecommunications towers, the initial term of a lease or contract for the use of such real property shall be no longer than ten years and there may be one renewal period of no longer than ten years, after which the lease or contract shall again be subject to sealed bids or auction; provided, however, that such lease shall also include provisions for the removal of the telecommunications tower structure.

(D) Where real property is leased pursuant to this Code section for the operation of an arena, sports field, stadium, or other recreational facility, the initial term of a lease or contract for the use of such real property shall be no longer than 20 years, and there shall not be a renewal period. After the initial term of a lease or contract, such lease or contract shall again be subject to sealed bids or auction.

(4) Where this subsection is applicable, it shall apply to any lease or contract entered into or renewed on or after July 1, 2011. This subsection shall not affect any provisions of subsection (k) of this Code section.

(5) Nothing contained in this Code section shall be construed so as to expand the powers of eminent domain or to otherwise provide for additional eminent domain authority for any municipal corporation. The ability for a governing authority of a municipal corporation to exercise eminent domain shall be subject to the limitations enumerated in Chapter 2 of Title 22 and the Georgia Constitution.

(m) Notwithstanding any other provision of law to the contrary, a city may exchange property dedicated as a city park with an institution owning property in or abutting a federal National Historic Site for use in connection with such property, provided that the city receives

property in fee simple that is of equal or greater acreage as the city property exchanged and that the city immediately dedicates the property as a public park.

History.

Code 1933, § 69-318, enacted by Ga. L. 1976, p. 350, § 1; Ga. L. 1978, p. 890, §§ 1, 2; Ga. L. 1981, p. 831, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1987, p. 1051, § 2; Ga. L. 1989, p. 1418, § 1; Ga. L. 1990, p. 877, § 2; Ga. L. 1992, p. 1348, § 2; Ga. L. 1993, p. 795, § 1; Ga. L. 2001, p. 863, § 1; Ga. L. 2004, p. 1076, § 1; Ga. L. 2005, p. 60, § 36/HB 95; Ga. L. 2010, p. 1078, § 2/SB 390; Ga. L. 2011, p. 240, § 3A/HB 280; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 647, § 1A/HB 189; Ga. L. 2018, p. 255, § 2/SB 397; Ga. L. 2023, p. 283, § 1/SB 116, effective July 1, 2023; Ga. L. 2025, p. 1029, § 36(14)/SB 153, effective July 1, 2025.

Amendments.

The 2023 amendment, effective July 1, 2023, added subparagraph (l)(3)(D).

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, deleted a colon following "posts" in division (a)(2)(B)(iv) and substituted "however, that," for "however, that" in subsection (c).

Cross references.

Discretion of governing body as to management and disposition of property, § 36-30-2.

Acquisition of facilities, § 36-34-3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2004, in paragraph (j)(1) (now paragraph (k)(1)), in the first sentence "purpose for which" was substituted for "purpose to which", "effect of" was substituted for "affect of", in the third sentence "insured" was substituted for "insured,", "act or omission" was substituted for "act of omission", "property;" was substituted for "property,", and "of Chapter 3" was inserted at the end.

Editor's notes.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Law reviews.

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 69-203 and former Ga. L. 1956, p. 22 are included in the annotations for this Code section.

Property held by municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956) (decided under former Ga. L. 1956, p. 22 and local law).

Distinction between land held in governmental and proprietary capacities. — There is a clear distinction between property purchased by a municipal corporation and held for use by the municipal corporation as an entity, or in the municipality's proprietary capacity, and property purchased by the city for the public use and benefit of the

municipality's citizens. As to property acquired for strictly corporate purposes and held in the municipal corporation's proprietary capacity, the power to dispose is unquestioned, but as to the latter, in the absence of express legislative authority, it is only when the public use has been abandoned or the property has become unsuitable or inadequate for the purpose to which the property was dedicated that the city has the power to dispose of such property. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956) (decided under former Ga. L. 1956, p. 22 and local law).

Property held by a municipality for governmental or public uses cannot be sold without express legislative authority, but must be devoted to the use and purpose for which the property was intended. The rule is otherwise as to property held by a municipality in the municipality's proprietary or private capacity when not devoted to any specific public use. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953) (decided under former Code 1933, § 69-203).

Though land be bought for public use, if not actually used for such purpose it cannot be said to be held by municipality affected by public trust, and may be sold. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953) (decided under former Code 1933, § 69-203).

When property held by municipality for governmental or public use is abandoned as to such use, the municipality may sell the property without express legislative approval. Kirkland v. Johnson, 209 Ga. 824, 76 S.E.2d 396, 1953 Ga. LEXIS 409 (1953) (decided under former Code 1933, § 69-203).

Power to swap and trade. — General Assembly did not intend by minor rearrangement of O.C.G.A. § 36-37-6 to expand the powers of municipalities, or to relieve the municipalities of the bidding requirements of the 1976 act, or to alter settled principles of the common law restricting the alienation of dedicated public lands; the power to swap and trade cemetery lots and personal property of limited value remains just that, and nothing more. Tuten v. City of Brunswick, 262 Ga. 399, 418 S.E.2d 367, 1992 Ga. LEXIS 585 (1992).

Proposed land exchange between city and church was ultra vires because the city lacked the power to dispose of the land by virtue of subsection (c) of O.C.G.A. § 36-37-6 which is not so substantive or reliable an expression of legislative intent as to vitiate the bidding requirements of subsection (a) nor to generate a radical inflation of subsection (b) to authorize a city to "swap" or "trade" all of the city's public property. Tuten v. City of Brunswick, 262 Ga. 399, 418 S.E.2d 367, 1992 Ga. LEXIS 585 (1992).

No lease of park for term of years for private gain. — Weight of authority is that a municipal park is a public utility, and a portion thereof cannot be leased for a term of years for private gain. Harper v. City of Augusta, 212 Ga. 605, 94 S.E.2d 690, 1956 Ga. LEXIS 461 (1956) (decided under former Ga. L. 1956, p. 22 and local law).

Preexisting option contracts. — O.C.G.A. § 36-37-6 has no application to the exercise of an option to purchase real estate which was granted prior to the statute's enactment. Silver v. City of Rossville, 253 Ga. 13, 315 S.E.2d 898, 1984 Ga. LEXIS 789 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Lease to private entity prohibited absent express authority. — Property held by a municipality for the public use and the benefit of the municipality's citizens cannot be leased to a private entity without express legislative authority, in the absence of other applicable exceptions. 1992 Op. Att'y Gen. No. U92-9.

Sale of donated property exempted. — Disposition of real property donated to a municipality upon the approved condition for use as a hospital is excepted by O.C.G.A. § 36-37-2 from the sealed bid or auction procedure of O.C.G.A. § 36-37-6; however, city officials must exercise the utmost good faith, fidelity, and integrity to obtain the best price in

any sale of the property. 1984 Op. Att'y Gen. No. U84-20.

RESEARCH REFERENCES

Am. Jur. 2d.

14 Am. Jur. 2d, Cemeteries, §§ 3, 9. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 472 et seq., 501.

C.J.S.

63 C.J.S., Municipal Corporations, §§ 1123 et seq., 1133. 64A C.J.S., Municipal Corporations, § 2385.

ALR.

Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

Lease of property by municipality or other political subdivision, with option to purchase same, as evasion of constitutional or statutory limitation of indebtedness, 71 A.L.R. 1318; 145 A.L.R. 1362.

Lease or sale of municipal plant or contract therefor as affecting right of municipality to compete, 118 A.L.R. 1030.

Implied or inherent power of municipal corporation to sell its real property, 141 A.L.R. 1447.

Right and capacity of taxpayer to attack sale by municipal corporation or other taxing unit of its property, 17 A.L.R.2d 475.

Power of municipal corporation to exchange its real property, 60 A.L.R.2d 220.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A.L.R.2d 595.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-37-6.1. Sale, exchange, lease, or grant of easement over property used for recreational purposes by certain incorporated municipalities.

(a) This Code section shall be applicable to incorporated municipalities of the State of Georgia having a population of more than 300,000 according to the United States decennial census of 1960 or any future such census.

(b) All such municipalities shall have authority to sell, exchange, or otherwise dispose of any real or personal property comprising parks, playgrounds, golf courses, swimming pools, or other like property used primarily for recreational purposes, provided that nothing in this Code section shall have the effect of authorizing alienation where such would be in derogation of rights, duties, and obligations imposed by prior deed, contract, or like document of similar import or where such alienation would cause divesting of title to a park, playground, golf course, swimming pool, or other like property that had been dedicated to public use and not subsequently abandoned.

(c)(1) All such municipalities shall have authority to lease out and grant easements over property used primarily for recreational purposes to others consistent with general park and recreational purposes for a period not exceeding 50 years and for a valuable consideration. Any such recreational property which was formerly used for annual regional fair purposes but is no longer so used may be leased

by any such municipality to one or more private entities for terms of not more than 50 years each for development and use as motion picture and television production, processing, and related facilities together with all such support and service facilities as are necessary or convenient to such use.

(2) All such municipalities shall have authority to enter into contracts and renewals and extensions of contracts for the cooperative operation, maintenance, cooperative management, and funding of property which in no way limits the governance or the policy role of said municipalities which property is used primarily for recreational purposes consistent with general park and recreational purposes, for periods not exceeding ten years and for a valuable consideration.

(3) Notwithstanding the provisions of subsection (b) of this Code section, all such municipalities shall have authority to lease out, grant easements over, or convey any property described in subsection (b) of this Code section to an independent school system operating in such municipality for a valuable consideration where the governing authority of such municipality and the board of such independent school system determine that such lease, easement, or conveyance is in the best interest of their respective jurisdictions and for use of the school system for educational purposes. If such property is conveyed, the governing authority of such municipality shall subsequently replace such property with one or more properties which are determined by such governing authority to be, in the aggregate, of equal or greater acreage and of substantially equivalent or greater benefit to the citizens of such municipality, taking into consideration the prevailing uses and needs of such municipality. One or more independent conveyances of property as may be agreed upon by such municipality and independent school system for the public uses set forth in subsection (b) of this Code section shall be credited against the replacement property required by this paragraph for any subsequent conveyance of property described in subsection (b) of this Code section by the municipality to the independent school system. The cumulative impact of such conveyances shall not result in a net loss of park acreage owned by such municipality.

History.

Ga. L. 1967, p. 3022, §§ 1-3; Ga. L. 1981, p. 3196, § 1; Code 1981, § 36-37-6.1, enacted by Ga. L. 1982, p. 2107, § 40; Ga. L. 1991, p. 796, § 1; Ga. L. 2025, p. 766, § 1/SB 252, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, added paragraph (c)(3).

Editor's notes.

The provisions of this Code section were previously enacted in substantially similar form by Ga. L. 1967, p. 3022, §§ 1-3, and Ga. L. 1981, p. 3196, § 1. However, those provisions were not enacted as part of the original Code by the Code enactment Act (Ga. L. 1981, Ex. Sess., p. 8).

Law reviews.
For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

For annual survey of recent developments, see 38 Mercer L. Rev. 473 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Lease to private entity prohibited absent express authority. — Property held by a municipality for the public use and the benefit of the municipality's citizens cannot be leased to a private entity without express legislative authority in the absence of other applicable exceptions. 1992 Op. Att'y Gen. No. U92-9.

36-37-6.2. Purchase or other acquisition of real property on time or partly for cash; securing of balance; limitation on liability.

(a) As used in this Code section, the term "governing body" means the mayor and city council, the commissioner and commissioners, or either or both as the case may be, or the "governing body" by whatever name called of any city coming under this Code section.

(b) Any city in this state having a population of 200,000 or more according to the United States decennial census of 1920 or any future such census may, through its governing body, purchase on time or partly for cash, with the balance on time or deferred payments, or otherwise acquire any real property or interest in real property within or outside the limits of such city, securing the note or claim for deferred payments and interest thereon with mortgages or deed of trust on the land purchased or with or by means of an instrument in writing retaining title thereto in the vendor, or enter into any other contractual arrangement whereby provision is made that such note, claim, or other instruments for deferred payment and interest thereon, and all lawful charges, shall not be a charge or charges against the general credit of the city, or be a general liability thereof, but that the liability shall only extend to and be a charge against the land so purchased or acquired. Such method of acquisition provided for in this Code section shall not be considered or deemed exclusive but shall be cumulative and in addition to all other methods of acquisition of lands or interests therein for public purposes provided heretofore, hereafter, or by other provisions of this Code section.

History.
Ga. L. 1929, p. 303, §§ 1, 2; Code 1981, § 36-37-6.2, enacted by Ga. L. 1982, p. 2107, § 41; Ga. L. 1987, p. 3, § 36.

Editor's notes.
The provisions of this Code section were previously enacted in substantially similar form by Ga. L 1929, p. 303, §§ 1 and 2. However, those provisions were not enacted as part of the original Code by the Code enactment Act (Ga. L. 1981, Ex. Sess., p. 8).

36-37-7. Authority to dispose public utility plants or properties.

Municipalities are empowered and authorized, if they so desire, to sell, lease, or otherwise dispose of any or all electric, water, gas, or other municipally owned public utility plants or properties, on such terms and conditions as such municipalities deem proper, and to transfer title to such public utility properties by warranty deed, bill of sale, contract, or lease, in the manner provided by law; provided, however, that nothing contained in this Code section and Code Sections 36-37-8 through 36-37-10 shall be held or construed to affect the powers of any municipal corporation in the charter of which there is now contained any provision either authorizing or prohibiting the sale, lease, or other disposition of such properties by the municipality, so long as such provision remains in the charter of the municipality.

History.
Ga. L. 1925, p. 177, § 1; Code 1933, § 91-901.

JUDICIAL DECISIONS

Sections do not limit authority of city to dispose of property under charter. — Language in a city charter authorizing the city to dispose of property the city owns "in any manner whatsoever" is not limited by the provisions of former Code 1933, §§ 91-901 through 91-904 (see now O.C.G.A. §§ 36-37-7 through 36-37-10). Singer v. City of Cordele, 225 Ga. 323, 168 S.E.2d 138, 1969 Ga. LEXIS 488 (1969).

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 485 et seq.

C.J.S.
63 C.J.S., Municipal Corporations, §§ 1123 et seq., 1133 et seq. 64A C.J.S., Municipal Corporations, § 2385.

ALR.
Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A.L.R.2d 595.

36-37-8. Notice required to dispose of public utility plants or properties; petition; election.

Notice of intention to make such sale, lease, or other disposition of a municipal waterworks or electric or gas plant, setting out the price and other general terms and conditions of the proposed sale, lease, or disposition, shall be given by publication once a week for three consecutive weeks in some newspaper published in the municipality and, if no newspaper is published in the municipality, then in some newspaper published in the county in which the municipality is located and, if there is no such newspaper, then in some newspaper having a general circulation in the municipality. After ten days from the last

publication of such notice, the plant may be disposed of unless, within ten days after the last publication of the notice, a petition signed by not less than 20 percent of the qualified voters of the municipality is filed, objecting to and protesting against the sale, lease, or disposition. If the petition, so signed, is filed, the sale shall not be made unless submitted to a special election ordered for the purpose of determining whether a majority, which shall constitute two-thirds of those voting at the election, favors the sale, lease, or other disposition. Such election shall be ordered by the municipality to be held not less than 50 days after the date of the filing of the objecting petition with the municipality. The election shall be held in accordance with and in all respects be governed by the Acts of the General Assembly in regard to elections to determine whether municipalities shall issue bonds or not. The notice of the election shall state its purpose.

History.
Ga. L. 1925, p. 177, § 2; Code 1933, § 91-902.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 496.

C.J.S.
63 C.J.S., Municipal Corporations, §§ 1123 et seq., 1136.

ALR.
Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

36-37-9. Ballot language for election on disposition of public utility plant or property.

The ballots provided for the election shall have plainly written or printed thereon the words "Shall the waterworks, electric, or gas plant (as the case may be), be sold, leased, or disposed of (as the case may be)?" Beside such words shall be suitably placed, on separate lines, the words "Yes" and "No," so that the voter may indicate the way he desires to vote on the question submitted.

History.
Ga. L. 1925, p. 177, § 3; Code 1933, § 91-903; Ga. L. 1982, p. 3, § 36.

36-37-10. Determination of results for election to dispose of public utility plant or property.

If two-thirds of those voting in the election vote in favor of such sale, lease, or disposition, the proper officers of the municipal corporation may proceed to sell, lease, or dispose of such plant in accordance with the terms and conditions set out in the notice of proposed intention to

sell, lease, or dispose of such plant. If such election is determined against the sale, lease, or disposition of the plant, the plant shall not be sold, leased, or disposed of but shall remain the property of the municipality.

History.
Ga. L. 1925, p. 177, § 4; Code 1933, § 91-904.

RESEARCH REFERENCES

ALR.
Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

CHAPTER 38

BONDS

Article 1

General Provisions

Sec.
36-38-1. Investment of funds acquired by tax levied to pay bonded indebtedness generally.
36-38-2. Sale of municipal bonds and use of proceeds for retirement of earlier bonds.
36-38-3. Registration of bonds in which municipal funds invested in name of municipal corporation.
36-38-4. Registration of bonds in name of owner.

Article 2

Compromise of Bonded Debt

Sec.
36-38-20. Authority to compromise bonded debt; rights of dissenting creditors not prejudiced.
36-38-21. Issuance of new bonds for outstanding bonds.
36-38-22. Issuance and exchange of bonds; contractual effect of ordinance.
36-38-23. Sinking funds for redemption of new bonds; appointment of commission to manage fund; contractual effect of ordinance.

ARTICLE 1

GENERAL PROVISIONS

36-38-1. Investment of funds acquired by tax levied to pay bonded indebtedness generally.

Every municipal corporation and the officer or officers of any municipal corporation in this state who are charged with the custody of funds raised in pursuance of Article IX, Section V, Paragraph VI of the Constitution of this state are required, under the direction of the mayor and council of the municipal corporation or a duly constituted and authorized committee of the same, to invest, within six months from their collection, all sums collected by the municipal corporation under the requirements of such paragraph of the Constitution, for the purpose of paying the principal of the bonded indebtedness of the municipal corporation, which sums are not actually payable on such principal within 12 months from the date of collection thereof. Such sums may be invested in valid outstanding bonds of such municipal corporation or of some other municipal corporation in this state of equal or larger size, which bonds have been duly validated in accordance with law, or in county bonds of this state which have been duly validated, or in valid outstanding bonds of this state or of the United States. The officer or officers of the municipal corporation shall keep such funds so invested in such bonds, with the privilege of changing the investment from one character of the bonds named to another from time to time as the mayor and council may direct, until such time before the maturity of

outstanding obligations as may be necessary to dispose of the same in order to meet such obligations at maturity.

History.
Ga. L. 1910, p. 100, §§ 1, 2; Code 1933, §§ 87-701, 87-702; Ga. L. 1983, p. 3, § 57.
Law reviews.
For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964).

JUDICIAL DECISIONS

Under statute, the municipality is "required" to invest the funds as stipulated. No discretion is left to the municipal authorities. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Law with regard to investment of sinking funds of municipality differs from that in case of funds held by county treasurer. Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235, 1932 Ga. LEXIS 343 (1932).

Loan of sinking fund. — If the fund is loaned to a bank on a time certificate, by the municipal officers, such contract of loan is illegal and void, as contrary to this section, and will not preclude the municipality from taking steps, before the maturity of such certificate, to compel the bank to turn over the certificate to the city, such bank being the designated depository of the funds of the city, and having knowledge that the fund so loaned is the sinking fund of the city. Hogansville Banking Co. v. City of Hogansville, 156 Ga. 855, 120 S.E. 604, 1923 Ga. LEXIS 348 (1923).

No contract exists when funds deposited in violation of section. — When a sinking fund, collected by taxation for the purpose of retiring bonded indebtedness, is deposited in a bank in violation of the provisions of this section, no effectual contract exists between the bank and the municipality as a depositor. The municipality cannot attempt to legalize the attempted contract by a later ratification. Town of Douglasville v. Mobley, 169 Ga. 53, 149 S.E. 575, 1929 Ga. LEXIS 280 (1929).

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, § 2092 et seq.
ALR.
Liability of officer for loss of sinking fund through failure of bank, 25 A.L.R. 1358.

36-38-2. Sale of municipal bonds and use of proceeds for retirement of earlier bonds.

Whenever a municipal corporation invests its sinking fund in bonds issued by itself, if such bonds mature at a date beyond the maturity of other bonds of such municipal corporation such later bonds may be sold by the municipal corporation or the sinking fund commission and the funds therefrom used to retire earlier municipal bonds as they mature.

History.
Ga. L. 1923, p. 123, § 3a; Code 1933, § 87-703; Ga. L. 1935, p. 417, § 2.
Law reviews.
For note discussing and comparing the prudent man rule and the legal list rule in

trustee investment, see 15 Mercer L. Rev. 530 (1964).

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, § 2084 et seq.

36-38-3. Registration of bonds in which municipal funds invested in name of municipal corporation.

Whenever and as soon as the sinking fund of any municipal corporation has been invested in municipal, county, state, or federal government bonds as required by Code Section 36-38-1, the officer or officers of such municipal corporation charged with the custody of its funds and securities shall proceed forthwith to have the securities in which such funds are so invested registered in the name of the municipal corporation, provided such bonds by their terms under the conditions of their issue are capable of being registered in the name of the owner.

History.
Ga. L. 1910, p. 100, § 4; Code 1933, § 87-704.

36-38-4. Registration of bonds in name of owner.

Every issue of municipal bonds shall provide that at the owner's option the same may be registered in the owner's name, both as to principal and interest.

History.
Ga. L. 1910, p. 100, § 5; Code 1933, § 87-705.

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, § 2088.

ARTICLE 2

COMPROMISE OF BONDED DEBT

36-38-20. Authority to compromise bonded debt; rights of dissenting creditors not prejudiced.

The authorities of any municipal corporation of this state are authorized to compromise their bonded debt, in accordance with this article, provided that this article shall not be construed to prejudice the rights of such creditors as may refuse to assent to the compromise.

History.
Ga. L. 1878-79, p. 85, § 1; Code 1882, § 508m(2); Civil Code 1895, § 758; Civil Code 1910, § 905; Code 1933, § 87-501.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 695 et seq.
C.J.S.
64A C.J.S., Municipal Corporations, § 2426 et seq.
ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.
Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

36-38-21. Issuance of new bonds for outstanding bonds.

Where there are outstanding bonds and coupons of any municipal corporation of this state, whether such bonds or coupons are due or to become due, the authorities may issue new bonds with coupons attached, to be exchanged and to stand in the place of such outstanding bonds and coupons, provided that the new bonds so issued shall not exceed in amount the previously existing total bonded debt, with interest thereon, of such municipal corporation.

History.
Ga. L. 1878-79, p. 85, § 2; Code 1882, § 508m(3); Civil Code 1895, § 759; Civil Code 1910, § 906; Code 1933, § 87-502.

RESEARCH REFERENCES

C.J.S.
64A C.J.S., Municipal Corporations, § 2084 et seq.
ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-38-22. Issuance and exchange of bonds; contractual effect of ordinance.

When the authorities of a municipal corporation desire to avail themselves of the benefit of Code Sections 36-38-20 and 36-38-21 and this Code section, they are authorized and empowered to pass any ordinance or ordinances to provide for the issuance and exchange of new bonds to stand in the place and stead of outstanding bonds and coupons, to determine the mode and method of such issuance and exchange, and to fix the length of time such new bonds shall run and the rate of interest they shall bear. Such ordinance or ordinances shall have the force and effect of contracts between the municipal corporation and those who may receive or hold such new bonds so issued and exchanged.

History.
Ga. L. 1878-79, p. 85, § 3; Code 1882, § 508m(4); Civil Code 1895, § 760; Civil Code 1910, § 907; Code 1933, § 87-503.

RESEARCH REFERENCES

ALR.
Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

36-38-23. Sinking funds for redemption of new bonds; appointment of commission to manage fund; contractual effect of ordinance.

If any municipal corporation availing itself of this article desires to provide a sinking fund for the redemption of such new bonds, the authorities may pass all ordinances necessary for that purpose and create a commission for the management of such sinking fund and its proper use and application. The commission shall be composed of not less than three nor more than five residents of the municipal corporation. The ordinance or ordinances providing for the sinking fund and for the commission, along with its management and application, the mode of appointing the members thereof, and its duties, shall have the force and effect of law and shall be held and considered as part of the contract between the municipal corporation and the acceptors or holders of the new bonds.

History.
Ga. L. 1878-79, p. 85, § 4; Code 1882, § 508m(5); Civil Code 1895, § 761; Civil Code 1910, § 908; Code 1933, § 87-504.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, §§ 3, 283 et seq.
C.J.S.
64A C.J.S., Municipal Corporations, § 2089 et seq.
ALR.
Liability of officer for loss of sinking fund through failure of bank, 25 A.L.R. 1358.
Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 A.L.R. 220.
Existing sinking fund as a factor in determining whether indebtedness or proposed indebtedness of municipality or other political subdivision exceeds constitutional or statutory limit, 125 A.L.R. 1393.

CHAPTER 39

STREET IMPROVEMENTS

Sec.

36-39-1. Definitions.

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Sec.
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Cross references.

Acquisition of property by counties, municipalities, or other governmental entities for transportation purposes generally, § 32-3-1 et seq.

Powers of municipalities with respect to municipal street systems generally, § 32-4-90 et seq.

Editor's notes.

Paragraph (11.1) of Ga. L. 1982, p. 3, § 36, effective November 1, 1982, repealed this chapter, but that repealer was in turn repealed by Ga. L. 1982, p. 502, § 2, effective November 1, 1982.

JUDICIAL DECISIONS

Constitutionality. — This chapter is not unconstitutional on the ground that it is in conflict with Ga. Const. 1877, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wheat v. City of Bainbridge, 168 Ga. 479, 148 S.E. 332, 1929 Ga. LEXIS 169 (1929).

This chapter is not unconstitutional on the ground that it is general in its nature but not uniform in its operation, because it is made an alternative method of procedure, and its application is dependent upon its adoption by a favorable vote of the electors, whereas the Constitution does not contemplate the enactment of a law general in its nature, the application of which shall be optional with the municipality, either under a prior local law or a local law enacted subsequent to such general law. Wheat v. City of Bainbridge, 168 Ga. 479, 148 S.E. 332, 1929 Ga. LEXIS 169 (1929).

RESEARCH REFERENCES

ALR.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects, 58 A.L.R.4th 1197.

Legal aspects of speed bumps, 60 A.L.R.4th 1249.

36-39-1. Definitions.

As used in this chapter, the term:

(1) "Frontage" means that side or limit of the lot or parcel of land in question which abuts on the improvement.

(2) "Governing body" means the mayor and council, board of aldermen, board of commissioners, or other chief legislative body of a municipal corporation.

(3) "Improve" and "improvement" include the grading, regrading, paving, repaving, macadamizing, and remacadamizing of streets, alleys, sidewalks, or other public places or ways and the construction, reconstruction, and altering of curbing, guttering, storm sewers, turnouts, water mains, and water, gas, or sewer connections therein.

(4) "Municipal corporation" means any city or town incorporated in this state, having a population of 600 or more.

(5) "Pave" includes storm draining, paving, macadamizing, and grading.

(6) "Streets" means streets, avenues, alleys, sidewalks, and other public places or ways.

History.
Ga. L. 1927, p. 321, § 1; Code 1933, § 69-401.

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, § 1 et seq. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 3.
C.J.S.
39A C.J.S., Highways, §§ 1, 211, 218. 40 C.J.S., Highways, § 250 et seq. 62 C.J.S., Municipal Corporations, § 1 et seq.
ALR.
Scope and import of term "owner" in statutes relating to real property, 2 A.L.R. 778; 95 A.L.R. 1085.
Obligation for local improvements as within municipal debt limit, 33 A.L.R. 1415.
Right of municipality to hasten flow of surface water along natural drain ways by improvements of street or highway, 36 A.L.R. 1463.
Assessment of right of way other than that of railroad or street railway for street or local improvement, 58 A.L.R. 127.
Power to impose cost of maintenance or operation of street lighting system on local improvement district, 60 A.L.R. 272.
Underground conduits for electric wires as local improvements supporting special assessments, 66 A.L.R. 1389.
Character of improvement contemplated by statute, ordinance, or contract relating to "surface" or "resurface" of highway, 84 A.L.R. 1158.
Special assessments: What constitutes reconstruction or the like, as distinguished from repair, of pavement, 41 A.L.R.2d 613.

36-39-2. Adoption of chapter; election; effect of adoption of chapter generally.

The governing body of any municipal corporation in this state is authorized to hold an election or elections, at such time and under such conditions as may be determined by the governing body, for the purpose of adopting this chapter. When such election has been duly held, if a majority of the qualified electors voting therein voted in favor of such adoption, the election managers shall duly certify the results of the election to the governing body and the same shall be adopted and entered on the minutes thereof. Thereupon, the governing body of the municipal corporation shall be authorized and empowered to improve any street or streets in such municipal corporation whenever, in the judgment of the governing body, the public welfare or convenience requires such improvement, subject only to the conditions and limitations prescribed in this chapter.

History.
Ga. L. 1927, p. 321, § 2; Code 1933, § 69-402.

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, § 54.
C.J.S.
39A C.J.S., Highways, § 43 et seq. 64 C.J.S., Municipal Corporations, § 1828.

ALR.
Estoppel of municipality to open or use street, 171 A.L.R. 94.

36-39-3. Procedure for improvements; adoption and publication of resolution; filing of petition by landowners; objections to improvements.

(a) Whenever the governing body deems it necessary to improve any street or part thereof within the limits of the municipal corporation, either in length or in width, it shall, by resolution, declare such improvement necessary to be done and shall publish such resolution once a week for at least three consecutive weeks in the newspaper in which the sheriff's advertisements of the county in which the municipal corporation is located are published. If the owners of a majority of the lineal feet of frontage of the lands abutting on the proposed improvement, within 15 days after the last day of publication of the resolution, do not file with the clerk of the municipal corporation their protest in writing against the improvement, the governing body shall have the power to cause the improvement to be made, to contract therefor, and to make assessments and fix liens as provided for in this chapter. Any number of streets or any part or parts thereof to be so improved may be included in one resolution. Any protest or objection shall be made as to each street separately.

(b) If the owners of a majority of the lineal feet of frontage of the land liable to assessment for the improvement petition the governing body for the improvement, citing this chapter and designating by general description the improvement to be undertaken and the street or streets or part thereof to be improved, it shall thereupon be the duty of the governing body to proceed, as provided in this chapter, to cause such improvement to be made in accordance with the prayers of the petition and their own best judgment. In such cases the resolution mentioned in subsection (a) of this Code section shall not be required. The petition shall be lodged with the clerk of the municipal corporation, who shall investigate the sufficiency thereof, submit the petition to the governing body, and certify the result of his investigation.

History.
Ga. L. 1927, p. 321, § 3; Code 1933, § 69-403.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1921, p. 212 are included in the annotations for this Code section.

Certificate of chief of construction is prima facie evidence. — By Ga. L. 1921, p. 212, the certificate of the chief of construction that the petition was signed by the owners of more than 50 percent of the property abutting on the street or portion of the street sought to be paved is made prima facie evidence of this fact. Ga. L. 1919, p. 821, makes this prima facie presumption conclusive, if the owners do not file objections to the passage of the preliminary ordinance providing for the payment. Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152, 1926 Ga. LEXIS 235 (1926) (decided under Ga. L. 1921, p. 212).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Eminent Domain, §§ 67, 68. 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 34, 72, 129.

C.J.S.

29A C.J.S., Eminent Domain, § 37 et seq. 39A C.J.S., Highways, § 43 et seq. 64 C.J.S., Municipal Corporations, §§ 1251, 1749 et seq.

ALR.

Validity of promise based on invalid paving assessment, 20 A.L.R. 1326.

Lack of or defects in petition of property owners for local improvement as affecting validity or enforcement of assessment, 95 A.L.R. 116.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment, 100 A.L.R. 1292.

Utilization, under new proceeding for public improvement, of work done under a previously abandoned or invalid proceeding, 110 A.L.R. 278.

Cotenancy as factor in determining representation of property owners in petition for, or remonstrance against, public improvement, 3 A.L.R.2d 127.

Power of municipality or other governmental unit to make contract or covenant exempting or releasing property from special assessment, 47 A.L.R.2d 1185.

Widening of city street as local improvement justifying special assessment of adjacent property, 46 A.L.R.3d 127.

36-39-4. Basis of assessments for improvements; municipal corporation owner of intersecting streets fronting improvement; payment of assessments on frontage.

(a) Each lot or parcel of land abutting upon the improvement shall be charged on a basis of lineal foot frontage at an equal rate per foot of such frontage with its just pro rata share of the entire cost of the improvement, less any amounts paid by street or steam railways or others; provided, however, that the cost of the sidewalks, curbs, and gutters shall be charged entirely to the lots or parcels of land abutting on that side of the street upon which the same are constructed.

(b) The frontage of intersecting streets shall be assessed as real estate abutting upon the improvement and the municipal corporation, for all purposes of this chapter, shall be deemed to be the owner thereof. The mayor or chairman of the board of commissioners of the municipal corporation shall have authority to sign the petition or file the objec-

tions provided for in this chapter as to improvements affecting such frontage. The governing body of the municipal corporation shall pay from the municipal corporation treasury, as other current bills are paid, its just pro rata share of the entire cost of such an improvement, unless the owners of a majority of the frontage in the petition provided for in subsection (b) of Code Section 36-39-3 agree to pay the entire cost of the improvement or unless in the resolution provided for in subsection (a) of Code Section 36-39-3 it is stated that the entire cost of the improvement is to be paid by the owners of the abutting property.

History.
Ga. L. 1927, p. 321, § 4; Code 1933, § 69-404.

JUDICIAL DECISIONS

Obligation to pay for proportionate part of cost of public improvements may be created by law under authority given or by express contract. City of Hogansville v. Daniel, 52 Ga. App. 12, 182 S.E. 78, 1935 Ga. App. LEXIS 11 (1935).

Mistake of law by municipality will not raise implied obligation on part of property owner to pay for improvement. — When there is no legal liability resting on a citizen and abutting property owner to pay for public improvements or paving of a street, the law will not raise an implied obligation or quasi-contract to pay to the municipality making the improvements for the increased value of the owner's property arising because of the paving, even though the municipality at the time of the making of the improvements was laboring under a mistake of law as to the municipality's authority to levy assessments against the abutting property owner to pay for a proportionate part of the cost of making the improvements. City of Hogansville v. Daniel, 52 Ga. App. 12, 182 S.E. 78, 1935 Ga. App. LEXIS 11 (1935).

Immediate use of improvement to benefit abutting property not necessary. — Assessment against property for public improvements is not illegal because the improvement may not be immediately used beneficially in connection with the abutting property in its present condition. Incorporated Invs., Inc. v. City of Atlanta, 176 Ga. 509, 168 S.E. 10, 1933 Ga. LEXIS 211 (1933).

Property owner may be estopped to raise issue of confiscation. — When a city has obtained jurisdiction to make an assessment, and all the provisions of the act authorizing the assessment have been complied with, the property owner has been given fair opportunity to object, but fails to do so, and stands by and sees the improvement made without entering objection, the owner is estopped to raise the question of confiscation. City of McRae v. Folsom, 191 Ga. 272, 11 S.E.2d 900, 1940 Ga. LEXIS 632 (1940).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Eminent Domain, § 298. 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 224.

C.J.S.
29A C.J.S., Eminent Domain, § 361. 40 C.J.S., Highways, § 467 et seq. 64 C.J.S., Municipal Corporations, § 1250.

ALR.
Qualification of owner of property affected by public improvement to act in making assessment, 2 A.L.R. 1207.

Loss of right to contest assessment in proceeding for street or sewer improvement by waiver, estoppel, or the like, 9 A.L.R. 634.

Loss of right to contest assessment in drainage proceeding by waiver, estoppel, or the like, 9 A.L.R. 842.

Validity of promise based on invalid paving assessment, 20 A.L.R. 1326.

Validity of assessment for local improvement as affected by contingency upon which the award of a contract for a related improvement is dependent, 29 A.L.R. 832.

Excessiveness or unfairness of assessment for highway improvement on property of railroad company, 48 A.L.R. 497.

Assessments for improvements by the front-foot rule, 56 A.L.R. 941.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment, 63 A.L.R. 1179.

Validity of ad valorem tax for highway purposes without attempt to apportion on basis of benefits, 72 A.L.R. 1103.

Liability of abutting property to assessment for street paving as affected by character or extent of traffic, 73 A.L.R. 1295.

Classification as regards counties or other political divisions permissible in statute imposing cost of construction or maintenance of highways upon property specially benefited, 77 A.L.R. 1285.

Lump-sum assessment for taxes or public improvement against property owned by cotenants in undivided shares, 80 A.L.R. 862.

Statute authorizing or requiring reassessment for public improvement when original assessment is invalid or void as applicable when proceedings leading to original assessment were without jurisdiction, 83 A.L.R. 1190.

Public property as subject to special assessment for improvement, 90 A.L.R. 1137.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid, 96 A.L.R. 1275.

Diversion of traffic into business district by opening new route as special benefit for which assessment may be made, 96 A.L.R. 1380.

Property unit for purposes of assessment for street or other local improvement as affected by owner's disregard of original lot lines or creation of new ones, 104 A.L.R. 1049.

Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment, 114 A.L.R. 399.

Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.

Constitutionality of classification of streets as regards source of payment for improvements, 127 A.L.R. 1090.

Applicability of statute of limitations to action to enforce special assessments as affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function, 136 A.L.R. 572.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

Unimproved strip or area separating property from improved portion of street as affecting assessability of property for street improvement, 166 A.L.R. 1083.

Validity and effect of agreement by property owners or occupants to pay cost of, or assessment against property for, local improvement, 167 A.L.R. 1030.

Power to include in special assessment interest accruing during the construction of the public improvement and running until the special assessments therefor become due, 58 A.L.R.2d 1343.

Liability with respect to improvement assessments or charges as between vendor and purchaser, 59 A.L.R.2d 1044.

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service, 88 A.L.R.2d 1250.

What property "abuts" on improvement so as to be subject to assessment, 97 A.L.R.2d 1079.

Duty as between life tenant and remainderman as respects payment of improvement assessments, 10 A.L.R.3d 1309.

Exemption of public school property from assessments for local improvements, 15 A.L.R.3d 847.

36-39-5. Improvements when county owns abutting property.

Whenever the abutting landowners of any street of the municipal corporation petition the governing body as set out in subsection (b) of Code Section 36-39-3 or whenever the governing body passes the resolution provided for in subsection (a) of Code Section 36-39-3 for the improvement of any street, where the county is owner of property on the street and where the governing body of the county has assented to the proposed improvement and has provided funds to pay in cash its proportionate part of the cost of the improvement, the frontage so owned shall be counted as if owned by an individual for all the purposes of this chapter. The chairman of the board of commissioners of the county is authorized to sign the petition or file objections in behalf of the county.

History.
Ga. L. 1927, p. 321, § 13; Ga. L. 1933, § 69-425.

RESEARCH REFERENCES

ALR.
Public property as subject to special assessment for improvement, 90 A.L.R. 1137.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

36-39-6. Paving by railroad having tracks in street.

Any railroad or street railway having tracks located in a street at the time of a proposed improvement shall be required by the governing body to pave the width of its tracks and two feet on each side thereof. Such paving shall be done with the same material and in the same manner as the rest of the street to be paved, provided that the governing body may require such paving to be of a different material and manner of construction when, in its judgment, this is rendered necessary by the uses of the street by the railway. The work shall be performed under the supervision and subject to the approval of the city's municipal corporation's engineer. If the railway, within a period of 30 days after receipt of the notice to do such work, does not agree in writing to comply with such order or if the work is not completed to the satisfaction of the municipal corporation's engineer within such time as may be prescribed by the governing body, the governing body may have the work done and may charge the cost and expense thereof to the railway company. The governing body shall have a lien against the railway company for such cost and expense. Such lien shall have the same rank and priority and shall be enforced in the same manner as the liens provided for in Code Section 36-39-20.

History.
Ga. L. 1927, p. 321, § 5; Code 1933, § 69-405; Ga. L. 1987, p. 3, § 36.

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, § 224. 40 Am. Jur. 2d, Highways Streets, and Bridges, § 241.
C.J.S.
64 C.J.S., Municipal Corporations, § 1461.
ALR.
Paving ordinance as impairment of obligation of street railway franchise, 10 A.L.R. 897.
Liability of railroad or street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder, 29 A.L.R. 679.
Duty of street railway to keep street in repair as affected by change in traffic conditions, 33 A.L.R. 131.

36-39-7. Payment for street improvements and construction of water, gas, and sewer connections; payment of costs of connections.

Whenever the petition provided for in subsection (b) of Code Section 36-39-3 is presented or when the governing body has determined to improve any street and has passed the resolution provided for in subsection (a) of Code Section 36-39-3, the governing body shall have the power to enact all such ordinances and to establish all such rules and regulations as may be necessary to require the owners of all the property abutting on the improvement and of any railway in the street to pay the cost of such improvement and to cause to be put in and constructed all water, gas, or sewer pipe connections to connect with any existing water, gas, or sewer pipes in and underneath the streets where such improvement is to be made. All cost and expense of making water, gas, or sewer pipe connections shall be taxed solely against the property abutting on the improvement; but such cost and expense shall be included and made a part of the general assessment to cover the cost of the improvement.

History.
Ga. L. 1927, p. 321, § 6; Code 1933, § 69-406.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 180 et seq.
C.J.S.
39A C.J.S., Highways, § 43 et seq. 40 C.J.S., Highways, § 250 et seq.
ALR.
Construction of provision of statute, ordinance, or franchise relating to "repair" of street railway zone, 10 A.L.R. 928.
Eligibility of public officer or employee to appointment as member of body to lay assessments for public improvement, 71 A.L.R. 540.
Power to include in special assessment interest accruing during the construction

of the public improvement and running until the special assessments therefor become due, 58 A.L.R.2d 1343.

36-39-8. Resolution letting contract for improvements following time for protests or filing of petition.

After the expiration of the time for objection or protest on the part of the property owners, if no sufficient protest is filed, or on receipt of a petition for an improvement signed by the owners of a majority of the frontage of the land to be assessed, if the petition is found to be in proper form and properly executed, the governing body shall adopt a resolution reciting that no protest has been filed or that a petition was filed, as the case may be, and expressing the determination of the governing body to proceed with the improvement. The resolution shall state the kind of improvement, define the extent and character of the same, and specify such other matters as may be necessary to instruct the engineer employed by the municipal corporation in the performance of his or her duties in preparing for such improvement the necessary plans, plats, profiles, specifications, and estimates. The resolution shall set forth any and all such reasonable terms and conditions as the governing body deems proper to impose with reference to the letting of the contract and the provisions thereof. The governing body, by such resolution, shall provide that the contractor shall execute to the municipal corporation a good and sufficient bond, as provided in Part 3 of Article 3 of Chapter 91 of this title, and may also require a bond in an amount to be stated in the resolution for the maintenance of the good condition of the improvements for a period of not less than five years from the time of completion, in the discretion of the governing body. The resolution shall also direct the clerk of the municipal corporation to advertise for sealed proposals for furnishing the materials and performing the work necessary in making such improvements.

History.
Ga. L. 1927, p. 321, § 7; Code 1933, § 69-407; Ga. L. 1952, p. 310, § 1; Ga. L. 2000, p. 498, § 3; Ga. L. 2001, p. 820, § 11.

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 26 et seq., 72 et seq.

C.J.S.
40 C.J.S., Highways, §§ 265, 325. 64 C.J.S., Municipal Corporations, § 1195.

36-39-9. Work performed by municipal corporation; property owners' objections to performance of work by municipal corporation.

As an alternative to contracting for the improvement, the governing body shall have the right, at its option and in its discretion, to provide

that the work necessary in making the improvement shall be done by the municipal corporation itself. In such event, the municipal corporation shall procure all materials, provide the machinery and equipment, and do all of the work necessary in making such improvement. If the governing body determines that the municipal corporation shall itself do the work necessary in making the improvement, the resolution expressing the determination of the governing body to proceed with the improvement shall so state; and such resolution shall fix a time and place at which the owners of the property affected by the proposed improvement shall have the right to file objections thereto. Notice of the resolution and of the intention of the governing body to cause the work to be done by the municipal corporation shall be published in at least six consecutive issues of a daily paper having a general circulation in the municipal corporation or once a week for two weeks in the newspaper in which the sheriff's advertisements for the county in which the municipal corporation is situated are published. The notice shall set out the time and place at which objections may be filed, which time shall be not less than ten days following the last publication of the notice. The owners of the lots or parcels of land fronting or abutting upon any street or portion thereof upon which such improvement is proposed to be made shall have the right, within the time prescribed, to file written objections to the performance of the work by the municipal corporation. In the event that the owners of a majority of the lineal frontage of the lots or parcels of land fronting or abutting upon any such street or portion thereof object to the doing of the work by the municipal corporation, the work shall be done under contract and the governing body shall proceed in the manner provided in this chapter for the letting of the work under contract. If no objections are filed by the owners of a majority of the lineal frontage of the lots or parcels of land fronting or abutting on any such street or portion thereof within the time prescribed, the municipal corporation itself shall proceed with the doing of the work necessary in making the improvement. Where the work of making the improvement is done by the municipal corporation, the cost thereof shall include the entire cost of all materials used and labor done in the performance of the work, shall include a reasonable rental for the use of machinery, equipment, and materials used in the doing of the work, and shall also include all engineering, legal, and other expenses incurred in connection with the doing of the work or the proceedings under which the same is done. When the work of making the improvement is done by the municipal corporation, the provisions of Code Section 36-39-8 relating to the letting of a contract and the provisions of Code Sections 36-39-10 and 36-39-11 shall not apply.

History.
Ga. L. 1927, p. 321, § 7; Code 1933, § 69-407; Ga. L. 1952, p. 310, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 26 et seq., 72 et seq.
C.J.S.
40 C.J.S., Highways, §§ 265, 325. 64 C.J.S., Municipal Corporations, § 1193.

ALR.
What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-39-10. Publication and contents of notice of contract proposals.

The notice of the proposals specified in Code Section 36-39-8 shall be published in at least six consecutive issues of a daily paper or at least two issues of a weekly paper having a general circulation in the municipal corporation. The notice shall state the street or streets to be improved, the kinds of improvements proposed, what bond or bonds will be required to be executed by the contractor, the time when and the place where the sealed proposals shall be filed, and when and where the same will be considered by the governing body.

History.
Ga. L. 1927, p. 321, § 7; Code 1933, § 69-408.

JUDICIAL DECISIONS

Presumption of acceptance of assessment terms. — When no objection to the assessment or prior proceedings was made by the property owner as provided in the act, and when no action was filed to enjoin the assessment or the improvement within 30 days after the passage of the ordinance making such assessment final, the property owner will be presumed to have accepted the terms thereof and to have agreed that the assessment provided for in the act may be made. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99, 1935 Ga. App. LEXIS 119 (1935).

RESEARCH REFERENCES

Am. Jur. 2d.
39 Am. Jur. 2d, Highways, Streets, and Bridges, § 28. 64 Am. Jur. 2d, Public Works and Contracts, § 53 et seq.
C.J.S.
64 C.J.S., Municipal Corporations, § 1345 et seq.

ALR.
What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-39-11. Examination of bids and award of contract; readvertisement for bids.

At the time and place specified in the notice provided for in Code Section 36-39-10, the governing body shall examine all bids received. Without unnecessary delay, the contract shall be awarded to the lowest

and best bidder, who will perform the work and furnish the materials which may be selected and perform all the conditions imposed by the governing body as prescribed in the resolutions and notice for proposals. The governing body shall have the right to reject any and all bids and readvertise for other bids when the bids submitted are not, in its judgment, satisfactory.

History.
Ga. L. 1927, p. 321, § 7; Code 1933, § 69-409.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Works and Contracts, § 75 et seq.
C.J.S.
64 C.J.S., Municipal Corporations, § 1341 et seq.
ALR.
Validity of promise based on invalid paving assessment, 20 A.L.R. 1326.
Right of municipality to exact of contractor additional consideration as condition of extension of time for completion of improvements, 71 A.L.R. 904.
Right of public authorities to reject all bids for public work or contract, 31 A.L.R.2d 469.
Public contracts: authority of state or its subdivision to reject all bids, 52 A.L.R.4th 186.
Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 A.L.R.4th 93.
Encroachment of trees, shrubbery, or other vegetation across boundary line, 65 A.L.R.4th 603.

36-39-12. Appointment of board of appraisers to appraise and apportion cost.

After the contract has been let or after the improvement has been made by the municipal corporation, in the event the governing body elects to have the work done by the municipal corporation, and after the cost for such improvement, which shall include all other expenses incurred by the municipal corporation incident to the improvement in addition to the contract price for the work and materials or in addition to the cost of all materials, labor, machinery, equipment, and services used in the making of each improvement, in the event the work is done by the municipal corporation, has been ascertained, the governing body shall, by resolution, appoint a board of appraisers, consisting of three members, to appraise and apportion the cost and expense of the same to the several tracts of land abutting on the improvement as provided in Code Sections 36-39-4 and 36-39-6.

History.
Ga. L. 1927, p. 321, § 8; Code 1933, § 69-410; Ga. L. 1952, p. 310, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, §§ 7, 60, 87 et seq., 113.

C.J.S.
40 C.J.S., Highways, §§ 470, 471. 64 C.J.S., Municipal Corporations, § 1539.

36-39-13. Filing of board of appraisers' report.

Within 30 days from the date of the resolution appointing the board of appraisers, such board shall file with the clerk of the municipal corporation a written report of the appraisal and the assessment and cost upon the several lots and tracts of land abutting on such street, as well as upon the property of any street or steam railway whose tracks are located in such street where such railway has failed or refused to do the paving as provided in Code Section 36-39-6 when and as required by the governing body.

History.
Ga. L. 1927, p. 321, § 8; Code 1933, § 69-411.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 129.

C.J.S.
64 C.J.S., Municipal Corporations, § 1542.

36-39-14. Hearing upon board of appraisers' report; review of report and objections; ordinance fixing assessments; taxation of interest.

When the report of the appraisers has been returned and filed, the governing body shall appoint a time for the holding of a session or shall designate a regular meeting of its body for the hearing of any complaints or objections that may be made by any interested person concerning the appraisal, apportionment, and assessment. Notice of such session for the hearing shall be published by the clerk of the governing body once a week for two weeks in a newspaper having a general circulation in the municipal corporation. The notice shall provide for an inspection of the return by any property owner or other party interested in such return. The time fixed for the hearing shall be not less than five nor more than ten days from the date of the last publication of the notice. The governing body at the session shall have the power and duty to review and correct the appraisal, apportionment, and assessment, to hear objections to the same, and to confirm the same either as made by the board or as corrected by the governing body. The governing body, by ordinance, shall fix the assessment in accordance with the appraisal and apportionment, as so confirmed, against the several tracts of land liable therefor. The rate of interest to be taxed

shall not exceed 1 percent per annum over and above the rate of interest stipulated in the bonds provided for in this chapter.

History.
Ga. L. 1927, p. 321, § 8; Code 1933, § 69-412.

JUDICIAL DECISIONS

Presumption of acceptance of assessment terms. — When no objection to the assessment or prior proceedings was made by the property owner as provided in the act, and when no action was filed to enjoin the assessment or the improvement within 30 days after the passage of the ordinance making such assessment final, the property owner will be presumed to have accepted the terms thereof and to have agreed that the assessment provided for in the act may be made. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99, 1935 Ga. App. LEXIS 119 (1935).

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 134 et seq.
C.J.S.
64 C.J.S., Municipal Corporations, §§ 1544 et seq., 1621, 1625 et seq.
ALR.
Qualification of owner of property affected by public improvement to act in making assessment, 2 A.L.R. 1207.

Loss of right to contest assessment in proceeding for street or sewer improvement by waiver, estoppel, or the like, 9 A.L.R. 634.

Loss of right to contest assessment in drainage proceeding by waiver, estoppel, or the like, 9 A.L.R. 842.

Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 40 A.L.R. 1352; 42 A.L.R. 1185.

Eligibility of public officer or employee to appointment as member of body to lay assessments for public improvement, 71 A.L.R. 540.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment, 100 A.L.R. 1292.

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service, 88 A.L.R.2d 1250.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-39-15. Time and manner of payment of assessments generally.

Assessment in conformity to the appraisal and apportionment as confirmed by the municipal corporation shall be payable to the treasurer of the municipal corporation in cash. If paid within 30 days from the date of the passage of the ordinance, such assessment shall be without interest.

History.
Ga. L. 1927, p. 321, § 8; Code 1933, § 69-413.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 167.
ALR.
Loss of right to contest assessment in proceeding for street or sewer improvement by waiver, estoppel, or the like, 9 A.L.R. 634.
Loss of right to contest assessment in drainage proceeding by waiver, estoppel, or the like, 9 A.L.R. 842.
Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from the property benefited, 51 A.L.R. 973; 172 A.L.R. 1030.
Power of municipality to transfer or assign its right to enforce assessment or lien for local improvements, 55 A.L.R. 667.
Right of taxpayer to anticipate payment of tax or special improvement assessment or deferred installments thereof, 96 A.L.R. 1475.
Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.
Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

36-39-16. Payment of assessment in installments.

If the owner of the land or of any street railway assessed, within 30 days from the passage of the ordinance making the assessment final, files with the clerk of the municipal corporation his written request asking that the assessments be payable in installments in accordance with the provisions of this Code section, the same shall thereupon be and become payable in equal annual installments over such period of years, not less than two nor more than ten, as shall be fixed and prescribed by the governing body of the municipal corporation. Such installments shall bear interest at a rate not exceeding 7 percent per annum until paid. Each installment, together with the interest on the entire amount remaining unpaid, shall be payable each year at such time and place as shall be provided by resolution of the governing body.

History.
Ga. L. 1927, p. 321, § 8; Code 1933, § 69-414; Ga. L. 1947, p. 1539, § 1; Ga. L. 1989, p. 1078, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 168 et seq.
C.J.S.
40 C.J.S., Highways, § 475 et seq. 64 C.J.S., Municipal Corporations, §§ 1687, 1692.
ALR.
Right of taxpayer to anticipate payment of tax or special improvement assessment or deferred installments thereof, 96 A.L.R. 1475.
Duration of lien of special assessment and period of limitation of action for its enforcement as affected by adoption of installment plan of payment, 114 A.L.R. 399.
Personal liability of property owner to

pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

36-39-17. Assessments where portion of costs paid by municipal corporation.

When the municipal corporation desires to pay any portion of the cost of the improvements contemplated in this chapter in addition to the amounts otherwise provided for, the balance may be assessed against the abutting property or the owners thereof or against the owners of any street or steam railway therein, as provided in this chapter.

History.
Ga. L. 1927, p. 321, § 15; Code 1933, § 69-427.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 90.

C.J.S.
64 C.J.S., Municipal Corporations, § 1474 et seq.

36-39-18. Additional assessments.

If any assessment is found to be invalid or insufficient in whole or in part for any reason whatsoever, the governing body may at any time, in the manner provided for the making of an original assessment, proceed to cause a new assessment to be made and fixed. The new assessment shall have the same force and effect as an original assessment.

History.
Ga. L. 1927, p. 321, § 12; Code 1933, § 69-415.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 130 et seq.

C.J.S.
40 C.J.S., Highways, § 474. 64 C.J.S., Municipal Corporations, §§ 1654 et seq., 1675.

ALR.
Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 42 A.L.R. 1185.

Necessity that additional assessment in proceeding for local improvement precede incurring liability in excess of the original assessment, 63 A.L.R. 1179.

Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

36-39-19. Publication and contents of notice of due date of assessment; effect of failure to publish notice.

It shall be the duty of the treasurer, not less than 30 days and not more than 50 days before the maturity of any installment of the assessments, to publish at least one time, in a newspaper having a general circulation in the municipal corporation, a notice advising the owner of the property affected by the assessment of the date when such installment and interest will be due, designating the street or streets or other public places for the improvement of which such assessments have been levied and stating that, unless the installment and interest are promptly paid, proceedings will be taken to collect such installment and interest. In lieu of the publication, the treasurer may mail the notice within the time limits aforesaid to the owners of record of the property affected, at their last known address. The failure of the treasurer or clerk to publish or mail the notice of maturity of any installment of the assessment and interest shall in no wise affect the validity of the assessment and interest and the execution issued therefor.

History.
Ga. L. 1927, p. 321, § 11; Code 1933, § 69-420.

RESEARCH REFERENCES

ALR.
Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid, 96 A.L.R. 1275.

Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

What constitutes newspaper of "general circulation" within meaning of state statutes requiring publication of official notices and the like in such newspaper, 24 A.L.R.4th 822.

36-39-20. Lien for assessment and interest.

The assessment and each installment thereof, along with the interest thereon and the expense of collection, are declared to be a lien against the lots and tracts of land so assessed, from the date of the ordinance levying the same, coequal with the lien of other taxes and prior to and superior to all other liens against such lots or tracts. Such lien shall continue until the assessment and the interest thereon are fully paid and shall be enforced in the same manner as are liens for municipal corporation taxes.

History.
Ga. L. 1927, p. 321, § 9; Code 1933, § 69-416.

JUDICIAL DECISIONS

Priority of lien coequal with tax lien. Paulk v. City of Ocilla, 188 Ga. 69, 2 S.E.2d 642, 1939 Ga. LEXIS 467 (1939).

RESEARCH REFERENCES

Am. Jur. 2d.

70C Am. Jur. 2d, Special or Local Assessments, §§ 170 et seq., 225.

C.J.S.

40 C.J.S., Highways, § 475 et seq. 64 C.J.S., Municipal Corporations, §§ 1676, 1684, 1692.

ALR.

Priority as between lien of taxes and lien of special assessments, 65 A.L.R. 1379.

Assessment for local improvements as taxes within statute providing for payment of taxes out of proceeds of judicial sale, 73 A.L.R. 1227.

Priority as between liens for public improvements, 99 A.L.R. 1478.

Action by municipality to enforce lien for special assessment as within statute of limitations not specifically covering it, 103 A.L.R. 885.

Constitutionality of statute giving to lien for alteration of property pursuant to public requirement, mechanics' lien or similar lien, preference over preexisting mortgage or other lien, 121 A.L.R. 616; 141 A.L.R. 66.

Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.

Applicability of statute of limitations to action to enforce special assessments as affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function, 136 A.L.R. 572.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

Easement, servitude, or restrictive covenant as affected by enforcement of assessment or improvement liens, 26 A.L.R.2d 873.

36-39-21. Execution, levy, and sale on unpaid assessments or interest generally.

It shall be the duty of the treasurer, within 15 days after the date of the maturity of any installment of assessment or interest, to issue an execution against the lot or tract of land assessed for the improvement or against the party or person owning the same for the amount of the assessment or interest. The treasurer shall turn over the same to the marshal or chief of police of the municipal corporation or his deputy, who shall levy the same upon the abutting real estate liable for the assessment and previously assessed for the improvements. After advertisement and other proceedings as in case of sales for city taxes, the real estate shall be sold at public outcry to the highest bidder. Such sales shall vest an absolute title in the purchaser, subject to the lien of the remaining unpaid installments with interest and also subject to the right of redemption as provided in Article 3 of Chapter 4 of Title 48.

History.

Ga. L. 1927, p. 321, § 11; Code 1933, § 69-421.

Cross references.

Executions to enforce collection of amounts due municipality for paving

streets or alleys, or laying sewers and drains, § 48-5-358.

RESEARCH REFERENCES

Am. Jur. 2d.

70C Am. Jur. 2d, Special or Local Assessments, § 180 et seq.

C.J.S.

40 C.J.S., Highways, § 475 et seq. 64 C.J.S., Municipal Corporations, § 1719 et seq. 82 C.J.S., Statutes, § 377 et seq.

ALR.

Character of action or proceeding in which purchaser at invalid sale for taxes or local improvement assessment may secure reimbursement from owner; and provisions of decree or judgment as to relief, 86 A.L.R. 1208.

Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.

Right of mortgagor or purchaser of equity of redemption to defeat lien of mortgage by acquisition of title at sale subsequent to mortgage for nonpayment of taxes, or of assessment for local improvement, 134 A.L.R. 289.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

Exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service, 88 A.L.R.2d 1250.

36-39-22. Affidavit contesting amount of execution; trial by superior court; penalties for delay.

The defendant shall have the right to file an affidavit denying that the whole or any part of the amount for which the execution issued is due and stating what amount he admits to be due, which amount so admitted to be due shall be paid and collected before the affidavit is received and the affidavit shall be received for the balance. All affidavits, including those filed by railroads or street railways against whom execution is issued for the cost and expense of paving, shall set out in detail the reasons why the affiant claims the amount is not due. When received by the municipal marshal or chief of police, such affidavits shall be returned to the superior court of the county wherein the municipal corporation is located. They shall be tried and the issue shall be determined as in cases of illegality, subject to all the pains and penalties provided for in other cases of illegality for delay under the laws of this state.

History.

Ga. L. 1927, p. 321, § 11; Code 1933, § 69-423.

JUDICIAL DECISIONS

General rule is that all presumptions are in favor of validity of assessments for local improvements, and while these presumptions are not conclusive, the burden is on the party attacking the validity of an assessment to show that the assessment is invalid. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99, 1935 Ga. App. LEXIS 119 (1935).

Burden of proof upon plaintiff. — On the trial of an illegality interposed to an execution levied on abutting real estate for an unpaid paving assessment, the burden is upon the plaintiff in execution

to make out a prima facie case, and this is done by putting in evidence an execution fair on the execution's face and a legal levy entered thereon. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99, 1935 Ga. App. LEXIS 119 (1935).

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 204 et seq.
C.J.S.
40 C.J.S., Highways, § 474 et seq. 64 C.J.S., Municipal Corporations, §§ 1632, 1649.
ALR.
Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.
Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

36-39-23. Collection and use of assessments generally; special fund; treasurer's bond.

The assessment provided for and levied under this chapter shall be payable as the several installments become due, together with the interest thereon, to the treasurer of the municipal corporation, who shall keep an accurate account of all such collections made by him. Such collections shall be kept in a special fund, to be used and applied for the payment of the bonds and the interest thereon and the expenses incurred incident thereto and for no other purpose until all the bonds are paid in full. The treasurer shall give bond in an amount to be fixed by the governing body, conditioned upon the faithful performance by him of the duties imposed in this chapter.

History.
Ga. L. 1927, p. 321, § 11; Code 1933, § 69-422.

RESEARCH REFERENCES

C.J.S.
40 C.J.S., Highways, § 467. 64A C.J.S., Municipal Corporations, § 1998 et seq.
ALR.
Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.
Applicability of statute of limitations to action to enforce special assessments as affected by question whether imposition or enforcement of the assessment is an exercise of a governmental function, 136 A.L.R. 572.
Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

36-39-24. Limitation period for contesting or enjoining assessments.

No action shall be sustained (1) to set aside any assessment, (2) to enjoin the governing body from making, fixing, or collecting the assessment or issuing or levying executions therefor or issuing bonds or providing for their payment, or (3) contesting the validity thereof on any grounds or for any reason other than the failure of the governing

body to adopt and publish the preliminary resolution provided for in Code Section 36-39-3 in cases requiring such resolution and its publication or to give notice of the hearing of the return of the appraisers as provided for in Code Section 36-39-14, unless such action is commenced within 30 days after the passage of the ordinance making the assessment final.

History.
Ga. L. 1927, p. 321, § 12; Code 1933, § 69-424.

JUDICIAL DECISIONS

General rule is that all presumptions are in favor of validity of assessments for local improvements, and while these presumptions are not conclusive, the burden is on the party attacking the validity of an assessment to show that the assessment is invalid. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99, 1935 Ga. App. LEXIS 119 (1935).

Presumption of acceptance of assessment terms. — When no objection to the assessment or prior proceedings was made by the property owner as provided in the act, and when no action was filed to enjoin the assessment or the improvement within 30 days after the passage of the ordinance making such assessment final, the property owner will be presumed to have accepted the terms thereof and to have agreed that the assessment provided for in the act may be made. City of La Grange v. Frosolona, 52 Ga. App. 232, 183 S.E. 99, 1935 Ga. App. LEXIS 119 (1935).

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 204 et seq.
C.J.S.
40 C.J.S., Highways, § 472. 64 C.J.S., Municipal Corporations, §§ 1602 et seq., 1623.
ALR.
Validity of promise based on invalid paving assessment, 20 A.L.R. 1326.

Right to enjoin enforcement of illegal tax, local assessment, or license fee, upon joinder of several affected thereby, 32 A.L.R. 1266; 156 A.L.R. 319.

Personal liability of property owner to pay assessments for local improvements, 127 A.L.R. 551; 167 A.L.R. 1030.

Manner of enforcing special assessments against public property, 150 A.L.R. 1394.

36-39-25. Issuance of bonds; payment; interest; terms; form.

The governing body, after the expiration of 30 days from the passage of the ordinance confirming and levying the assessment, shall, by resolution, provide for the issuance of bonds in the aggregate amount of the assessments remaining unpaid, bearing date not more than 30 days after the passage of the ordinance fixing the assessment and of such denomination as the governing body shall determine. Such bond or bonds, unless authority is thereafter granted and exercised for making them direct obligations of the municipal corporation, shall in no event become a liability of the municipal corporation or of the governing body of the municipal corporation issuing them. The bonds shall be payable in equal annual installments over the same period of years, not less

than two nor more than ten, as has been fixed and provided by the governing body of the municipal corporation for the payment of the assessments in installments under Code Section 36-39-16. One installment of any such series of bonds, with interest upon the whole series to date, shall be payable on such day and at such place as may be determined by the governing body, and one installment thereof with the yearly interest upon the whole amount remaining unpaid shall be payable on the same day in each succeeding year, until all are paid. Such bonds shall bear interest at a rate not exceeding 10 percent per annum from their date until maturity, payable annually. They shall be designated as "street-improvement bonds" and on the face thereof shall recite the street or streets, the part of the street or streets, or other public places for the improvement of which they have been issued. Unless authority is thereafter granted and exercised for making them direct obligations of the municipal corporation, such bonds shall be payable solely from assessments which have been fixed upon the lots or tracts of land benefited by the improvement under authority of this chapter. The bonds shall be signed by the mayor or chairman of the board of commissioners and attested by the clerk of the governing body, shall have the impression of the corporate seal of the municipal corporation thereon, and shall have interest coupons attached. All bonds issued by authority of this chapter shall be payable at such place either within or outside this state as shall be designated by the governing body.

History.
Ga. L. 1927, p. 321, § 10; Code 1933, § 69-417; Ga. L. 1947, p. 1539, § 2; Ga. L. 1989, p. 1078, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Street improvement bonds issued pursuant to statutory scheme contained in this chapter are not obligations of surplus of a bank as being obligation of any one obligor. 1952-53 Ga. Op. Att'y Gen. 7.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 60. 70C Am. Jur. 2d, Special or Local Assessments, § 167.

C.J.S.
64A C.J.S., Municipal Corporations, § 2025 et seq.

ALR.
Assignment and transfer of government bonds, 22 A.L.R. 775.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 A.L.R. 1109.

Constitutional provision against impairing obligation of contract as applicable to statutes affecting rights or remedies of holders or owners of improvement bonds or liens, 97 A.L.R. 911.

Priority as between successive issues of obligations of permanently organized local improvement district, 99 A.L.R. 1488.

Liability of municipality in consequence

of its inability, refusal, or failure to collect the cost of local improvements from the property benefited, 172 A.L.R. 1030.

36-39-26. Sale of bonds; delivery to contractors.

The bonds shall be sold by the governing body at not less than par and the proceeds thereof shall be applied to the payment of the contract price and other expenses incurred pursuant to this chapter. Alternatively, such bonds in the amount that is necessary for the purpose may be turned over and delivered to the contractor at par value in payment of the amount due him on his contract, and the portion thereof which is necessary to pay other expenses incident to and incurred in providing for the improvements shall be sold or otherwise disposed of as the governing body directs.

History.
Ga. L. 1927, p. 321, § 10; Code 1933, § 69-418.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 164 et seq.
ALR.
Priority as between successive issues of obligations of permanently organized local improvement district, 99 A.L.R. 1488.

36-39-27. Disposition of proceeds from bonds remaining after payment.

Any proceeds from the sale of the bonds remaining in the hands of the treasurer after the payment provided for in Code Section 36-39-26 shall go into the treasury of the municipal corporation as compensation for the services to be rendered by it as contemplated in this chapter.

History.
Ga. L. 1927, p. 321, § 10; Code 1933, § 69-419.

36-39-28. Petition for validation of ordinance establishing assessments; time; contents.

At any time within 60 days after the assessments are finally determined and fixed, the municipal corporation may file a petition in the superior court of the county in which the municipal corporation is situated, along with a copy of the ordinance, in which petition shall be alleged the fact of the passage and approval of the ordinance, the street or part of a street affected thereby, the character of paving or other improvement intended, and the approximate estimate of the cost. The petition shall allege that the ordinance is authorized by law and that it

will create a lien on all real property abutting on such street or part of a street for the payment by the owner of each lot or parcel of land so abutting of the pro rata share of expense assessed to each lot or parcel of land, as well as on any street or other railroad therein, if any such there are, and shall pray for a judgment by the court declaring the ordinance valid, legal, and binding and that the liens be set up as alleged. It shall not be necessary in such petition to allege the names of the owners of the abutting property or railroads to be affected, but it shall be sufficient to describe the street or portion thereof to be improved and to indicate that the property on the street is to be charged with the expense.

History.
Ga. L. 1927, p. 321, § 16; Code 1933, § 69-428.

RESEARCH REFERENCES

Am. Jur. 2d.
70C Am. Jur. 2d, Special or Local Assessments, § 171 et seq.

C.J.S.
64 C.J.S., Municipal Corporations, §§ 1483, 1676 et seq.

36-39-29. Order to show cause on petition; time and notice of hearing.

At or before the filing of the petition provided for in Code Section 36-39-28, the same shall be presented to the judge of the superior court, who shall thereupon enter an order calling upon all persons owning or interested in the real estate abutting on the street or on the designated part thereof to show cause, at a time and place to be named in the order, why the prayer of the petition should not be granted, the ordinance and assessments not declared valid, and the liens not be fixed as legal and binding. The hearing shall be not less than 30 nor more than 60 days after the entry of the order and shall be either in open court or at chambers. It shall be the duty of the clerk to publish once a week for four weeks, in the official newspaper of the county, a statement of the case and a copy of the order.

History.
Ga. L. 1927, p. 321, § 16; Code 1933, § 69-429.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Motions, Rules, and Orders, § 46.

C.J.S.
64 C.J.S., Municipal Corporations, § 1678.

36-39-30. Conduct of hearing; issuance of order by court.

At the time and place named or at such other time and place as the hearing may be adjourned to, any interested person shall be heard to show cause in writing, which writing shall be filed with the clerk, why the prayer of the petition should not be granted. The court shall hear all questions of law or fact and all competent evidence may be offered as in other cases. The court shall thereupon enter an appropriate order finding and adjudging that the ordinance is lawful and valid and that the liens are legal and binding, or otherwise, as the law and facts may warrant.

History.
Ga. L. 1927, p. 321, § 16; Code 1933, § 69-430.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Motions, Rules, and Orders, § 46.

36-39-31. Appeal from judgment of court.

The municipal corporation or any person appearing who is dissatisfied with the judgment may appeal to the Court of Appeals, as provided in Title 5.

History.
Ga. L. 1927, p. 321, § 16; Code 1933, § 69-431.

36-39-32. Conclusiveness of superior court's final judgment.

If the final judgment of the superior court is in favor of the validity of the ordinance and of the liens claimed, the same shall forever be conclusive, and the matters so determined shall never thereafter be drawn in question in any court.

History.
Ga. L. 1927, p. 321, § 16; Code 1933, § 69-432.

36-39-33. Entry of reference to judgment on bonds following validation; use of entry as evidence.

Bonds issued under this chapter after the judgment of the superior court shall have written or stamped thereon the words "Validated and confirmed by judgment of the superior court," specifying also the date when the judgment was rendered and the court in which it was rendered and shall be signed by the clerk of the superior court. Such

entry shall be original prima-facie evidence of the fact of the judgment and shall be receivable as such in any court of this state.

History.
Ga. L. 1927, p. 321, § 16; Code 1933, § 69-433.

RESEARCH REFERENCES

Am. Jur. 2d.
64 Am. Jur. 2d, Public Securities and Obligations, § 279 et seq.

36-39-34. Construction of chapter.

This chapter shall not be construed to repeal any special or local law or to affect any proceedings under such law for the making of improvements authorized in this chapter or for raising the funds therefor but shall be deemed to be additional and independent legislation for such purposes, to provide an alternative method of procedure for such purposes, and to be a complete law not subject to any limitations or restrictions contained in any other public or private law or laws except as otherwise provided in this chapter.

History.
Ga. L. 1927, p. 321, § 14; Code 1933, § 69-426.

JUDICIAL DECISIONS

Constitutionality. — This section is not violative of Ga. Const. 1877, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Wheat v. City of Bainbridge, 168 Ga. 479, 148 S.E. 332, 1929 Ga. LEXIS 169 (1929).

CHAPTER 40

GRANTS OF STATE FUNDS TO MUNICIPAL CORPORATIONS

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ARTICLE 1

GENERAL PROVISIONS

36-40-1. Grants for repairs on facilities of historical value.

(a) In addition to any grant to which any municipal corporation of this state is entitled under Article 2 of this chapter in any fiscal year, and any other law to the contrary notwithstanding, any such municipal corporation which owns and maintains from local revenues a public facility which is found and declared by a resolution of the General Assembly to be of historical value to the state and which is in need of repairs which are reasonably estimated to cost in excess of $5 million and to require more than one year to plan and complete shall be authorized to receive an annual grant equal to one-fourth of the amount of local funds expended on or committed to such repairs by the governing body of such municipal corporation. The funds appropriated by the General Assembly for the purposes of this Code section shall be

appropriated separately from funds appropriated for the purposes of Code Section 36-40-24.

(b) Funds made available under subsection (a) of this Code section shall be distributed in the same manner as other funds are distributed under Article 2 of this chapter. The certificate required by Code Section 36-40-22 shall include a statement of the amount of the annual grant under subsection (a) of this Code section, the total amount of local funds expended on or committed to the repairs specified in subsection (a) of this Code section as of the date of the certificate, and the total amount of grant funds under subsection (a) of this Code section already distributed to the municipal corporation under Article 2 of this chapter.

(c) No municipal corporation shall receive any grant under this Code section for a facility which was not found and declared eligible under subsection (a) of this Code section by April 24, 1977.

History.
Ga. L. 1975, p. 1006, §§ 1, 3, 3A; Ga. L. 1982, p. 3, § 36.

Cross references.
Powers and duties of Department of Natural Resources relating to historic preservation, promotion, § 12-3-50 et seq.

ARTICLE 2

GRANTS FOR PUBLIC PURPOSES

36-40-20. Legislative intent.

It is declared to be the purpose and intent of the General Assembly that state funds be made available to the governing bodies of certain municipal corporations of this state to be expended for any public purposes, except for the purpose of paying the salaries of elected municipal corporation officers.

History.
Ga. L. 1967, p. 889, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Office of Treasury and Fiscal Services must make two fund computations during census years. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960

decennial United States census; after the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the State Treasurer (now director of the Office of Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

Municipalities may use funds granted for any public purpose other than paying salaries of elected municipal officers. 1970 Op. Att'y Gen. No. 70-171.

36-40-21. Municipal corporation defined.

As used in this article, the term "municipal corporation" means a municipal corporation whose population shall be based on the current United States decennial census of 1980 or any future such census, the governing body of which has held at least six regular meetings within the 12 months preceding the execution of the certificate required by Code Section 36-40-22 and which for a period of one year has levied and collected an ad valorem tax on the real property in such municipal corporation or which has, for such one-year period, performed at least two of the following municipal activities and services:

(1) Furnished water service;

(2) Furnished sewerage service;

(3) Furnished garbage collection;

(4) Furnished police protection;

(5) Furnished fire protection;

(6) Assessed and collected business licenses; or

(7) Furnished municipal street-lighting facilities.

History.
Ga. L. 1967, p. 889, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Municipality must have been incorporated and listed in United States decennial census in order to qualify for municipal grant. 1967 Op. Att'y Gen. No. 67-353.

Office of Treasury and Fiscal Services must make two fund computations during census year. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the State

Treasurer (now director of the Office of Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 13, 93.

C.J.S.
62 C.J.S., Municipal Corporations, § 1 et seq.

36-40-22. Certificate of eligibility for grant generally; submission; form; execution and attestation; penalty for signing false certificate.

(a) Each municipal corporation, as defined in Code Section 36-40-21, shall submit to the Office of the State Treasurer a certificate showing the number of regular meetings held within the preceding 12 months by the governing body of the municipal corporation and stating that ad valorem taxes on real property were levied and collected in such municipal corporation within the 12 months preceding such certificate or stating that the municipal corporation performed at least two of the activities and services enumerated in Code Section 36-40-21.

(b) Such certificate shall be substantially in the following form:

CERTIFICATE

"The undersigned, Mayor (Chairman of the Commission) of (Official Corporate Name), does hereby certify that ____ regular meetings of the governing body were held during the past 12 months and that ad valorem taxes were levied and collected during the past 12 months for the operation of the government of (Official Corporate Name) or that the municipal corporation performed the following two services:

_____ and

_____.

The municipal treasurer or other official or officials authorized to receive municipal funds is (are)

_____.

_____ _____
Date Mayor (Chairman of Commission)
Attest:

_____
Clerk"

(c) Such certificate shall be executed by the highest elective official, whether designated as mayor or by some other term (or as chairman of the commission in those municipal corporations having a commission form of government), and shall be attested by the clerk. The name of the municipal corporation used in the certificate shall be its official corporate name. The name of the municipal treasurer or other official or officials authorized to receive municipal funds shall be listed in the certificate and the instrument transferring funds to the municipal corporation shall be payable to such treasurer or other official or officials as listed in the certificate.

(d) The information contained in the certificate shall constitute the basis upon which the Office of the State Treasurer shall make the distribution of funds under this article.

(e) Any person willfully and knowingly signing a certificate containing false information shall be guilty of a misdemeanor.

History.
Ga. L. 1967, p. 889, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

State treasurer must make two fund computations during census year. — Only manner in which the state treasurer can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the state treasurer should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 509 et seq.

36-40-23. When certificate to be filed; effect of failure to file certificate.

Prior to June 1 of each year, a certificate shall be filed which shall be the basis upon which payments shall be made of funds made available under this article for the immediately succeeding fiscal year beginning

July 1 and ending June 30. If no certificate is filed within such time limitation in this Code section, the municipality shall not be entitled to and shall not be paid any funds for the applicable period and such municipality shall not be included in the formula for determining the amount of the grants as provided in Code Section 36-40-24.

History.
Ga. L. 1967, p. 889, § 5.
Editor's notes.
Ga. L. 1967, p. 889, § 5, the basis for this Code section, was amended by Ga. L. 1982, p. 869, § 1, (effective April 13, 1982), which added a new paragraph to the end of that section of the 1967 Act, providing for the filing of a late certification by any eligible municipality which failed to file for Fiscal Year 1982 funds or which filed after the June 1 cutoff date. Section 2 of the 1982 Act provided for the repeal of the 1982 Act effective November 1, 1982.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Office of Treasury and Fiscal Services must make two fund computations during census year. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the State Treasurer (now director of the Office of Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

36-40-24. Computation of allocation of funds.

(a) To the extent that funds are made available by any law, for the purposes set out in Code Section 36-40-20, the Office of the State Treasurer is authorized and directed to grant such funds to the municipal corporations of this state, as defined in Code Section 36-40-21, on the following basis:

(1) The total amount of the grant shall be divided by the total population of all municipal corporations, to arrive at an average per capita amount. Such per capita amount shall be multiplied in turn by the population of each municipal corporation with a population of 10,000 or less to arrive at the respective grants of such municipal corporations. Such grants shall be referred to as "paragraph (1) grants."

(2) In addition to the amount it would receive under paragraph (1)

grants, each municipal corporation with a population under 5,000 shall receive an additional grant equal to 50 percent of the amount it received as a paragraph (1) grant. Such grants shall be referred to as "paragraph (2) grants."

(3) In addition to the amount it would receive under paragraph (1) grants, each municipal corporation with a population of not less than 5,000 and not more than 10,000 shall receive an additional grant equal to 25 percent of the amount it received as paragraph (1) grants. Such grants shall be referred to as "paragraph (3) grants."

(4) The amount remaining for distribution after deducting the total amounts of paragraph (1) grants, paragraph (2) grants, and paragraph (3) grants shall then be divided by the total population of all remaining municipal corporations (eliminating those receiving paragraph (1), paragraph (2), and paragraph (3) grants), to arrive at a per capita amount for such remaining municipal corporations. The per capita amount as so determined shall then be multiplied by the population of each such remaining municipal corporation to arrive at its respective grant. Such grants shall be referred to as "paragraph (4) grants."

(b) No municipal corporation which qualifies for state grants under this article shall receive less than $500.00 per annum.

(c) Whenever the term "population" is used in this article, it means population as determined according to the United States decennial census of 1980 or any future such census.

(d) The computation of individual municipal grants as called for in this article shall be prepared and certified by the Office of the State Treasurer, which shall make payments as called for in this Code section.

History.
Ga. L. 1967, p. 889, § 2; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Minimum amount to be received. — Municipality which was not eligible under the 1960 United States census, but which is eligible under the 1970 United States census, should receive at least $250.00 regardless of the application of the formula. 1970 Op. Att'y Gen. No. 70-62.

State treasurer must make two fund computations during census year. — Only manner in which the state treasurer can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to

the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the state treasurer should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

36-40-25. Payment and use of funds.

Funds distributed under this article shall be paid to the municipal corporation in the name of the municipal treasurer or other official or officials authorized to receive municipal funds, as listed in the certificate required by Code Section 36-40-22. Funds granted under Code Section 36-40-24 shall be expended by the municipal corporation only for the purposes prescribed in Code Section 36-40-20.

History.
Ga. L. 1967, p. 889, § 6; Ga. L. 1975, p. 1006, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Office of Treasury and Fiscal Services must make two fund computations during census year. — Only manner in which the State Treasurer (now director of the Office of Treasury and Fiscal Services) can compute grants to municipalities for the fiscal year 1970-71 is to make two separate computations and two separate payments of funds; one-half of available funds should be distributed to the respective municipalities based on population according to the 1960 decennial United States census. After the 1970 decennial United States census becomes effective for the purpose of affecting Georgia law (December 31, 1970), the State Treasurer (now director of the Office of Treasury and Fiscal Services) should make computations based on the 1970 census and distribute the remaining half of money appropriated for fiscal 1970-71. 1970 Op. Att'y Gen. No. 70-36.

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, § 404 et seq.

ARTICLE 3

GRANTS FOR PURCHASE AND CONSTRUCTION OF CAPITAL OUTLAY ITEMS

36-40-40. Municipal corporation defined.

The term "municipal corporation," as used in this article, means a

municipal corporation, the population of which is based on the current United States decennial census, the governing body of which has held at least six regular meetings within the 12 months preceding the execution of the certificate required by Code Section 36-40-42, and which has levied taxes or levied fees of any type for the operation of the government of the municipal corporation or which has received a franchise tax from any utility, firm, or corporation within the 12 months preceding the execution of the certificate required by Code Section 36-40-42.

History.
Ga. L. 1965, p. 458, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Reference to "the current United States decennial census" is a reference to the population of an otherwise qualifying incorporated municipality based on the population of that municipality as it existed at the last decennial census in 1960. 1968 Op. Att'y Gen. No. 68-210.

Municipality must have been incorporated and listed in United States decennial census in order to qualify for a municipal grant. 1967 Op. Att'y Gen. No. 67-353.

RESEARCH REFERENCES

Am. Jur. 2d.
56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 1, 13.

C.J.S.
62 C.J.S., Municipal Corporations, § 1 et seq.

36-40-41. Grants of state funds for capital outlay items generally.

Pursuant to Article VII, Section III, Paragraph III of the Constitution of Georgia, relating to the granting of state funds to municipal corporations, such funds are authorized to be granted to certain municipal corporations as provided for in this article and may be used by such municipal corporations for purchasing, constructing, improving, maintaining, and repairing capital outlay items. Any funds granted to municipal corporations pursuant to the aforesaid provision of the Constitution shall be used only for the purposes provided for in this Code section.

History.
Ga. L. 1965, p. 458, § 1; Ga. L. 1967, p. 882, § 1; Ga. L. 1983, p. 3, § 57.

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — General Assembly intended to aid qualifying municipalities to fulfill the municipalities' responsibility to provide a system of roads and streets and to aid the municipalities in providing traffic control. 1965-66 Op. Att'y Gen. No. 65-40.

Construction of section. — This section should be strictly construed, but construed in pari materia with prior acts and amendments authorizing grants to municipalities. 1965-66 Op. Att'y Gen. No. 65-40.

Funds received by municipalities must be used for "devices and equipment" which have as their primary function direct control of traffic or else provide a direct accommodation to the general flow of traffic. 1965-66 Op. Att'y Gen. No. 65-40.

Municipalities may expend funds granted under this section only for purchase, construction, improvement, maintenance, and repair of capital outlay items. 1970 Op. Att'y Gen. No. 70-171.

Determining what are traffic control devices. — General Assembly by the language of this section intended to confer upon the municipalities qualifying under this section some latitude in determining what are "traffic control devices and equipment to control and accommodate the flow of traffic"; however, such latitude is not completely discretionary without limitations. 1965-66 Op. Att'y Gen. No. 65-40.

What are activities incident to providing road system. — To construct and maintain a system of public roads, streets, sidewalks, bridges and appurtenances, and to provide traffic control devices and equipment to control and accommodate the flow of traffic therein would be "activities incident to providing and maintaining an adequate system of public roads and bridges in this State" under the provisions of Ga. Const. 1945, Art. VII, Sec. IX, Para. IV (see now Ga. Const. 1983, Art. III, Sec. IX, Para VI(b)). This section declares the same within its latitude. 1965-66 Op. Att'y Gen. No. 65-40.

Term "capital outlay items," as used in this law, would include any expenditure on behalf of municipalities for long-term additions or betterments properly chargeable to a capital asset account. 1970 Op. Att'y Gen. No. 70-171.

Investment not restricted. — General Assembly intended funds granted to municipalities to be special funds and did not intend to restrict the funds so as to prohibit the funds' temporary investment so long as the investment does not interfere in any way with the expedient use of the funds for the purpose provided in the act, and the maturity date of the government obligations does not extend beyond the date when such funds shall be needed for these purposes. 1965-66 Op. Att'y Gen. No. 65-35.

Use of word "shall" permissive as to question of temporary investment of funds. — Limitation imposed by this section authorizing grants was intended by the legislature to be a limitation on the final use of these funds and the word "shall" as used in the section should be interpreted as permissive or directory when the question of temporary investment of these funds is considered. Certainly no right or benefit is lost by taking this interpretation; but to the contrary, the benefit of capital earnings is lost if this interpretation is not taken. 1965-66 Op. Att'y Gen. No. 65-35.

Legitimacy of expenses for street lights. — When street lights are installed or rented primarily to directly control or accommodate the general flow of traffic, the expenses for such installation or rental would be legitimate expenses under this section. However, when street lights are installed or rented as a general city improvement or as a measure to control crime, expenses of installation or renting would not be qualified expenditures. 1965-66 Op. Att'y Gen. No. 65-40.

Street name sign expenses not legitimate. — As the usual and general purpose for street name signs is to facilitate individuals in gaining directions and is not, strictly speaking, a measure directed at controlling or accommodating the general flow of traffic, street name signs are not a legitimate expenditure

under this section. 1965-66 Op. Att'y Gen. No. 65-40.

Bush hog mower expenses not legitimate. — Since bush hog mowers for rights of way and litter barrels do not have as a primary function the direct control or accommodation of the flow of traffic, although mowers and barrels may indirectly, or as an auxiliary purpose, facilitate the flow of traffic, the mowers and barrels would not be qualified expenditures within the strict construction of this section. 1965-66 Op. Att'y Gen. No. 65-40.

RESEARCH REFERENCES

Am. Jur. 2d.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 105, 459 et seq.

C.J.S.

81A C.J.S., States, § 404 et seq.

36-40-42. Certificate of eligibility for grant; submission; form; execution and attestation; penalty for signing false certificate.

(a) Each municipal corporation, as defined in Code Section 36-40-40, shall submit to the Office of the State Treasurer a certificate showing the number of regular meetings held within the preceding 12 months by the governing body of the municipal corporation and stating that taxes or fees were levied within the 12 months preceding the execution of such certificate for the operation of the municipal government.

(b) The certificate shall be substantially in the following form:

CERTIFICATE

"The undersigned, Mayor (Chairman of the Commission) of (Official Corporate Name), does hereby certify that ____ regular meetings of the governing body were held during the past 12 months and that taxes or fees were levied during the past 12 months for the operation of the government of (Official Corporate Name). The municipal treasurer or other official or officials authorized to receive municipal funds is (are) _____.

_____ _____

Date Mayor (Chairman of Commission)

Attest:

_____

Clerk"

(c) The certificate shall be executed by the highest elective official, whether designated as "mayor" or by some other term or as the "chairman of the commission" in those municipal corporations having a commission form of government, and shall be attested by the clerk. The name of the municipal corporation used in the certificate shall be its official corporate name. The name of the municipal treasurer or other

official or officials authorized to receive municipal funds shall be listed in the certificate and the instrument transferring funds to the municipal corporation shall be payable to such treasurer or other official or officials as listed in the certificate.

(d) The information contained in the certificate shall constitute the basis upon which the Office of the State Treasurer shall make the distribution of funds under this article.

(e) Any person who willfully and knowingly signs a certificate containing false information shall be guilty of a misdemeanor.

History.
Ga. L. 1965, p. 458, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

RESEARCH REFERENCES

C.J.S.
62 C.J.S., Municipal Corporations, § 509 et seq.

36-40-43. When certificate to be filed; effect of failure to file certificate.

Prior to June 1 of each year, a certificate shall be filed which shall be the basis upon which payments shall be made of funds made available under this article for the immediately succeeding fiscal year beginning July 1 and ending June 30. If no certificate is filed within the time limitation specified in this Code section, the municipality shall not be entitled to and shall not be paid any funds for the applicable period and such municipality shall not be included in the formula for determining the amount of the grants as provided in Code Section 36-40-44.

History.
Ga. L. 1965, p. 458, § 5.

36-40-44. Computation of allocation of funds.

(a) To the extent that funds are made available by any law for the purposes set out in Code Section 36-40-41, the Office of the State Treasurer is authorized and directed to grant such funds to the municipal corporations of this state, as defined in Code Section 36-40-40, on the following basis:

(1) An amount equal to five ten-thousandths of the total sum available at any given time for grants under this article shall be first determined, and each municipal corporation whose population is 500 or less shall receive as its total grant such portion of the five ten-thousandths amount so determined as its population proportion-

ately bears to 500. Such grants shall be referred to as "paragraph (1) grants."

(2) The amount remaining for distribution after deducting the total amount of paragraph (1) grants shall then be divided by the total population of all municipal corporations whose population exceeds 500, to arrive at a per capita amount. Such per capita amount shall be multiplied, in turn, by the population of each municipal corporation whose population exceeds 500. Any such municipal corporation whose population when so multiplied equals less than the five ten-thousandths amount as first determined under paragraph (1) of this Code section shall receive as its total grant the five ten-thousandths amount. Such grants shall be referred to as "paragraph (2) grants."

(3) The amount remaining for distribution after deducting the total amount of paragraph (1) and paragraph (2) grants shall then be divided by the total population of all remaining municipal corporations (eliminating those receiving paragraph (1) and paragraph (2) grants), to arrive at a per capita amount for such remaining municipal corporations. The per capita amount as so determined shall then be multiplied by the population of each such remaining municipal corporation to arrive at its respective grant. Such grants shall be referred to as "paragraph (3) grants."

(b) Whenever the term "population" is used in this article, it means population as determined according to the United States decennial census of 1980 or any future such census.

(c) The computation and payments of individual municipal grants as called for in this article shall be made by the Office of the State Treasurer.

History.
Ga. L. 1965, p. 458, § 2; Ga. L. 1973, p. 524, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility of municipalities to share in funds. — All incorporated municipalities appearing in the 1970 United States census would be eligible to share in the distribution of the second half of funds appropriated for fiscal year 1970-71 regardless of whether the municipalities were eligible prior to that time. 1970 Op. Att'y Gen. No. 70-62.

Distribution of funds on basis of 1960 and 1970 censuses. — In distributing grants to municipalities for fiscal year 1970-71, the state treasurer should distribute one-half of funds appropriated on the basis of the 1960 United States decennial census and the remaining one-half on the basis of the 1970 census. 1970 Op. Att'y Gen. No. 70-62.

Computation of allocation for city qualifying under 1970 census. — A municipality which did not qualify under the 1960 United States census, but which does qualify under the 1970 United States census, would receive, when applicable, 5/10,000ths of the amount which is

available for distribution under the 1970 United States census; this would be one-half of the total amount appropriated for fiscal year 1970-71. 1970 Op. Att'y Gen. No. 70-62.

36-40-45. Payment and use of funds.

Funds distributed under this article by the Office of the State Treasurer shall be paid to the municipal corporation in the name of the municipal treasurer or other official or officials authorized to receive municipal funds, as listed in the certificate required by Code Section 36-40-42. Such funds shall be expended by the municipal corporation only for the purposes prescribed in Code Section 36-40-41.

History. Ga. L. 1965, p. 458, § 6; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

36-40-46. Submission of annual audit; adjustment of fund distribution; effect of failure to submit audit; procedure when municipal corporation has no annual audit.

(a) The governing authority of each municipal corporation shall submit to the state auditor a copy of its regular annual audit not later than six months after the end of the fiscal year for which the audit was made. The state auditor shall compare the amount of funds distributed to each municipal corporation in such year under this article against the amount of funds expended by each municipal corporation in such year for the purposes authorized by such Code sections. If the state auditor determines that the amount so expended is less than the amount distributed, he shall certify such amount to the Office of the State Treasurer, which shall deduct and withhold the certified amount from the next funds to be distributed to the offending municipal corporation under this article. If, however, a municipal corporation expending less than the amount distributed to it certifies at the time of the submission of its audit that it is accumulating such funds for a specified allowable purpose and submits proof of the deposit or investment of such funds, then such municipal corporation will be deemed to have complied with the requirements of this Code section, except that the amount of such funds shall be added to the amount of funds distributed to such municipal corporation in the next succeeding year or years for the purpose of making the comparison and determination provided for in this Code section.

(b) Upon certification by the state auditor to the Office of the State Treasurer that the audit required by this Code section from any municipal corporation has not been received, the Office of the State Treasurer shall not distribute any further funds under this article to such offending municipal corporation until the state auditor again certifies to the Office of the State Treasurer that the delinquent audit

has been filed. It shall be the duty of the state auditor to make such certification when no audit is received or when a delinquent audit is received.

(c) If any municipal corporation is not now having a regular annual audit made of its funds, the Office of the State Treasurer shall not distribute any further funds under this article to such municipal corporation until either:

(1) An audit has been made and submitted to the state auditor; or

(2) The mayor or clerk submits a statement under oath to the state auditor stating:

(A) That the municipal corporation does not now have a regular annual audit;

(B) That the funds received under this article have been deposited in and disbursed from a separate account; and

(C) That the funds have been expended for the purposes authorized by this article.

(d) Upon the request of the Governor or the commissioner of transportation, the state auditor is authorized to audit the books and records of each municipal corporation to verify the accuracy of the report so filed with him and to ensure that the expenditure of such funds has been made for the purposes intended.

History.
Ga. L. 1966, p. 249, § 1; Ga. L. 1982, p. 3, § 36; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

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Subsection (c) of statute requires that mayor or clerk submit a statement under oath stating that municipality does not have a regular annual audit, that the funds received under this act have been deposited in and disbursed from a separate account, and that the funds have been expended for the purposes authorized by this act. In the absence of the foregoing, the state treasurer is not authorized to distribute any further funds to a municipality, and in all probability any distributions to a municipality not meeting alternatives stated in this section are questionable. 1965-66 Op. Att'y Gen. No. 66-116.

Determination of compliance. — Fiscal Division of the Department of Administrative Services (now the Office of the State Treasurer) is required to make some determination as to whether municipality is now having regular annual audit of its funds, and if not, whether any of the two specified alternatives are being complied with. 1965-66 Op. Att'y Gen. No. 66-116.

CHAPTER 41

URBAN RESIDENTIAL FINANCE AUTHORITIES FOR LARGE MUNICIPALITIES

Sec.	
36-41-1.	Short title.
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36-41-8.	Issuance of revenue bonds; use and commitment of funds; form and contents of bonds; execution; sale; temporary bonds; refunding bonds; trust indenture; validation of bonds; bonds as authorized investments.
36-41-9.	Pledge of assets for payment of bonds.
36-41-10.	Bonds or obligations not public debt.
36-41-11.	Tax exemptions.
36-41-12.	Competition with Georgia Housing and Finance Authority.
36-41-13.	Annual audit.

Cross references.
Housing Authorities Law, § 8-3-1 et seq.
Clearance and rehabilitation of blighted areas, § 8-4-1 et seq.

36-41-1. Short title.

This chapter shall be known and may be cited as the "Urban Residential Finance Authorities Act for Large Municipalities."

History.
Ga. L. 1979, p. 4662, § 1.

36-41-2. Legislative findings and declaration of public necessity.

It is found, determined, and declared:

(1) That there exists within the large municipalities of the state a serious shortage of decent, safe, and sanitary housing which a significant portion of the persons and families residing or desiring to reside in such municipalities can afford. This shortage is inimical to the safety, health, and welfare of the residents of this state and the sound growth of its large municipalities. The cost of financing the ownership and rehabilitation of housing in such municipalities is a major factor affecting the ability of a person to obtain decent and safe

housing therein. In order to remedy such housing shortages, it is necessary to implement a public program to reduce the cost of financing for the acquisition and rehabilitation of housing, in order to make the acquisition of housing feasible for all persons and families residing or desiring to reside in the large municipalities of the state;

(2) That it is necessary and essential that public corporations be created for such large municipalities of the state directly, or indirectly through qualified lending institutions, to make loans at rates below market to finance either the acquisition or rehabilitation or both of residential housing and to acquire mortgages in order to encourage investment in and upgrade urban areas;

(3) That it is necessary and in the best interests of the state to provide loans at rates below market for the acquisition and rehabilitation of housing which will:

(A) Provide for and promote the public health, safety, and welfare in the large municipalities of the state;

(B) Reduce unemployment and encourage the increase of industrial and commercial activities and economic development in the large municipalities;

(C) Provide for the efficient and well-planned growth and development of the large municipalities, including the elimination and prevention of slum areas and blight, and for the proper coordination of industrial facilities with public services, mass transportation facilities, and residential development, by providing an incentive for home ownership within the geographical limits of the large municipalities;

(D) Assist persons and families in acquiring and owning decent, safe, and sanitary housing which they can afford within the geographic limits of the large municipalities;

(E) Promote the integration of families of varying economic means in the large municipalities; and

(F) Preserve and increase the tax base of the large municipalities; and

(4) Accordingly, that it is a valid public purpose, as a matter of public health, safety, convenience, and welfare, to assist in providing financing for the acquisition, construction, or rehabilitation of housing in the large municipalities of the state and that the creation of public corporations and instrumentalities of the state is the most feasible method by which the state can accomplish such public purposes.

History.
Ga. L. 1979, p. 4662, § 2; Ga. L. 1980, p. 556, § 1; Ga. L. 1987, p. 3, § 36.

36-41-3. Definitions.

As used in this chapter, the term:

(1) "Authority" means any public corporation created by this chapter.

(2) "Bonds" means any bonds, including refunding bonds, or any notes or other obligations authorized to be issued by an authority pursuant to this chapter.

(3) "Eligible household" means any household which does not have sufficient income to afford to pay the amounts at which private enterprise, without federally aided, state aided, or authority aided mortgages, is providing a substantial supply of decent, safe, and sanitary housing and which satisfies the income limitations set by each authority in administrative guidelines and procedures established pursuant to subsection (c) of Code Section 36-41-5.

(4) "Federally aided mortgage" means any mortgage insured or guaranteed by an agency of the United States government or any mortgage receiving special benefits, directly or indirectly, under any federal laws designated specifically to encourage the purchase of housing.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of a large municipality.

(6) "Household" shall have that meaning specified by the United States Bureau of the Census in its 1980 census.

(7) "Income" shall have that meaning specified by the United States Bureau of the Census in its 1980 census.

(8) "Lending institution" means any bank or trust company, savings and loan association, building and loan association, savings bank, insurance company, mortgage banker, mortgage broker, or other financial institution, any governmental agency, or any holding company for any of the foregoing. Such lending institution shall have a place of business in this state and shall be authorized to do business in this state.

(9) "Median household income" shall have that meaning used in the United States decennial census for the Metropolitan Statistical Area of the particular municipality activating the particular authority as adjusted from time to time by the United States Department of Housing and Urban Development.

(10) "Mortgage" means a deed to secure debt, together with the promissory note, the repayment of which is secured by such deed to secure debt, which is held by either the authority or a lending institution, which deed to secure debt encumbers either a fee simple or leasehold estate located within the geographic boundaries of a large municipality activating the authority and improved by residential housing.

(11) "Municipality" means any municipal corporation of this state having a population of 350,000 or more according to the United States decennial census of 1980 or any future such census.

(12) "Nonprofit housing corporation" means a nonprofit or charitable private corporation providing safe and sanitary dwelling accommodations to persons of low income in such manner as to be essentially similar in operation and function to any authority or housing authority essential under this chapter.

(13) "Qualified housing sponsor" means an entity, whether organized for profit or not, meeting criteria established by the authority, which has undertaken to provide housing which will be available for sale or rent to eligible persons and families upon such terms and in conformity with administrative guidelines established by the authority. With respect to residential housing to be occupied substantially by students, the term "qualified housing sponsor" shall mean a nonprofit educational institution which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, which provides a program of education beyond the high school level, and which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) Provides an educational program for which it awards a bachelor's degree or provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor's degree or its equivalent, for which it awards a postgraduate degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree; and

(C) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer, by the university system and its educational units for credit on the same basis as if transferred from an institution so accredited;

provided, however, that a nonprofit educational institution which is otherwise a qualified housing sponsor as defined in this paragraph

shall be deemed to be a qualified housing sponsor notwithstanding such institution's maintenance of a special early admission policy for gifted high school students.

(14) "Real property" means all lands, franchises, and interests in land, including lands under water and riparian rights, space rights, and air rights, and any and all other things usually included within such term. Such term shall include any and all interests in such property less than full title, such as easements, incorporeal hereditaments, and every estate or interest or right, legal or equitable, including terms for years.

(15) "Rehabilitation costs" means the total of all costs incurred by eligible households in the rehabilitation of residential housing which are approved by an authority as reasonable and necessary, which costs shall include, but shall not necessarily be limited to, the following: the cost of site preparation and development; fees for architectural, engineering, legal, accounting, and other services paid or payable in connection with the planning, reconstruction, and financing of residential housing; the cost of necessary surveys, plans, and permits; the cost of insurance, interest, financing, taxes, assessments, and other operating and carrying costs during rehabilitation; the cost of rehabilitation, reconstruction, fixturing, furnishing, and equipping residential housing; the cost of land improvements, including, but not limited to, landscaping and off-site improvements, whether or not any such cost has been paid in cash or in a form other than cash; and the cost of such other items as the authority shall determine to be reasonable and necessary for the rehabilitation of residential housing.

(16) "Residential housing" means any real property and improvement thereon, whether multifamily residential housing or single-family residential housing, within the geographic boundaries of a large municipality activating the authority, which is owned, in whole or in part, by an eligible household or which is providing or shall provide, in whole or in part, dwelling accommodations for eligible households; provided, however, that, with respect to multifamily residential housing, such multifamily residential housing shall be deemed to be occupied by eligible households if at least 20 percent of the dwelling units of such multifamily residential housing are occupied by eligible households. Such term shall include dormitories, apartment dwellings, or other housing facilities which shall be occupied primarily by students.

(17) "Security interest" means an interest in personal property installed or to be installed in residential housing, which interest secures, in whole or in part, the repayment of a promissory note, the holder of which interest and note is either an authority or a lending

institution. Such term includes all documentation executed in connection with the creation of such interest and specifically includes both the aforesaid promissory note and a security agreement.

(18) "State" means the State of Georgia.

(19) "State aided mortgage" means a mortgage loan for housing for eligible households assisted under this chapter.

(20) "Student" means any individual who possesses a certificate of admission or enrollment at an institution for higher education that is a qualified housing sponsor.

History.

Ga. L. 1979, p. 4662, § 3; Ga. L. 1980, p. 556, §§ 2, 3; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, § 1; Ga. L. 1986, p. 947, § 1; Ga. L. 1987, p. 150, § 1; Ga. L. 1988, p. 1530, §§ 1, 2; Ga. L. 1991, p. 989, § 3; Ga. L. 2025, p. 1029, § 36(15)/SB 153, effective July 1, 2025.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "Such term" for "The term 'real property'" in paragraph (14); in paragraph (16), substituted "however, that," for "however, that" in the middle of the first sentence, and "Such term" for "The term 'residential housing'" at the beginning of the second sentence; and substituted "Such term" for "The term 'security interest'" at the beginning of the second sentence in paragraph (17).

36-41-4. Creation of authority; governing board; filing of resolutions with Secretary of State; vacancies; officers; compensation; rules and regulations.

There is created in and for each municipality of this state, as defined in paragraph (11) of Code Section 36-41-3, a public body corporate, which shall be deemed to be an instrumentality of the state, to be known as the "urban residential finance authority" of such municipality and which shall be governed by a board of not less than seven nor more than nine members. Each member of the board shall be a resident of the large municipality activating the authority. No more than two members of the board may be appointed by the mayor of the large municipality activating the authority with the remaining members appointed by the governing body of the municipality for such term and upon such conditions as specified by resolution of the governing body. Any member of the governing body of the large municipality, the mayor or other chief executive thereof, and the chief fiscal officer thereof may serve on the board. The provisions of Chapter 62A of this title relating to ethics and conflicts of interest shall apply to members of the board of each authority created under this Code section. No authority created under this Code section shall transact any business or exercise any powers under this chapter until the governing body of the large municipality activating the authority, by resolution, declares that there is need for an authority to function in such municipality. A copy of the resolution adopted by the governing body and copies of any resolution adopted by

the governing body providing for filling vacancies in the membership of the board of the authority or making any changes in the membership of the board of the authority shall be filed with the Secretary of State. Appointments to fill vacancies on the board of any authority, either for an unexpired or full term as fixed in the original resolution creating the same, shall be made by the governing body of the municipality. The members of the board of each authority shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary-treasurer, who need not be a member of the board and need not be a resident of the municipality activating such authority. Each member of the board of each authority shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is in attendance at a meeting of the authority, but shall receive the same for not more than 20 meeting days during any one fiscal year. For attendance at any conference in connection with the performance of their official duties, other than a meeting of the authority, members shall be reimbursed for actual expenses incurred and travel expenses in the same manner as provided by law for members of the General Assembly but shall receive the same for not more than ten days during any one fiscal year. However, if the secretary-treasurer is not a member of the board, then the secretary-treasurer may receive such compensation for his services as may be agreed upon by the members of the board. Each authority shall make rules and regulations for its government and may delegate to one or more of its members or its officers, agents, and employees such powers and duties as may be deemed necessary and proper.

History.
Ga. L. 1979, p. 4662, § 4; Ga. L. 1984, p. 337, § 1; Ga. L. 1987, p. 3, § 36; Ga. L. 1988, p. 1530, § 3.

Cross references.
Expense allowances for General Assembly members, §§ 28-1-8 and 45-7-4.

36-41-5. Powers of authority generally; establishment of administrative guidelines for determination of eligibility.

(a) Except as otherwise limited by this chapter, each authority shall have the power:

(1) To bring and defend actions;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, including contracts with any agency or authority or nonprofit housing corporation within this state;

(4) To make and alter bylaws for its organization and internal management;

(5) To acquire, hold, and dispose of real and personal property for its corporate purposes;

(6) To appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their compensation;

(7) To borrow money and to issue bonds, the term of which shall not exceed 40 years, and to provide for the rights of the holders thereof;

(8) To make loans pursuant to Code Section 36-41-6 for the financing, acquisition, or rehabilitation of residential housing, the repayment of which is secured by mortgages or security interests or other assets and funds of the authority or other security devices determined to be satisfactory by the authority; to participate in the making of loans secured by mortgages or security interests or other security devices determined to be satisfactory by the authority; to undertake commitments to make loans secured by mortgages or security interests or other security devices determined to be satisfactory by the authority; to acquire and, pursuant to Code Section 36-41-7, to contract to acquire mortgages or security interests or participations therein, owned by lending institutions, the Federal National Mortgage Association, or any federal or state agency; and to enter into advance commitments to such organizations for the purchase of such mortgages or security interests or participations;

(9) To sell mortgages and security interests at public or private sale; to negotiate modifications or alterations in mortgages and security interests; to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security interest, contract, or other agreement; and to bid for and purchase property which was the subject of such mortgage or security interest, at any foreclosure or at any other sale, to acquire or take possession of any such property; and, in the event that the authority takes possession of any such property, to complete, administer, and pay the principal and interest of any obligations incurred in connection with such property and to operate, manage, lease, dispose of, and otherwise deal with such property in such manner as may be necessary or desirable to protect the interests of the authority and the holders of its bonds and other obligations;

(10) To collect fees and charges in connection with its loans, commitments, and servicing, including, but not limited to, reimbursement of costs of financing as the authority shall determine to be reasonable and as shall be approved by the authority;

(11) To make and execute contracts for the servicing of mortgages made or acquired by the authority pursuant to this chapter and to

pay the reasonable value of services rendered to the authority pursuant to those contracts;

(12) To accept gifts, grants, loans, or other aid from the federal government, the state or any county or municipality within the state or any persons or corporations and to agree and comply with any conditions attached to such financial assistance;

(13) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of bond principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks which have deposits insured by the Federal Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation and certificates of deposit of federal savings and loan associations and state building and loan associations which have deposits insured by the Federal Savings and Loan Insurance Corporation or the Georgia Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit

Insurance Corporation or the Federal Savings and Loan Insurance Corporation or the Georgia Deposit Insurance Corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, the Federal Home Loan Bank of Atlanta, Georgia, or with any national or state bank, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct or general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys; and

(G) Any and all other obligations of investment grade and having a national recognized market including, but not limited to, rate guarantee agreements, guaranteed investment contracts, or other similar arrangements offered by any firm, agency, business, governmental unit, bank, insurance company, or other entity, provided that each such obligation shall permit moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(14) To make and contract to make loans to lending institutions on such terms and conditions as it shall determine. All lending institutions are authorized to borrow from the authority in accordance with

subsection (d) of Code Section 36-41-6 and the administrative guidelines established by the authority pursuant to criteria set forth in this chapter;

(15) To procure insurance against any loss in connection with its property and other assets;

(16) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this chapter;

(17) To make loans pursuant to Code Section 36-41-6 to finance the construction of residential housing;

(18) To engage in and assist in the development and operation of low and moderate income housing pursuant to Code Section 8-3-30;

(19) To participate in or administer federal programs for the issuance of mortgage credit and to do all things necessary or convenient to qualify as an issuer of mortgage credit certificates;

(20) To participate in or administer or participate in and administer any federal, state, county, or municipal program designed to assist in lowering the cost of housing for eligible households;

(21) To provide financing for housing projects, without regard to targeting for eligible households, which encourages the development of housing in accordance with the comprehensive development plan of the municipality activating the authority;

(22) To participate, own, lease, develop, operate, or manage residential housing or other real and personal property in cooperation, joint venture, partnership, or other contractual obligations with the federal government, state, or any county or municipality within the state, or any qualified housing sponsor; and

(23) To participate in, issue on behalf of, or jointly issue any bonds, notes, or other obligations with any public housing authority, downtown development authority, or development authority within the state or the Georgia Housing and Finance Authority.

(b) No authority shall have the power of eminent domain.

(c) Each authority shall establish administrative guidelines as to income limitations for eligible households for the purposes of paragraph (3) of Code Section 36-41-3 by taking into account the following considerations, among others determined by the authority to be appropriate:

(1) The size of the family or number of persons who intend to reside together;

(2) The conditions and costs of obtaining and maintaining existing and available housing within the geographic boundaries of the municipality activating the authority;

(3) The costs of obtaining and maintaining newly constructed or rehabilitated housing within the geographic boundaries of the municipality activating the authority, including considerations of the total rehabilitation costs of such housing and the costs of financing such housing as affected by prevailing and available financing terms and conditions relating to nonfederally aided and nonstate aided mortgages; and

(4) The age or physical condition of the persons who intend to reside in the residential housing.

(d) The administrative guidelines established by each authority pursuant to subsection (c) of this Code section may differ in order to reflect the varying tenant composition and economic and housing conditions within the jurisdiction of each authority.

History.

Ga. L. 1979, p. 4662, § 5; Ga. L. 1980, p. 556, §§ 4-6; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, §§ 2, 3; Ga. L. 1986, p. 947, §§ 2-4; Ga. L. 1987, p. 150, §§ 2-4; Ga. L. 1988, p. 1530, §§ 4, 5; Ga. L. 1989, p. 14, § 36; Ga. L. 1991, p. 1653, § 2-3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, "others" was substituted for "other" in the introductory language of subsection (c).

Pursuant to Code Section 28-9-5, in 1987, "Bank" was inserted following "Federal Intermediate Credit" in subparagraph (a)(13)(C).

Pursuant to Code Section 28-9-5, in 1988, "and" was deleted at the end of paragraph (a)(21).

36-41-6. Loans to qualified housing sponsors or eligible households; loans to lending institutions.

(a) With respect to the power to make loans set forth in subsection (a) of Code Section 36-41-5, each authority may make loans to qualified housing sponsors or eligible households for the financing, acquisition, or rehabilitation of residential housing within the geographic boundaries of the large municipality activating the authority. Any such loan:

(1) Shall be used for all or part of the cost of financing, acquiring, or rehabilitating residential housing, including the construction of residential housing, in accordance with the rules of the authority; and

(2) Shall be secured in such manner and be repaid in such period, not exceeding 40 years, as may be determined by the authority and shall bear interest at a rate determined by the authority.

(b) Each authority may make and contract to make loans to lending institutions, on such terms and conditions as it shall determine, in

accordance with the following criteria, and all lending institutions are authorized to borrow from the authority in accordance with administrative guidelines of the authority established pursuant to the following criteria:

(1) The authority shall require that each lending institution receiving a loan pursuant to this subsection shall issue and deliver to the authority evidence of its indebtedness to the authority, which shall constitute a general obligation of such lending institution and shall bear such date or dates, shall mature at the time or times, shall be subject to prepayment, and shall contain such other provisions consistent with this Code section as the authority shall determine;

(2) The interest rate or rates and other terms of such loans made from the proceeds of any issue of bonds of the authority shall be at least sufficient to assure the payment of the bonds and the interest thereon as the same become due;

(3) The authority may require that such loans shall be secured as to payment of both principal and interest by a pledge of collateral security in such amounts as the authority shall determine to be necessary to assure the payment of such loans and the interest thereon as the same become due. Such collateral security may consist of:

(A) Obligations for the payment of money by or guaranteed by the United States of America;

(B) Obligations for the payment of money by any of the following: the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Home Loan Bank System, the Export-Import Bank, the Federal Land Banks, the Federal National Mortgage Association, or the Government National Mortgage Association;

(C) Obligations for the payment of money by the state or any municipal corporation therein;

(D) Mortgages insured by the Federal Housing Administration or guaranteed by the United States Department of Veterans Affairs and such other mortgages insured or guaranteed by the federal government or by a private insurer as to payment of principal and interest as shall be approved by the authority;

(E) Conventional mortgages approved by the authority; or

(F) Any other security determined by the authority to protect the interests of the authority and the bondholders;

(4) The authority may require that collateral for such loans be deposited with a bank, trust company, or other financial institution acceptable to the authority located in the state and designated by the

authority as custodian therefor. In the absence of such requirement and if required by the authority, each lending institution shall enter into an agreement with the authority containing such provisions as the authority shall deem necessary to:

(A) Identify adequately and maintain such collateral;

(B) Service such collateral; and

(C) Require the lending institution to hold such collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition thereof and the income therefrom. The authority may also establish such additional requirements as it shall deem necessary with respect to the pledging, assigning, setting aside, or holding of such collateral and the making of substitutions therefor or additions thereto and the disposition of income and receipts therefrom;

(5) The authority shall require as a condition of each loan to a lending institution that such lending institution, within such period after receipt of the loan proceeds as the authority may prescribe by regulation, shall have entered into written commitments to make and, within such period thereafter as the authority may prescribe by regulation, shall have disbursed the net loan proceeds in mortgage loans on residential housing in an aggregate principal amount equal to the net amount of such loan proceeds. Such mortgage loans shall have such terms and conditions as the authority may prescribe;

(6) The authority shall require each lending institution to which the authority has made a loan to submit evidence satisfactory to the authority of the making of new mortgage loans for residential housing as required by this Code section and in connection therewith may, through its employees or agents, inspect the books and records of any such lending institution;

(7) Compliance by any lending institution with the terms of its agreement with or undertaking to the authority with respect to the making of mortgage loans for residential housing may be enforced by the decree of any court of competent jurisdiction;

(8) To the extent that any provisions of this subsection may be inconsistent with any provision of law of the state governing the affairs of lending institutions, the provisions of this subsection shall control.

(c) Notwithstanding any other provision of this chapter, each authority may finance residential housing under any provision of this chapter for occupancy by persons who, by virtue of age, physical condition, or other appropriate factors, are determined by the authority to require the assistance provided by such authority under this chapter, without regard to personal or family income.

History.
Ga. L. 1979, p. 4662, § 6; Ga. L. 1980, p. 556, § 7; Ga. L. 1985, p. 391, §§ 4, 5; Ga. L. 1987, p. 150, §§ 5, 6; Ga. L. 1990, p. 45, § 1; Ga. L. 1992, p. 6, § 36.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1985 and in 1987, semicolons were substituted for periods at the end of paragraphs (b)(1) through (b)(7).

36-41-7. Purchase of mortgages or security interests or participations therein.

(a) With respect to the power to purchase mortgages or security interests or participations therein from lending institutions as set forth in subsection (a) of Code Section 36-41-5, each authority may purchase mortgages or security interests from lending institutions, which shall in turn reinvest the proceeds in new mortgage loans made as rapidly as possible on residential housing. A mortgage or security interest or participation therein shall not be acquired under this chapter unless the rate of interest on such mortgage meets the rates of interest established by the authority. The authority shall establish such rates of interest, taking into consideration all of the following:

(1) The cost to the authority in obtaining funds;

(2) Allowances to be made to a lending institution as a service fee in acting as a servicing agent in the administration and collection of the mortgage;

(3) Administrative costs of the authority;

(4) Allowances for any necessary reserves of the authority; and

(5) Regulations of the Internal Revenue Service of the United States.

(b) The authority may purchase participations in mortgages or security interests and shall make such rules as will adequately secure the authority and its bondholders with respect to the purchase of participations in mortgages or security interests.

(c) If the authority purchases a mortgage or a security interest or a participation therein from a lending institution, the lending institution may act as servicing agent for the authority in the collection and administration of the mortgage or security interest, subject to the rules established by the authority under this chapter.

(d) Subject to the rights of bondholders, the authority shall fix the amount of the fee to be paid a servicing agent, in such amount as shall reasonably compensate the servicing agent for performing such services. The amount of such fee may be deductible from any interest payable and collected under the mortgage or security interest.

(e) The authority may make commitments to lending institutions to purchase a mortgage or security interest or participation therein prior

to the date of its execution, and a mortgage which is made by a lending institution under a prior commitment from the authority to purchase the mortgage or security interest or a participation therein shall satisfy the requirement to reinvest the proceeds from the sale as quickly as possible in mortgage loans for residential housing. The authority shall establish such fees as are necessary to reimburse the authority for the administrative costs incurred in connection with making commitments to purchase and in purchasing mortgages or security interests or participations therein.

(f) The authority may require as a condition of a purchase of any mortgage or security interest from a lending institution that the lending institution represent and warrant to the authority any or all of the following:

(1) The unpaid principal balance and the interest rate thereon have been accurately stated to the authority and that the interest rate and all service charges in connection therewith are not usurious under the laws of the state;

(2) The amount of the unpaid principal balance is legally and validly due and owing;

(3) The lending institution has no notice of the existence of any counterclaim, offset, or defense asserted by the mortgagor or his successor in interest;

(4) Necessary documents have been properly recorded in the county in which the real estate lies;

(5) The mortgage or security interest constitutes a valid lien on the property described in the mortgage or security interest, subject only to such matters which do not adversely affect to a material degree the use or value of the property;

(6) The loan when made was lawful under the laws of the state or under federal law or both, whichever governed the making of the loan, and would be lawful on the date of purchase by the authority if made by the lending institution on that date in the amount of the unpaid principal balance;

(7) The mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, real property taxes, or otherwise in the performance of the mortgagor's obligations under the mortgage or security interest and has not, to the knowledge of the lending institution, been in default in the performance of any such obligation for a period of longer than 60 days;

(8) The mortgage or security interest requires that the property described therein be covered by a valid and subsisting policy of

insurance issued by a responsible insurance company legally licensed and authorized to conduct and transact business in the state and providing fire and extended coverage to an amount not less than 80 percent of the insurable value of the property or in the amount of the mortgage or security interest, whichever the authority may determine;

(9) The insurance coverage referred to in paragraph (8) of this subsection is in full force and effect; and

(10) Subject to subsection (e) of this Code section, moneys received from the authority will be utilized for the financing, acquisition, or rehabilitation of residential housing within the geographic boundaries of the municipality activating the authority, and that certification by the lending institution to the effect that moneys have been reloaned as set forth in this chapter will be filed with the authority pursuant to the rules of the authority and will be available to the members of the public and to members of the General Assembly.

(g) Each lending institution shall be liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the lending institution shall, at the option of the authority, repurchase the mortgage or security interest or participation for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine.

(h) The authority may require the recording of an assignment of any mortgage purchased by it from a lending institution.

History. Ga. L. 1979, p. 4662, § 7; Ga. L. 1980, p. 556, § 8; Ga. L. 1985, p. 391, § 6; Ga. L. 1987, p. 150, § 7.

36-41-8. Issuance of revenue bonds; use and commitment of funds; form and contents of bonds; execution; sale; temporary bonds; refunding bonds; trust indenture; validation of bonds; bonds as authorized investments.

(a) Each authority shall have the power and is authorized, at one time or from time to time, to issue its revenue bonds in such principal amounts as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, including the making and purchasing of loans for the acquisition, financing, construction, and rehabilitation of residential housing as provided in this chapter; the payment of interest on bonds of the authority; the establishment of reserves to secure such bonds; and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(b) The authority may retain the services of a qualified, independent financial advisor. The financial advisor shall not in any manner be involved in the underwriting of the revenue bonds or in the origination, sale, or servicing of mortgage loans for residential housing and shall serve only to advise the authority.

(c) The bonds of each issue shall be dated; shall bear interest at such rate or rates as shall be set by the authority (which may include the use of any formula or market-pricing mechanism determined by the authority to be reasonable), without limitation by any existing law of the state, payable at such times as the authority may determine; shall mature at such time or times as the authority may determine; shall be payable in such medium of payment as to both principal and interest as may be determined by the authority; and, at the option of the authority, may be made redeemable before maturity or exchangeable for other bonds of the same series at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution or financing documents providing for the issuance of such bonds or both redeemable and exchangeable. The bonds may be issued as serial bonds or as term bonds with or without mandatory sinking fund provisions or as a combination thereof.

(d) The authority shall determine the form of the bonds, including any interest or principal coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company inside or outside the state.

(e) All such bonds shall be executed in the name of the authority by the chairman or vice-chairman and secretary-treasurer of the authority and shall be sealed with the official seal of the authority or a facsimile thereof. Coupons shall be executed in the name of the authority by the chairman or vice-chairman of the authority. The facsimile signature of both the chairman or vice-chairman and the secretary-treasurer of the authority may be imprinted in lieu of the manual signatures if the authority so directs, and the facsimile of the chairman's or vice-chairman's signature shall be used on such coupons. Bonds and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid notwithstanding the fact that before or after the delivery thereof such person ceased to hold such office. In addition to the foregoing, the bonds shall bear the manual or facsimile signature of the clerk of the superior court of each county wherein is located a municipality activating an authority.

(f) The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both

principal and interest. The authority may sell such bonds at public or private sale in such manner and for such price as it may determine to be for the best interest of the authority.

(g) Prior to the preparation of definitive bonds, the authority may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter. The authority may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this chapter.

(h) Each authority is authorized to provide by resolution for the issue of refunding bonds of the authority for the purpose of refunding any bonds issued under this chapter and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by this chapter insofar as the same may be applicable.

(i) If the authority so determines, the bonds may be issued pursuant to a trust indenture between the authority and a trustee, which trust indenture shall have such terms and provisions as may be determined by the authority.

(j) Except as provided in this Code section, all revenue bonds issued by the authority under this chapter shall be executed, confirmed, and validated under, and in accordance with, Article 3 of Chapter 82 of this title, except that, in lieu of specifying the maturities or the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the petition and complaint filed in the validation proceeding may state that the bonds, when issued, will mature no later than 40 years from their issuance and bear interest at a rate not exceeding a maximum per annum rate of interest specified in such notices or that, in the event that bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained in this subsection shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices.

(k) In the event that no appeal is filed within the time prescribed by law or, if an appeal is filed, that the judgment is affirmed on appeal, the judgment of the superior court so confirming and validating the issuance of the bonds and the security therefor shall be forever conclusive upon the validity of the bonds and the security therefor against the authority and all other persons.

(l) The bonds are made securities in which all public officers and bodies of the state and all municipalities; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of the state and all municipalities for any purposes of which the deposit of the bonds or other obligations of the state is now or may hereafter be authorized.

History.
Ga. L. 1979, p. 4662, § 8; Ga. L. 1980, p. 556, §§ 9, 10; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, § 7; Ga. L. 1986, p. 10, § 36; Ga. L. 1986, p. 947, § 5; Ga. L. 1987, p. 3, § 36; Ga. L. 1987, p. 150, § 8.

Cross references.
Revenue bonds generally, § 36-82-60 et seq.

36-41-9. Pledge of assets for payment of bonds.

Each authority may pledge for the payment of its bonds such assets, funds, contract rights, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority shall be valid and binding from the time when the pledge is made. The moneys or properties so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded.

History.
Ga. L. 1979, p. 4662, § 9; Ga. L. 1985, p. 391, § 8; Ga. L. 1987, p. 150, § 9.

36-41-10. Bonds or obligations not public debt.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the state or any county, municipality, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of the state or any such county, municipality, or political subdivision. All such bonds and obligations shall be payable solely from the sources established for the payment thereof in the

resolution or financing documents authorizing the issuance of such bonds; and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of the state or any county, municipality, or political subdivision thereof, nor to enforce the payment thereof against any property of the state or any such county, municipality, or political subdivision.

History.
Ga. L. 1979, p. 4662, § 11; Ga. L. 1982, p. 3, § 36; Ga. L. 1985, p. 391, § 9; Ga. L. 1987, p. 150, § 10.

36-41-11. Tax exemptions.

As each authority will be performing essential governmental functions in the exercise of the powers conferred upon it by this chapter, the state covenants with the holders of the bonds of an authority that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of any facilities maintained or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority and that the bonds and notes of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The exemption from taxation provided in this Code section shall not extend to tenants or lessees of the authority and shall not include exemptions from sales and use taxes on property purchased by the authority or for use by the authority. No authority shall be required to pay any intangible tax on the recording of any mortgage held or granted by the authority.

History.
Ga. L. 1979, p. 4662, § 10; Ga. L. 1985, p. 391, § 10; Ga. L. 1987, p. 150, § 11.

36-41-12. Competition with Georgia Housing and Finance Authority.

No authority shall compete with the Georgia Housing and Finance Authority to such an extent as to affect adversely the interests and rights of the holders of bonds issued by the Georgia Housing and Finance Authority.

History.
Ga. L. 1979, p. 4662, § 12; Ga. L. 1991, p. 1653, § 2-3.

36-41-13. Annual audit.

Each authority and each trustee acting on behalf of an authority shall submit to an annual independent audit performed by a qualified firm

selected by the members of such authority. Payment for this audit shall be paid from any funds held by the trustee for the authority.

History.
Ga. L. 1979, p. 4662, § 13; Ga. L. 1988, p. 1530, § 6.

CHAPTER 42

DOWNTOWN DEVELOPMENT AUTHORITIES

Sec.	
36-42-1.	Short title.
36-42-2.	Legislative purpose.
36-42-3.	Definitions.
36-42-4.	Creation of authorities; appointment and terms of directors; quorum.
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36-42-8.	Powers of authorities generally.
36-42-8.1.	[Repealed] Eminent domain by municipality or authority.
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36-42-10.	Applicability of "Revenue Bond Law"; form and provisions for exchange and transfer of bonds; certificate of validation; specification of interest rates in notice to district attorney or Attorney General.
36-42-11.	Agreements and instruments of authority generally; use of proceeds; subsequent issues; bond anticipation notes.
36-42-12.	Obligations of authorities not public debt of state or political subdivision thereof.
36-42-13.	Constitutional authority for enactment of chapter; tax exemption.
36-42-14.	Effect of chapter on other public authorities.
36-42-15.	Construction of chapter; applicability of the "Georgia Uniform Securities Act of 2008."
36-42-16.	Creation of special districts.
36-42-17.	Assessments under Code Section 36-42-16; priority of liens regarding assessments for downtown development authorities.

Law reviews.

For note, "Procedural Requirements for Public Approval of Tax-Exempt Industrial Development Bonds Under TEFRA," see 19 Ga. St. B.J. 84 (1982).

For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

For survey article on construction law, see 44 Mercer L. Rev. 125 (1992).

36-42-1. Short title.

This chapter may be referred to as the "Downtown Development Authorities Law."

History.

Ga. L. 1981, p. 1744, § 1.

Law reviews.

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

JUDICIAL DECISIONS

Underground Atlanta is a public works. — Underground Atlanta was constructed under the Downtown Development Authorities Act and is a proper project under the Downtown Development Authorities Act; accordingly, the Underground Atlanta project falls within the definition of "project" in O.C.G.A. § 36-42-3(6) and the totality of the agreements between the city and Underground Festival, Inc., clearly contemplates a public works project. City of Atlanta v. United Elec. Co., 202 Ga. App. 239, 414 S.E.2d 251, 1991 Ga. App. LEXIS 1744 (1991).

36-42-2. Legislative purpose.

The revitalization and redevelopment of the central business districts of the municipal corporations of this state develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities and promote the general welfare of this state by creating a climate favorable to the location of new industry, trade, and commerce and the development of existing industry, trade, and commerce within the municipal corporations of this state. Revitalization and redevelopment of central business districts by financing projects under this chapter will develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities and will promote the general welfare of this state. It is, therefore, in the public interest and is vital to the public welfare of the people of this state, and it is declared to be the public purpose of this chapter, so to revitalize and redevelop the central business districts of the municipal corporations of this state. No bonds, notes, or other obligations, except refunding bonds, shall be issued by an authority under this chapter unless its board of directors adopts a resolution finding that the project for which such bonds, notes, or other obligations are to be issued will promote the foregoing objectives.

History.
Ga. L. 1981, p. 1744, § 9.
Cross references.
Clearance and rehabilitation of blighted areas, § 8-4-1 et seq.

JUDICIAL DECISIONS

Scope of application. — Although the "Downtown Development Authorities Law" expands the scope of permissible authority projects beyond that of the "Development Authorities Law" to include all types of commercial projects, the "Downtown Development Authorities Law" otherwise resembles the "Development Authorities Law" in design and purpose. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

Neither the increased breadth of the "Downtown Development Authorities Law" in comparison with the uniform industrial development authority statutes which preceded it, nor the apparently broad language of the enacting and definitions clauses therein, are sufficiently definite indications that the General As-

sembly intended to undertake a radical departure from its previous cautious approach and grant local governments unbridled power to finance all their public works through downtown development authorities. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

Street and government-building construction. — Municipality's attempt to use the "Downtown Development Authorities Law" to finance street improvements and construction and refurbishing of governmental buildings is unconstitutional. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

36-42-3. Definitions.

As used in this chapter, the term:

(1) "Authority" means each public body corporate and politic created pursuant to this chapter.

(2) "Cost of the project" or "cost of any project" means and includes:

(A) All costs of acquisition (by purchase or otherwise), construction, assembly, installation, modification, renovation, or rehabilitation incurred in connection with any project or any part of any project;

(B) All costs of real property, fixtures, or personal property used in or in connection with or necessary for any project or for any facilities related thereto, including, but not limited to, the cost of all land, estates for years, easements, rights, improvements, water rights, connections for utility services, fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; and the cost of preparation of any application therefor and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project;

(C) All financing charges and loan fees and all interest on revenue bonds, notes, or other obligations of an authority which accrues or is paid prior to and during the period of construction of a project and during such additional period as the authority may reasonably determine to be necessary to place such project in operation;

(D) All costs of engineering, surveying, and architectural and legal services and all expenses incurred by engineers, surveyors, architects, and attorneys in connection with any project;

(E) All expenses for inspection of any project;

(F) All fees of fiscal agents, paying agents, and trustees for bondholders under any trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any

such fiscal agents, paying agents, and trustees; and all other costs and expenses incurred relative to the issuance of any revenue bonds, notes, or other obligations for any project;

(G) All fees of any type charged by an authority in connection with any project;

(H) All expenses of or incidental to determining the feasibility or practicability of any project;

(I) All costs of plans and specifications for any project;

(J) All costs of title insurance and examinations of title with respect to any project;

(K) Repayment of any loans made for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project or the financing thereof or the placing of any project in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the foregoing purposes shall be a part of the cost of the project and may be paid or reimbursed as such out of proceeds of revenue bonds, notes, or other obligations issued by the authority.

(3) "Downtown development area" means the geographical area within a municipal corporation designated as such by the resolution of the governing body activating the authority for such municipal corporation as modified by any subsequent resolution of the governing body of such municipal corporation.

(4) "Governing body" means the elected or duly appointed officials constituting the governing body of any municipal corporation in the State of Georgia.

(5) "Municipal corporation" means any city or town in this state.

(6) "Project" means:

(A) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings,

structures, facilities, or other improvements located or to be located within the downtown development area, and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, any undertaking authorized by Chapter 43 of this title as part of a city business improvement district, any undertaking authorized in Chapter 44 of this title, the "Redevelopment Powers Law," when the downtown development authority has been designated as a redevelopment agency, or any undertaking authorized in Chapter 61 of this title, the "Urban Redevelopment Law," when the downtown development authority has been designated as an urban redevelopment agency, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities in its authorized area of operation; and

(B) The provision of financing to property owners for the purpose of installing or modifying improvements to their property in order to reduce the energy or water consumption on such property or to install an improvement to such property that produces energy from renewable resources.

A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determine, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter. Such term shall include any one or more buildings or structures used or to be used as a not for profit hospital, not for profit skilled nursing home, or not for profit intermediate care home subject to regulation and licensure by the Department of Community Health and all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(7) "Revenue bonds" or "bonds" means any bonds of an authority which are authorized to be issued under the Constitution and laws of Georgia, including refunding bonds but not including notes or other obligations of an authority.

History.

Ga. L. 1981, p. 1744, § 1; Ga. L. 1988, p. 1463, § 1; Ga. L. 1992, p. 6, § 36; Ga. L. 1992, p. 2533, § 1; Ga. L. 2002, p. 415, § 36; Ga. L. 2008, p. 12, § 2-34/SB 433; Ga. L. 2010, p. 261, § 1/HB 1388.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, a comma was added following "licenses" near the end of subparagraph (2)(B).

JUDICIAL DECISIONS

Scope of application. — Although the "Downtown Development Authorities Law" expands the scope of permissible authority projects beyond that of the "Development Authorities Law" to include all types of commercial projects, the "Downtown Development Authorities Law" otherwise resembles the "Development Authorities Law" in design and purpose. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

Neither the increased breadth of the "Downtown Development Authorities Law" in comparison with the uniform industrial development authority statutes which preceded that law, nor the apparently broad language of the enacting and definitions clauses therein, are sufficiently definite indications that the General Assembly intended to undertake a radical departure from the General Assembly's previous cautious approach and grant local governments unbridled power to finance all local public works through downtown development authorities. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

Underground Atlanta is a public works project. — Underground Atlanta was constructed under the Downtown Development Authorities Act and is a proper project under the Downtown Development Authorities Act; accordingly, the Underground Atlanta project falls within the definition of "project" in paragraph (6) of O.C.G.A. § 36-42-3 and the totality of the agreements between the city and Underground Festival, Inc., clearly contemplates a public works project. City of Atlanta v. United Elec. Co., 202 Ga. App. 239, 414 S.E.2d 251, 1991 Ga. App. LEXIS 1744 (1991).

Street and government-building construction. — Municipality's attempt to use the "Downtown Development Authorities Law" to finance street improvements and construction and refurbishing of governmental buildings is unconstitutional. Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

36-42-4. Creation of authorities; appointment and terms of directors; quorum.

There is created in and for each municipal corporation in this state a public body corporate and politic to be known as the downtown development authority of such municipal corporation, which shall consist of a board of seven directors. The governing body of the municipal corporation shall appoint two members of the first board of directors for a term of two years each, two for a term of four years each, and three for a term of six years each. The governing body of the municipal corporation may appoint one of its elected members as a member of the downtown development authority. After expiration of the initial terms, except for the director who is also a member of the governing body of the municipal corporation, the terms of all directors shall be six years; provided, however, that the terms shall be four years for those directors appointed or reappointed on or after July 1, 1994. The term of a director who is also a member of the governing body of a municipal corporation shall end when such director is no longer a member of the governing body of the municipal corporation. If at the end of any term of office of any director a successor to such director has not been elected, the director whose term of office has expired shall

continue to hold office until a successor is elected. A majority of the board of directors shall constitute a quorum.

History.
Ga. L. 1981, p. 1744, § 2; Ga. L. 1992, p. 2533, § 2; Ga. L. 1994, p. 1006, § 1.

JUDICIAL DECISIONS

Removal of director. — O.C.G.A. Ch. 42, T. 36 is silent as to whether a director may be removed and, assuming removal is possible, just how it might be accomplished, but the fact that the legislation provides specified terms for the office of director is inconsistent with the idea of tenure at the pleasure of the city. Hernandez v. Downtown Dev. Auth., 256 Ga. 356, 349 S.E.2d 449, 1986 Ga. LEXIS 875 (1986).

36-42-5. Activation of authority by resolution; filing of resolution with Secretary of State and Department of Community Affairs; comments by Department of Community Affairs.

(a) No authority shall transact any business or exercise any powers under this chapter until the governing body of the municipal corporation shall, by proper resolution, declare that there is a need for an authority to function in such municipal corporation, thereby activating the authority. In its resolution, the governing body shall designate as the downtown development area that geographical area within the municipal corporation which, in the judgment of the governing body, constitutes the central business district and shall appoint the initial directors of the authority.

(b) A copy of the governing body's resolution shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this chapter, and with the Department of Community Affairs. The Department of Community Affairs may, but shall not be required to, furnish written comments to any authority within 30 days after the governing body's resolution is filed with the Department of Community Affairs. Any such comments shall be furnished by the authority to the governing body of the municipal corporation which activated the authority. Such comments shall be informational only and shall not affect any action taken or to be taken by any authority or governing body, and no action of the authority or the governing body shall be required in response to any such comments. The requirements of this subsection relating to filing with the Department of Community Affairs shall apply only to authorities originally activated after July 1, 1983.

History.
Ga. L. 1981, p. 1744, § 3; Ga. L. 1983, p. 1346, § 1.

36-42-6. Action by resolution subsequent to activating authority.

The governing body of the municipal corporation may, by proper resolution adopted subsequent to its resolution activating its authority:

(1) Change its designation of the downtown development area to a geographical area within the municipal corporation which, in the judgment of the governing body, at the time constitutes the central business district, provided that any such change in the downtown development area shall be effective prospectively from the adoption of the resolution providing therefor and shall not affect any project of, or any action taken by, the authority within or with respect to the downtown development area as defined prior to such change becoming effective; and

(2) Appoint directors of the authority which the governing body of the municipal corporation is authorized to appoint; and

(3) Disapprove any proposed issue of revenue bonds, notes, or other obligations of the authority, in the manner provided in this chapter.

History.
Ga. L. 1981, p. 1744, § 4; Ga. L. 1983, p. 1346, § 2.

36-42-7. Qualifications and reimbursement of directors; election of officers; training.

(a) Directors shall be:

(1) Taxpayers residing in the municipal corporation for which the authority is created;

(2) Owners or operators of businesses located within the downtown development area and who shall be taxpayers residing in the county in which is located the municipal corporation for which the authority is created; or

(3) Persons having a combination of the qualifications specified in paragraphs (1) and (2) of this subsection;

provided, however, that one of such directors may be a member of the governing body of the municipal corporation.

(b) Not less than four of the directors having the qualifications specified in subsection (a) of this Code section shall be persons who, in

the judgment of the governing body of the municipal corporation, either have or represent a party who has an economic interest in the redevelopment and revitalization of the downtown development area. Successors to the directors shall be appointed by the governing body of the municipal corporation.

(c) The directors shall elect one of their members as chairman and another as vice chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may but need not be a director. The directors shall receive no compensation for their services but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c.1) Notwithstanding subsection (a) of this Code section, one director appointed to the board may reside outside the county; provided, however, that such appointed director owns a business within the downtown development area and is a resident of the State of Georgia. If subsequently to his or her appointment to the board pursuant to this subsection, the director ceases to own a business within the downtown development area or reside in the State of Georgia, such director shall relinquish his or her seat on the board.

(d) Except for a director who is also a member of the governing body of a municipal corporation, each director shall attend and complete at least eight hours of training on downtown development and redevelopment programs within the first 12 months of a director's appointment to the downtown development authority. Directors in office on January 1, 1992, shall be exempt from this requirement unless reappointed for an additional term.

History.
Ga. L. 1981, p. 1744, § 5; Ga. L. 1990, p. 570, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 2533, § 2; Ga. L. 2008, p. 180, § 1/HB 1126; Ga. L. 2021, p. 344, § 1/HB 161.

36-42-8. Powers of authorities generally.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts, agreements, and other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, including, but not limited to, contracts for construction of projects, leases of projects, contracts for sale of projects, agreements for loans

to finance projects, contracts with respect to the use of projects, and agreements to join or cooperate with an urban residential finance authority, created by the municipal corporation within which the downtown development area is located pursuant to the provisions of Chapter 41 of this title, in the exercise, either jointly or otherwise, of any or all of its powers for the purpose of financing, including the issuance of revenue bonds, notes, or other obligations of the authorities, planning, undertaking, owning, constructing, operating, or contracting with respect to any projects located within the downtown development area or, for projects under subparagraph (B) of paragraph (6) of Code Section 36-42-3, within the territorial boundaries of the municipal corporation;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To finance (by loan, grant, lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage projects and to pay the cost of any project from the proceeds of revenue bonds, notes, or other obligations of the authority or any other funds of the authority, or from any contributions or loans by persons, corporations, partnerships (whether limited or general), or other entities, all of which the authority is authorized to receive, accept, and use;

(6) To borrow money to further or carry out its public purpose and to execute revenue bonds, notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the authority, to evidence and to provide security for such borrowing;

(7) To issue revenue bonds, notes, or other obligations of the authority and use the proceeds thereof for the purpose of paying, or loaning the proceeds thereof to pay, all or any part of the cost of any project and otherwise to further or carry out the public purpose of the authority and to pay all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(8) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other

financial assistance in furtherance of the authority's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(9) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the authority;

(10) To contract for any period, not exceeding 50 years, with the State of Georgia, state institutions, or any municipal corporation or county of this state for the use by the authority of any facilities or services of the state or any such state institution, municipal corporation, or county, or for the use by any state institution or any municipal corporation or county of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such political subdivision with which the authority contracts are authorized by law to undertake;

(11) To extend credit or make loans to any person, corporation, partnership (whether limited or general), or other entity for the costs of any project or any part of the costs of any project, which credit or loans may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by rentals, revenues, fees, or charges, upon such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the authority may deem necessary or desirable;

(12) As security for repayment of any revenue bonds, notes, or other obligations of the authority, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority (including, but not limited to, real property, fixtures, personal property, and revenues or other funds) and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes, or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or

other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The State of Georgia, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and use the proceeds of any tax levied by a municipal corporation to pay the costs of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(14) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(15) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to the best advantage of the authority and the public purpose thereof;

(16) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(17) To appoint, select, and employ engineers, surveyors, architects, urban or city planners, fiscal agents, attorneys, and others and to fix their compensation and pay their expenses;

(18) To encourage and promote the improvement and revitalization of the downtown development area and to make, contract for, or otherwise cause to be made long-range plans or proposals for the downtown development area in cooperation with the municipal corporation within which the downtown development area is located;

(19) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and

other matters which the authority determines to deal with in its bylaws;

(20) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(21) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(22) To serve as an urban redevelopment agency pursuant to Chapter 61 of this title;

(23) To contract with a municipal corporation to carry out supplemental services in a city business improvement district established pursuant to Chapter 43 of this title;

(24) To serve as a redevelopment agency pursuant to Chapter 44 of this title; and

(25) To exercise any power granted to development authorities in Code Sections 36-62-2.1, 36-62-6.2, 36-62-8.1, and 36-62-8.2.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter; and no such power limits or restricts any other power of the authority except that, notwithstanding any other provision of this chapter, no authority described in this chapter shall be granted the power of eminent domain.

History.

Ga. L. 1981, p. 1744, § 6; Ga. L. 1982, p. 3, § 36; Ga. L. 1988, p. 902, § 1; Ga. L. 1988, p. 1463, § 2; Ga. L. 1992, p. 2533, § 3; Ga. L. 2006, p. 39, § 19/HB 1313; Ga. L. 2013, p. 746, § 1/SB 242; Ga. L. 2024, p. 434, § 1/HB 206, effective April 25, 2024.

Amendments.

The 2024 amendment, effective April 25, 2024, deleted "and" from the end of paragraph (a)(23); substituted "; and" for a period at the end of paragraph (a)(24); and added paragraph (a)(25).

Editor's notes.

Ga. L. 2006, p. 39, § 1/HB 1313, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

Law reviews.

For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 157 (2006).

JUDICIAL DECISIONS

Bond proposal secured by infrastructure fees upheld. — Bond proposal secured by infrastructure fees was sound, feasible, and reasonable; the trial court was not required to find that the projected $633 million of fees over a 30 year period would service bonds in the possible amount of $1.25 billion; the bonds

would be issued only if sufficient infrastructure fees were projected to service the bonds. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

36-42-8.1. [Repealed] Eminent domain by municipality or authority.

History.
Code 1981, § 36-42-8.1, enacted by Ga. L. 1992, p. 2533, § 4; repealed by Ga. L. 2006, p. 39, § 20/HB 1313, effective April 4, 2006.

Editor's notes.
Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that the repeal of this Code section shall only apply to petitions for condemnation filed on or after April 4, 2006.

36-42-9. Revenue bonds generally.

(a) Revenue bonds, notes, or other obligations issued by an authority shall be paid solely from the property (including, but not limited to, real property, fixtures, personal property, revenues, or other funds) pledged, mortgaged, conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds, notes, or other obligations.

(b) All revenue bonds, notes, and other obligations shall be authorized by resolution of the authority, adopted by a majority vote of the directors of the authority at a regular or special meeting.

(c) Reserved.

(d) Revenue bonds, notes, or other obligations shall bear such date or dates, shall mature at such time or times (not more than 40 years from their respective dates), shall bear interest at such rate or rates (which may be fixed or may fluctuate or otherwise change from time to time), shall be subject to redemption on such terms, and shall contain such other terms, provisions, covenants, assignments, and conditions as the resolution authorizing the issuance of such bonds, notes, or other obligations may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the authority authorizing the issuance of such revenue bonds, notes, or other obligations shall bind the directors of the authority then in office and their successors.

(e) The authority shall have power from time to time and whenever it deems it expedient to refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose permitted under this chapter. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed upon, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded.

(f) There shall be no limitation upon the amount of revenue bonds, notes, or other obligations which any authority may issue. Any limitations with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of this title, the "Revenue Bond Law," the usury laws of this state, or any other laws of this state shall not apply to revenue bonds, notes, or other obligations of an authority.

History.
Ga. L. 1981, p. 1744, § 7; Ga. L. 1983, p. 1346, § 3; Ga. L. 1984, p. 941, § 2.

36-42-10. Applicability of "Revenue Bond Law"; form and provisions for exchange and transfer of bonds; certificate of validation; specification of interest rates in notice to district attorney or Attorney General.

(a) All bonds issued by the authority under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, the "Revenue Bond Law," except as provided in this chapter, provided that notes and other obligations of the authority may, but shall not be required to, be so validated.

(b) Bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions, as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide.

(c) Bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the county in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(d) In lieu of specifying the rate or rates of interest which bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest (which may be fixed or may fluctuate or otherwise change from time to time) specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate (which may be fixed or may fluctuate or otherwise change from time to time) so specified; provided, however, that nothing in this Code section

shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(e) The terms "cost of the project" and "cost of any project" shall have the meaning prescribed in this chapter whenever those terms are referred to in bond resolutions of an authority, in bonds, notes, or other obligations of an authority, or in notices or proceedings to validate such bonds, notes, or other obligations of an authority.

History.
Ga. L. 1981, p. 1744, § 8.

Law reviews.
For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

36-42-11. Agreements and instruments of authority generally; use of proceeds; subsequent issues; bond anticipation notes.

(a) Subject to the limitations and procedures provided by this Code section and by Code Section 36-42-10, the agreements or instruments executed by an authority may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority.

(b) The proceeds derived from the sale of all bonds, notes, and other obligations issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, all or part of the cost of any project, or for the purpose of refunding any bonds, notes, or other obligations issued in accordance with this chapter.

(c) Issuance by an authority of one or more series of bonds, notes, or other obligations for one or more purposes shall not preclude it from issuing other bonds, notes, or other obligations in connection with the same project or with any other projects; but the proceeding wherein any subsequent bonds, notes, or other obligations are issued shall recognize and protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security agreement, or other agreement or instrument made for any prior issue of bonds, notes, or other obligations, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds, notes, or other obligations on a parity with such prior issue.

(d) An authority shall have the power and is authorized, whenever bonds of the authority shall have been validated as provided in this chapter, to issue from time to time its notes in anticipation of such bonds as validated and to renew from time to time any such notes by the

issuance of new notes, whether or not the notes to be renewed have matured. The authority may issue such bond anticipation notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. Such notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public sale or at private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority to any issue thereof; and the authority may include in any notes any terms, covenants, or conditions which the authority is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

History.
Ga. L. 1981, p. 1744, § 8.

36-42-12. Obligations of authorities not public debt of state or political subdivision thereof.

No bonds, notes, or other obligations of, and no indebtedness incurred by, an authority shall constitute an indebtedness or obligation of the State of Georgia or any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or any county, municipal corporation, or political subdivision thereof. No holder or holders of any such bonds, notes, or other obligations shall ever have the right to compel any exercise of the taxing power of the state or any county, municipal corporation, or political subdivision thereof, nor to enforce the payment thereof against the state or any such county, municipal corporation, or political subdivision.

History.
Ga. L. 1981, p. 1744, § 11.

36-42-13. Constitutional authority for enactment of chapter; tax exemption.

This chapter is enacted pursuant to authority granted the General Assembly by the Constitution of Georgia. Each authority created pursuant to this chapter is created for nonprofit and public purposes; and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that each authority is an institution of purely public charity and will be perform-

ing an essential governmental function in the exercise of the power conferred upon it by this chapter; and for such reasons the state covenants with the holders from time to time of the bonds, notes, and other obligations issued under this chapter that no such authority shall be required to pay any taxes or assessments imposed by this state or any counties, municipal corporations, political subdivisions, or taxing districts thereof upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and that the bonds, notes, and other obligations of each such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within this state. The tax exemption provided for in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority.

History.
Ga. L. 1981, p. 1744, § 12.

Cross references.
Authority of General Assembly to create development authorities, Ga. Const. 1983, Art. IX, Sec. VI, Para. III.

JUDICIAL DECISIONS

Constitutional authority. — Downtown Development Authorities Law is solely based upon Ga. Const. 1983, Art. IX, Sec. VI, Para. III (development authorities) and not Ga. Const. 1983, Art. IX, Sec. III, Para. I (intergovernmental contracts). Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

36-42-14. Effect of chapter on other public authorities.

This chapter shall not affect any other authority existing as of April 17, 1981, or thereafter under general or local constitutional amendment or under general or local law.

History.
Ga. L. 1981, p. 1744, § 14.

36-42-15. Construction of chapter; applicability of the "Georgia Uniform Securities Act of 2008."

This chapter shall be liberally construed to effect the purposes hereof. The offer, sale, or issuance of bonds, notes, or other obligations by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required by this chapter shall be necessary to the performance of any act authorized by this chapter, nor shall any such act be subject to referendum.

History.
Ga. L. 1981, p. 1744, § 10; Ga. L. 2008, p. 381, § 10/SB 358.

36-42-16. Creation of special districts.

Pursuant to Article IX, Section II, Paragraph VI of the Constitution of the State of Georgia, municipalities may create one or more special districts within the area of operation of a downtown development authority for the purpose of levying and collecting taxes, fees, or assessments to pay the cost of any project or to support the exercise of any other powers which the authority may possess.

History.
Code 1981, § 36-42-16, enacted by Ga. L. 1992, p. 2533, § 5.

36-42-17. Assessments under Code Section 36-42-16; priority of liens regarding assessments for downtown development authorities.

(a) An assessment under Code Section 36-42-16 that relates to any project described in subparagraph (B) of paragraph (6) of Code Section 36-42-3 shall be levied and may be collected when:

(1) A written contract regarding such assessment is executed by the property owner, the authority, and the project administrator;

(2) Such contract is administratively acknowledged by the relevant local jurisdiction with the taxing authority; and

(3) A notice of assessment is recorded in the property records of the relevant local jurisdiction.

(b) A lien for any assessment under Code Section 36-42-16 that relates to any project under subparagraph (B) of paragraph (6) of Code Section 36-42-3 shall have the same priority as municipal liens under paragraph (4) of subsection (b) and subparagraph (g)(2)(B) of Code Section 48-2-56.

History.
Code 1981, § 36-42-17, enacted by Ga. L. 2015, p. 1329, § 1/SB 4; Ga. L. 2017, p. 753, § 1/HB 428.

CHAPTER 43

CITY BUSINESS IMPROVEMENT DISTRICTS

Sec.		Sec.	
36-43-1.	Short title.	36-43-5.	Adoption of district plan.
36-43-2.	Legislative purpose.	36-43-6.	Financing of districts.
36-43-3.	Definitions.	36-43-7.	Segregation of funds.
36-43-4.	Powers of municipalities with respect to districts generally.	36-43-8.	Design and rehabilitation standards.
		36-43-9.	Termination of districts.

Cross references.
Revitalizations of central business districts, § 12-3-56.

36-43-1. Short title.

This chapter shall be known and may be cited as the "City Business Improvement District Act."

History.
Ga. L. 1981, p. 4531, § 1.

36-43-2. Legislative purpose.

The General Assembly finds that many business districts within large cities in this state are in an economically depressed condition and that this condition adversely affects the economic and general well-being of the people of such large cities of the state. It is further found and declared that the establishment of city business improvement districts is an effective means for restoring and promoting commercial and other business activity within such business districts.

History.
Ga. L. 1981, p. 4531, § 3.
Cross references.
Clearance and rehabilitation of blighted areas, § 8-4-1 et seq.

36-43-3. Definitions.

As used in this chapter, the term:

(1) "District" means a city business improvement district established pursuant to this chapter.

(2) "District plan" or "plan" means a proposal adopted by ordinance which includes all of the following:

(A) A map of the district;

(B) A description of the boundaries of the district proposed for creation or extension, such description to be sufficient to identify the lands included, the present and proposed uses of these lands, the supplemental services to be provided within the district, the maximum millage to be levied for providing supplemental services, the proposed time for implementation and completion of the plan, any design and rehabilitation standards which may be mandated for buildings located within each district, and any rules and regulations applicable to the district. Boundaries of any such district shall not include land on which is located telephone central office and switching facilities serving an area exceeding the boundaries of the district; and

(C) Any other item required to be incorporated therein by the governing authority.

(3) "Municipality" means any municipal corporation located wholly within this state.

(4) "Supplemental services" means those services provided for the improvement and promotion of the district, including, but not limited to, advertising, promotion, sanitation, security, and business recruitment and development.

(5) "Taxpayer" means any entity or person paying ad valorem taxes on real or personal property, whether on one or more businesses or one or more parcels of property within a district.

History.
Ga. L. 1981, p. 4531, § 2; Ga. L. 1988, p. 539, § 1.

36-43-4. Powers of municipalities with respect to districts generally.

Upon the establishment of any city business improvement district pursuant to this chapter, the governing authority of any municipality to which this chapter is applicable shall have authority to exercise the following powers with respect to each such district, subject to this chapter:

(1) To adopt a district plan for the provision of supplemental services to the district and to adopt budgets for the implementation of such supplemental services;

(2) To fix and levy annually a millage upon real and personal property within the district, to make such assessments liens upon the properties, and to enforce such liens in the same manner as other city taxes;

(3) To provide supplemental services or to contract with nonprofit

corporations or to contract with downtown development authorities established pursuant to Chapter 42 of this title for all or part of the supplemental services required to implement the plan;

(4) To mandate design and rehabilitation standards for buildings located within the district subject to any existing or established historic preservation requirements or ordinances; and

(5) To levy and collect a surcharge on existing business license and occupation taxes upon businesses and occupations within the district and to enforce liens for nonpayment of said surcharges in the same manner as other city taxes.

History.
Ga. L. 1981, p. 4531, § 4; Ga. L. 1990, p. 1348, § 1; Ga. L. 1992, p. 2533, § 6.

36-43-5. Adoption of district plan.

The governing authority of any municipality to which this chapter is applicable may create city business improvement districts by the adoption of district plans, as follows:

(1) No such plan may be adopted except upon a written petition signed and acknowledged by either:

(A) At least 51 percent of the municipal taxpayers (as shown by the most recent list of taxpayers billed by the municipality) of the district proposed for creation or extension; or

(B) Municipal taxpayers owning at least 51 percent (by assessed value as shown by the most recent assessment rolls of the municipality) of the taxable property subject to ad valorem real and personal property taxation in the district;

(2) Such petition must be accompanied by a proposed district plan, to include a budget, a formula for imposing assessments on the taxpayers within the district, and design and rehabilitation standards, if desired;

(3) The petition shall be presented to the governing authority of the municipality, which shall refer it to the appropriate municipal departments for review of its sufficiency, reasonableness of assessments, and financial feasibility of the plan. These departments shall submit to the governing authority reports which shall approve of, disapprove of, or give qualified approval with modifications to the district plan, with reasons therefor. The governing authority shall hold a public hearing on the issue of whether such district should be created, provided that notice of the hearing shall be placed in a newspaper of general circulation in the community at least ten days

prior to the date of the hearing. The governing authority may approve, approve with modifications, or disapprove the plan; and

(4) Any district plan thus adopted may be amended from time to time or rescinded or its budget may be revised by ordinance.

History.
Ga. L. 1981, p. 4531, § 5; Ga. L. 1992, p. 2533, § 6.

36-43-6. Financing of districts.

The expense incurred in the provision of supplemental services within a district shall be financed in accordance with the district plan upon which the establishment or extension of the district was based, provided that the cost of supplemental services shall not include the cost to the district of services performed by the municipality on a city-wide basis. Any property tax charges or business license fee and occupation tax surcharges shall be levied and collected in the same manner, at the same time, and by the same officers as other city taxes and assessments.

History.
Ga. L. 1981, p. 4531, § 6; Ga. L. 1990, p. 1348, § 2; Ga. L. 1992, p. 2533, § 6.

36-43-7. Segregation of funds.

No charges assessed and collected by a municipality pursuant to this chapter shall be spent for any purpose not authorized by the district plan of the district where such charges were assessed and collected, except for such costs as may be attributed to the billing and collection of such charges.

History.
Ga. L. 1981, p. 4531, § 7.

36-43-8. Design and rehabilitation standards.

Upon the establishment of any district pursuant to this chapter, the governing authority of any municipality to which this chapter is applicable may mandate design and rehabilitation standards for buildings within districts if it finds that such standards are necessary to prevent or eliminate blight, to establish and improve property values, and to foster economic development within districts. The governing authority may establish deadlines for compliance with these standards and may provide for their enforcement.

History.
Ga. L. 1981, p. 4531, § 8.

Cross references.
Standards and requirements for con-

struction, alteration and other modifications of buildings generally, § 8-2-1 et seq.

Clearance and rehabilitation of blighted areas, § 8-4-1 et seq.

36-43-9. Termination of districts.

Any district which is created or renewed pursuant to Code Section 36-43-5 shall terminate and cease to exist on a date specific no less than five years and no more than ten years from the date of its creation or renewal by ordinance.

History.
Ga. L. 1981, p. 4531, § 9; Ga. L. 1998, p. 1209, § 13.

CHAPTER 44

REDEVELOPMENT POWERS

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Housing Authorities Law, § 8-3-1 et seq.

Clearance and rehabilitation of blighted areas, § 8-4-1 et seq.

Editor's notes.

The former chapter, relating to redevelopment powers consisted of Code Sections 36-44-1 through 36-44-23. The former chapter was based on Ga. L. 1985, p. 1360, § 1; Ga. L. 1986, p. 10, § 36; Ga. L. 1987, p. 967, § 1; Ga. L. 1989, p. 1398, § 1; Ga. L. 1992, p. 2533, §§ 7-10; Ga. L. 1993, p. 91, § 36; Ga. L. 1998, p. 1209, §§ 1-12; Ga. L. 2001, p. 304, §§ 1-3; Ga. L. 2001, p. 1051, §§ 1-3; Ga. L. 2004, p. 886, §§ 1-4; Ga. L. 2006, p. 39, § 21/HB 1313; Ga. L. 2006, p. 857, §§ 1-7/HB 1361; Ga. L. 2009, p. 8, § 36/SB 46, and was repealed by Ga. L. 2009, p. 158, § 2/HB 63, effective April 22, 2009.

36-44-1. Short title.

This chapter shall be known and may be cited as the "Redevelopment Powers Law."

History.
Code 1981, § 36-44-1, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

Cross references.
Payments in lieu of taxes (PILOT) restriction, § 36-80-16.1.

JUDICIAL DECISIONS

Power to impose fees. — An intergovernmental agreement between a city and development authority was lawful under Ga. Const. 1983, Art. IX, Sec. II, Para. VII(c), despite the objectors' claim that the city was not authorized to assess infrastructure fees and provide the fees as payment for bonds; the city had statutory authority to impose the fees under the Redevelopment Powers Law, O.C.G.A. § 36-44-1 et seq., and O.C.G.A. § 36-88-6(g)(1) of the Enterprise Zone Employment Act, O.C.G.A. § 36-88-1 et seq. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

Validation of bonds. — Trial court's validation of three bonds at issue was upheld because the record supported the trial court's decision to defer to the city's view that redevelopment served a beneficial public purpose and while not all residents, including the intervenors, shared the city's vision for the area, that did not mean that the project was illegal. Franzen v. City of Atlanta, 359 Ga. App. 462, 857 S.E.2d 237, 2021 Ga. App. LEXIS 224 (2021).

36-44-2. Legislative findings and purpose.

It is found and declared that economically and socially depressed areas exist within counties and municipalities of this state and that these areas contribute to or cause unemployment, limit the tax resources of counties and municipalities, and create a greater demand for governmental services and, in general, have a deleterious effect upon the public health, safety, morals, and welfare. It is, therefore, in the public interest that such areas be redeveloped to the maximum extent practicable to improve economic and social conditions therein in order to abate or eliminate such deleterious effects. To encourage such redevelopment, it is essential that the counties and municipalities of this state have additional powers to form a more effective partnership with private enterprise to overcome economic limitations that have previously impeded or prohibited redevelopment of such areas. It is the purpose of this chapter, therefore, to grant such additional powers to the counties and municipalities of this state, and it is the intention of the General Assembly that this chapter be liberally construed to carry out such purpose.

History.
Code 1981, § 36-44-2, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g),

governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26, 2013 Ga. LEXIS 493 (2013).

Validation of bonds. — Trial court's validation of three bonds at issue was upheld because the record supported the trial court's decision to defer to the city's view that redevelopment served a beneficial public purpose and while not all residents, including the intervenors, shared the city's vision for the area, that did not mean that the project was illegal. Franzen v. City of Atlanta, 359 Ga. App. 462, 857 S.E.2d 237, 2021 Ga. App. LEXIS 224 (2021).

Bond proposal secured by infrastructure fees upheld. — Bond proposal secured by infrastructure fees was sound, feasible, and reasonable; the trial court was not required to find that the projected $633 million of fees over a 30 year period would service bonds in the possible amount of $1.25 billion; the bonds would be issued only if sufficient infrastructure fees were projected to service the bonds. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

36-44-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem property taxes" means all ad valorem property taxes levied by each political subdivision and each county and independent board of education consenting to the inclusion of that board of education's property taxes as being applicable to a tax allocation district as provided by Code Section 36-44-9, except:

(A) Those ad valorem property taxes levied to repay bonded indebtedness;

(B) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on personal property or on motor vehicles; and

(C) Unless otherwise provided in the resolution creating such district, those ad valorem property taxes levied on the assessed value of property owned by public utilities and railroad companies, as determined pursuant to the provisions of Chapter 5 of Title 48.

(2) "Area of operation" means, in the case of a municipality or its redevelopment agency, the territory lying within the corporate limits of such municipality; in the case of a county or its redevelopment agency, the territory lying within the unincorporated area of the county; and, in the case of a consolidated government or its redevelopment agency, the area lying within the territorial boundaries of the consolidated government. In the case of a county or its redevelopment agency, such term may also include part or all of the territory within such county lying within the corporate limits of a municipality when authorized by a resolution of the governing authority of such municipality. Such term may also mean the combined areas of operation of political subdivisions which participate in the creation of a common redevelopment agency to serve such participating political subdivisions as provided in subsection (d) of Code Section 36-44-4.

(3) "Local legislative body" means the official or body in which the legislative powers of a political subdivision are vested.

(4) "Political subdivision" means any county, municipality, or consolidated government of this state.

(5) "Redevelopment" means any activity, project, or service necessary or incidental to achieving the development or revitalization of a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan or the preservation or improvement of historical or natural assets within a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan. Without limiting the generality of the foregoing, redevelopment may include any one or more of the following:

(A) The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(B) The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;

(C) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public or private housing;

(D) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public works or other public facilities necessary or incidental to the provision of governmental services;

(E) The identification, preservation, renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or restoration of buildings or sites which are of historical significance;

(F) The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces, green spaces, or recreational facilities;

(G) The construction, installation, preservation, renovation, rehabilitation, reconstruction, restoration, alteration, improvement, and maintenance of public art and arts and cultural facilities;

(H) The development, construction, reconstruction, repair, demolition, alteration, or expansion of structures, equipment, and facilities for mass transit;

(I) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of telecommunication infrastructure;

(J) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of facilities for the improvement of pedestrian access and safety;

(K) Improving or increasing the value of property; and

(L) The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.

(6) "Redevelopment agency" means the local legislative body of a political subdivision or a public body corporate and politic created as the redevelopment agency of the political subdivision or an existing public body corporate and politic designated as the redevelopment agency of the political subdivision pursuant to Code Section 36-44-4.

(7) "Redevelopment area" means an urbanized area as determined by current data from the United States Bureau of the Census or an area presently served by sewer that qualifies as a "blighted or distressed area," a "deteriorating area," or an "area with inadequate infrastructure," as follows:

(A) A "blighted or distressed area" is an area that is experiencing one or more conditions of blight as evidenced by:

(i) The presence of structures, buildings, or improvements that by reason of dilapidation; deterioration; age; obsolescence; inadequate provision for ventilation, light, air, sanitation, or open space; overcrowding; conditions which endanger life or property by fire or other causes; or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, high unemployment, juvenile delinquency, or crime and are detrimental to the public health, safety, morals, or welfare;

(ii) The presence of a predominant number of substandard, vacant, deteriorated, or deteriorating structures; the predominance of a defective or inadequate street layout or transportation facilities; or faulty lot layout in relation to size, accessibility, or usefulness;

(iii) Evidence of pervasive poverty, defined as being greater than 10 percent of the population in the area as determined by current data from the United States Bureau of the Census, and an unemployment rate that is 10 percent higher than the state average;

(iv) Adverse effects of airport or transportation related noise or environmental contamination or degradation or other adverse

environmental factors that the political subdivision has determined to be impairing the redevelopment of the area; or

(v) The existence of conditions through any combination of the foregoing that substantially impair the sound growth of the community and retard the provision of housing accommodations or employment opportunities;

(B) A "deteriorating area" is an area that is experiencing physical or economic decline or stagnation as evidenced by two or more of the following:

(i) The presence of a substantial number of structures or buildings that are 40 years old or older and have no historic significance;

(ii) High commercial or residential vacancies compared to the political subdivision as a whole;

(iii) The predominance of structures or buildings of relatively low value compared to the value of structures or buildings in the surrounding vicinity or significantly slower growth in the property tax digest than is occurring in the political subdivision as a whole;

(iv) Declining or stagnant rents or sales prices compared to the political subdivision as a whole;

(v) In areas where housing exists at present or is determined by the political subdivision to be appropriate after redevelopment, there exists a shortage of safe, decent housing that is not substandard and that is affordable for persons of low and moderate income; or

(vi) Deteriorating or inadequate utility, transportation, or transit infrastructure; and

(C) An "area with inadequate infrastructure" means an area characterized by:

(i) Deteriorating or inadequate parking, roadways, bridges, pedestrian access, or public transportation or transit facilities incapable of handling the volume of traffic into or through the area, either at present or following redevelopment; or

(ii) Deteriorating or inadequate utility infrastructure either at present or following redevelopment.

(8) "Redevelopment costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred to achieve the redevelopment of a redevelopment area or any portion thereof designated by a redevelopment plan or any

expenditures made to carry out or exercise any powers granted by this chapter. Without limiting the generality of the foregoing, redevelopment costs may include any one or more of the following:

(A) Capital costs, including the costs incurred or estimated to be incurred for the construction of public works or improvements, new buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of existing buildings, structures, and fixtures, including facilities owned or operated by school districts and systems; the acquisition of equipment; and the clearing and grading of land;

(B) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued under this chapter occurring during the estimated period of construction of any project with respect to which any capital costs within the meaning of subparagraph (A) of this paragraph are financed in whole or in part by such obligations and for a period not to exceed 42 months after completion of any such construction and including reasonable reserves related thereto and all principal and interest paid to holders of evidences of indebtedness issued to pay for other redevelopment costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(C) Professional service costs, including those costs incurred for architectural, planning, engineering, financial, marketing, and legal advice and services;

(D) Imputed administrative costs, including reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan;

(E) Relocation costs as authorized by a redevelopment plan for persons or businesses displaced by the implementation of a redevelopment plan, including but not limited to those relocation payments made following condemnation under Chapter 4 of Title 22, "The Georgia Relocation Assistance and Land Acquisition Policy Act";

(F) Organizational costs, including the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation and implementation of redevelopment plans;

(G) Payments to a political subdivision or board of education in lieu of taxes to compensate for any loss of tax revenues or for any

capital costs incurred because of redevelopment activity; provided, however, that any such payments to a political subdivision or board of education shall not exceed in any year the amount of the contribution to the tax allocation increment in that year by such political subdivision or board of education; and

(H) Real property assembly costs.

(9) "Redevelopment plan" means a written plan of redevelopment for a redevelopment area or a designated portion thereof which:

(A) Specifies the boundaries of the proposed redevelopment area;

(B) Explains the grounds for a finding by the local legislative body that the redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or that the redevelopment area includes one or more natural, historical, or cultural assets which have not been adequately preserved, protected, or improved and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan;

(C) Explains the proposed uses after redevelopment of real property within the redevelopment area;

(D) Describes any redevelopment projects within the redevelopment area proposed to be authorized by the redevelopment plan, estimates the cost thereof, and explains the proposed method of financing such projects;

(E) Describes any contracts, agreements, or other instruments creating an obligation for more than one year which are proposed to be entered into by the political subdivision or its redevelopment agency or both for the purpose of implementing the redevelopment plan;

(F) Describes the type of relocation payments proposed to be authorized by the redevelopment plan;

(G) Includes a statement that the proposed redevelopment plan conforms with the local comprehensive plan, master plan, zoning ordinance, and building codes of the political subdivision or explains any exceptions thereto;

(H) Estimates redevelopment costs to be incurred or made during the course of implementing the redevelopment plan;

(I) Recites the last known assessed valuation of the redevelop-

ment area and the estimated assessed valuation after redevelopment;

(J) Provides that property which is to be redeveloped under the plan and which is either designated as a historic property under Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," or is listed on or has been determined by any federal agency to be eligible for listing on the National Register of Historic Places will not be:

(i) Substantially altered in any way inconsistent with technical standards for rehabilitation; or

(ii) Demolished unless feasibility for reuse has been evaluated based on technical standards for the review of historic preservation projects,

which technical standards for rehabilitation and review shall be those used by the state historic preservation officer, although nothing in this subparagraph shall be construed to require approval of a redevelopment plan or any part thereof by the state historic preservation officer;

(K) Specifies the proposed effective date for the creation of the tax allocation district and the proposed termination date;

(L) Contains a map specifying the boundaries of the proposed tax allocation district and showing existing uses and conditions of real property in the proposed tax allocation district;

(M) Specifies the estimated tax allocation increment base of the proposed tax allocation district;

(N) Specifies ad valorem property taxes for computing tax allocation increments determined in accordance with Code Section 36-44-9 and supported by any resolution required under paragraph (3) of Code Section 36-44-8;

(O) Specifies the amount of the proposed tax allocation bond issue or issues and the term and assumed rate of interest applicable thereto;

(P) Estimates positive tax allocation increments for the period covered by the term of the proposed tax allocation bonds;

(Q) Specifies the property proposed to be pledged for payment or security for payment of tax allocation bonds which property may include positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, subject to the limitations of Code Sections 36-44-9 and 36-44-20;

(R) If the plan proposes to include in the tax allocation increment ad valorem taxes levied by a board of education, the plan shall contain a school system impact analysis addressing the financial and operational impact on the school system of the proposed redevelopment, including but not limited to an estimate of the number of net new public school students that could be anticipated as redevelopment occurs; the location of school facilities within the proposed redevelopment area; an estimate of educational special purpose local option sales taxes projected to be generated by the proposed redevelopment, if any; and a projection of the average value of residential properties resulting from redevelopment compared to current property values in the redevelopment area; and

(S) Includes such other information as may be required by resolution of the political subdivision whose area of operation includes the proposed redevelopment area.

(10) "Resolution" means a resolution or ordinance by which a local legislative body takes official legislative action and any duly adopted amendment thereto.

(11) "Special fund" means the fund provided for in subsection (c) of Code Section 36-44-11.

(12) "Tax allocation bonds" means one or more series of bonds, notes, or other obligations issued by a political subdivision to finance, wholly or partly, redevelopment costs within a tax allocation district and which are issued on the basis of pledging for the payment or security for payment of such bonds positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20. Tax allocation bonds shall not constitute debt within the meaning of Article IX, Section V of the Constitution.

(13) "Tax allocation district" means a contiguous geographic area within a redevelopment area which is defined and created by resolution of the local legislative body of a political subdivision pursuant to subparagraph (B) of paragraph (3) of Code Section 36-44-8 for the purpose of issuing tax allocation bonds to finance, wholly or partly, redevelopment costs within the area.

(14) "Tax allocation increment" means that amount obtained by multiplying the total ad valorem property taxes, determined as provided in Code Section 36-44-9, levied within a tax allocation district in any year by a fraction having a numerator equal to that

year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district minus the tax allocation increment base and a denominator equal to that year's taxable value of all taxable property subject to ad valorem property taxes within the tax allocation district. In any year, a tax allocation increment is "positive" if the tax allocation increment base is less than that year's taxable value of all taxable property subject to ad valorem property taxes and "negative" if such base exceeds such taxable value.

(15) "Tax allocation increment base" means the taxable value of all taxable property subject to ad valorem property taxes, as certified by the state revenue commissioner, located within a tax allocation district on the effective date such district is created pursuant to Code Section 36-44-8.

(16) "Taxable property" means all real and personal property subject to ad valorem taxation by a political subdivision, including property subject to local ad valorem taxation for educational purposes.

(17) "Taxable value" means the current assessed value of taxable property as shown on the tax digest of the county in which the property is located.

History.
Code 1981, § 36-44-3, enacted by Ga. L. 2009, p. 158, § 2/HB 63; Ga. L. 2010, p. 878, § 36/HB 1387; Ga. L. 2011, p. 752, § 36/HB 142; Ga. L. 2012, p. 775, § 36/HB 942; Ga. L. 2013, p. 141, § 36/HB 79; Ga. L. 2019, p. 568, § 1/HB 349.

36-44-4. Local legislative bodies serving as redevelopment agency; common redevelopment agency.

(a) As an alternative to the creation of a redevelopment agency provided for by subsections (b) through (f) of this Code section, the local legislative body of a political subdivision, by resolution, may designate itself as its respective redevelopment agency and may exercise, within its respective area of operation, the redevelopment powers provided by this chapter.

(b) The local legislative body of a political subdivision may create a public body corporate and politic to serve as its redevelopment agency. Any such public corporation may be created by resolution adopted by the local legislative body of the political subdivision. Such resolution may provide for the membership of the board of directors of such public corporation and their terms of office, for the powers and duties of such public corporation, and for such other matters as may reasonably be necessary and convenient for the creation and activation of such public corporation as the redevelopment agency of the political subdivision.

(c) In the event a political subdivision has activated a public corporation as its "urban redevelopment agency" or designated a housing authority as its "urban redevelopment agency" pursuant to Code Sections 36-61-17 and 36-61-18 of the "Urban Redevelopment Law," the local legislative body of such political subdivision may designate such public corporation as its redevelopment agency for the purposes of this chapter. Any action taken pursuant to the authority of this subsection shall be by resolution duly adopted by the local legislative body of the political subdivision.

(d) Any county, municipality, and consolidated government, or any combination of such political subdivisions, by resolution of their respective local legislative bodies, may jointly create a public corporation, or designate an existing public corporation which already exercises "redevelopment powers" under any other law, to serve as the common redevelopment agency on behalf of such political subdivisions. The membership of the board of directors and their terms of office of any such jointly created public corporation and the powers and duties of such public corporation shall be as mutually agreed upon by the local legislative bodies of the participating political subdivisions, as evidenced by a resolution duly adopted by each such local legislative body. In the event a public corporation is created or designated, as authorized in this Code section, to serve as the common redevelopment agency of two or more political subdivisions, then the area of operation of such redevelopment agency shall be the combined areas of operation of the political subdivisions jointly creating or designating such redevelopment agency.

(e) A political subdivision may participate in the creation or designation of a public corporation to serve as a common redevelopment agency as provided by subsection (d) of this Code section as well as create or designate a public corporation to serve as the redevelopment agency of the political subdivision. In such event, the members of the board of directors of the public corporation created or designated as the redevelopment agency of the political subdivision may also serve, in accordance with the provisions of the resolution of the local legislative body of the political subdivision participating in the creation or designation of a public corporation to serve as a common redevelopment agency, as members of the board of directors of the jointly created public corporation.

(f) For purposes of redevelopment in its downtown area, any municipality may designate a downtown development authority created pursuant to Chapter 42 of this title to serve as a redevelopment agency. Such designation shall not affect any other redevelopment agency that may exist as a part of the municipality. The area of operation of any downtown development agency designated as a redevelopment agency

pursuant to this subsection shall not exceed the area of operation of the downtown development authority established pursuant to Chapter 42 of this title.

History.
Code 1981, § 36-44-4, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-5. Power of political subdivision.

(a) Subject to the limitation of subsection (b) of this Code section, a political subdivision may exercise any powers necessary or convenient to carry out the purposes of this chapter, including, but not limited to, the power to:

(1) Describe the boundaries of one or more redevelopment areas within its area of operation, but any redevelopment area so described shall conform to the definition of a redevelopment area provided by paragraph (7) of Code Section 36-44-3;

(2) Cause redevelopment plans to be prepared, to approve by resolution the plans, and to implement the provisions and effectuate the purposes of the plans;

(3) Create within redevelopment areas tax allocation districts and define the boundaries thereof or designate an entire redevelopment area as a tax allocation district;

(4) Define the boundaries of portions of a redevelopment area or an entire redevelopment area for the implementation of redevelopment plans other than plans calling for the creation of tax allocation districts;

(5) Issue tax allocation bonds;

(6) Deposit moneys into and disburse moneys from the special fund of any tax allocation district;

(7) Enter into and execute any contracts, leases, mortgages, or other agreements, including agreements with bondholders or lenders, determined by the local legislative body to be necessary or convenient to implement the provisions and effectuate the purposes of redevelopment plans. The contracts or agreements may include conditions, restrictions, or covenants which either run with the land or otherwise regulate the use of land;

(8) Acquire and retain or acquire and dispose of property or interests therein for redevelopment purposes or use or dispose of property or interests therein presently owned by the political subdivision for redevelopment purposes; and any disposition of such

property or interests therein may be by public or private sale or lease; and

(9) Exercise, for the purposes of this chapter, any powers conferred upon political subdivisions by Chapter 61 of this title, the "Urban Redevelopment Law."

(b) The powers granted to political subdivisions by subsection (a) of this Code section and by this chapter and any powers delegated to a redevelopment agency pursuant to Code Section 36-44-6 may be exercised only for the purpose of adopting and implementing redevelopment plans, but this limitation shall not be construed to interfere with the exercise of any power now or hereafter possessed by a political subdivision which is granted by any other law.

History.
Code 1981, § 36-44-5, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

JUDICIAL DECISIONS

Bond proposal secured by infrastructure fees upheld. — Bond proposal secured by infrastructure fees was sound, feasible, and reasonable; the trial court was not required to find that the projected $633 million of fees over a 30 year period would service bonds in the possible amount of $1.25 billion; the bonds would be issued only if sufficient infrastructure fees were projected to service the bonds. Franzen v. Downtown Dev. Auth. of Atlanta, 309 Ga. 411, 845 S.E.2d 539, 2020 Ga. LEXIS 462 (2020).

Validation of bonds. — Trial court's validation of three bonds at issue was upheld because the record supported the trial court's decision to defer to the city's view that redevelopment served a beneficial public purpose and while not all residents, including the intervenors, shared the city's vision for the area, that did not mean that the project was illegal. Franzen v. City of Atlanta, 359 Ga. App. 462, 857 S.E.2d 237, 2021 Ga. App. LEXIS 224 (2021).

36-44-6. Delegation of powers; limitations on delegation.

(a) Subject to the limitations of subsection (b) of this Code section, the local legislative body of a political subdivision, by resolution, may delegate any of its redevelopment powers to its redevelopment agency created or designated pursuant to Code Section 36-44-4. The local legislative body shall have authority to delegate some or all such powers in such manner and pursuant to such terms and conditions as the local legislative body shall provide by resolution. Any such resolution shall specify any powers delegated to a redevelopment agency, and such resolution may be amended, modified, or repealed by the local legislative body adopting it.

(b) Any delegation of redevelopment powers pursuant to the authority of subsection (a) of this Code section shall be limited by the following requirements:

(1) Any redevelopment plan must be approved by resolution of the local legislative body of the political subdivision as a condition precedent to the implementation of said redevelopment plan, and such approval shall be subject to the requirements of Code Section 36-44-7;

(2) The boundaries of any redevelopment area must be described by resolution of the local legislative body of the political subdivision;

(3) A tax allocation district must be created by resolution of the local legislative body of the political subdivision;

(4) The issuance of any tax allocation bonds shall be by resolution of the local legislative body of the political subdivision;

(5) The power of eminent domain may only be exercised under this chapter by the local legislative body of a political subdivision; and

(6) A local legislative body may not delegate to a redevelopment agency created under subsection (b), (c), (d), or (e) of Code Section 36-44-4 any urban redevelopment project powers except those which may be conferred on an urban redevelopment agency under Code Section 36-61-17 of the "Urban Redevelopment Law."

History.
Code 1981, § 36-44-6, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

Code Commission notes.
The amendment of this Code section by Ga. L. 2009, p. 8, § 36, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 158, § 2. See County of Butts v. Strahan, 151 Ga. 417 (1921).

36-44-7. Approval of redevelopment plans.

(a) A redevelopment plan may be proposed by the redevelopment agency of a political subdivision, but such plan may not be implemented until it is approved by the adoption of a resolution of the local legislative body of the political subdivision as provided in this chapter.

(b) When a proposed redevelopment plan is prepared, it shall be submitted by the redevelopment agency to the local legislative body. Within the 60 day period after the plan is submitted, the local legislative body shall hold at least one public hearing on the proposed redevelopment plan. The local legislative body shall cause the time, date, place, and purpose of each such public hearing to be advertised in one or more newspapers of general circulation within the area of operation of the political subdivision at least once during a period of five days immediately preceding the date of each public hearing.

(c) Within 45 days after completing the public hearings required by subsection (b) of this Code section, the local legislative body of the political subdivision shall schedule and hold a meeting of the local legislative body for the purpose of considering the approval of the

redevelopment plan. The local legislative body shall cause the date, time, place, and purpose of such meeting to be advertised in one or more newspapers of general circulation within the area of operation of the political subdivision at least once during a period of five days immediately preceding the date of such meeting. At such meeting the redevelopment plan shall be approved as submitted, amended and approved, or rejected and returned to the redevelopment agency for further consideration. Any redevelopment plan rejected by the local legislative body shall be returned to the redevelopment agency and shall be subject to the public hearing requirements of subsection (b) of this Code section if it is again submitted to the local legislative body for approval, either in the same or amended form.

(d) Once approved by the local legislative body, a redevelopment plan may be amended only by the local legislative body of the political subdivision. The local legislative body shall cause the date, time, place, and purpose of any meeting of the local legislative body at which an amendment to a redevelopment plan is to be considered to be advertised in the same manner as prescribed by subsection (c) of this Code section for a meeting to consider the adoption of a redevelopment plan.

History.
Code 1981, § 36-44-7, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-8. Creation and implementation of tax allocation districts.

In order to create and carry out the purposes of a tax allocation district, the following steps are required:

(1) Preparation by the redevelopment agency of a redevelopment plan for the proposed tax allocation district and its submission for consent to the political subdivision or board of education required to consent, if the plan proposes to include in the tax allocation increment ad valorem property taxes levied by a political subdivision or board of education required to consent to such inclusion under Code Section 36-44-9, or if the plan proposes to pledge for payment or security for payment of tax allocation bonds and other redevelopment costs the general funds of a county required to consent to such inclusion under Code Section 36-44-9;

(2) Submission of the redevelopment plan to the local legislative body of the political subdivision whose area of operation will include the tax allocation district;

(3) Adoption by the local legislative body of a resolution approving the redevelopment plan and which:

(A) Describes the boundaries of the tax allocation district with

sufficient definiteness to identify with ordinary and reasonable certainty the territory included. The boundaries shall include only those whole units of property assessed for ad valorem property tax purposes;

(B) Creates the district on December 31 following the adoption of the resolution or on December 31 of a subsequent year as determined by the local legislative body;

(C) Assigns a name to the district for identification purposes. The first district created shall be known as "Tax Allocation District Number 1," followed by the name of the political subdivision within whose area of operation the district is located;

(D) Specifies the estimated tax allocation increment base;

(E) Specifies ad valorem property taxes to be used for computing tax allocation increments;

(F) Specifies the property proposed to be pledged for payment or security for payment of tax allocation bonds which property may include positive tax allocation increments derived from the tax allocation district, all or part of general funds derived from the tax allocation district, and any other property from which bonds may be paid under Code Section 36-44-14, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20; and

(G) Contains findings that:

(i) The redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or includes one or more natural, historical, or cultural assets which have not been adequately preserved or protected and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan; and

(ii) The improvement of the area is likely to enhance the value of a substantial portion of the other real property in the district.

If any information required to be included in the resolution approving the redevelopment plan under subparagraphs (A) through (G) of this paragraph is contained in the redevelopment plan, then the resolution approving the redevelopment plan may incorporate by reference that portion of the redevelopment plan containing said information; and

(4) A certified copy of any resolution giving the consent required under paragraph (1) of this Code section must be submitted to the

local legislative body of the political subdivision whose area of operation will include the tax allocation district prior to inclusion of such ad valorem property taxes or general funds in calculation of the tax allocation increment.

History.
Code 1981, § 36-44-8, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-9. Computing tax allocation increments; property tax included; use of tax funds.

(a) When a tax allocation district is created within the area of operation of a municipality by the local legislative body of such municipality, property taxes for computing tax allocation increments shall be based on all ad valorem property taxes levied by the municipality. If the municipality has an independent school system, ad valorem property taxes levied for educational purposes by the municipality shall be included in computing the tax allocation increments if the local legislative body of the municipality is empowered to make the determination of the municipal ad valorem tax millage rate for educational purposes. If the board of education of the independent school system is empowered to set the ad valorem tax millage rate for educational purposes and the local legislative body of the municipality does not have the authority to modify such rate set by the board of education, the tax allocation increment shall not be computed on the basis of municipal taxes for educational purposes unless the board of education of the independent school system consents, by resolution duly adopted by said board of education, to the inclusion of educational ad valorem property taxes as a basis for computing tax allocation increments.

(b) County ad valorem property taxes may be included in the computation of tax allocation increments of a municipal tax allocation district if the local legislative body of the county consents to such inclusion by resolution duly adopted by said local legislative body. For those municipalities which do not have an independent school system, ad valorem property taxes levied for county school district purposes may be included in the computation of tax allocation increments of a municipal tax allocation district if the county board of education or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such inclusion by resolution duly adopted by said board of education or local legislative body, respectively.

(c) When a tax allocation district is created within the area of operation of a county by the local legislative body of the county, property taxes for computing tax allocation increments shall be based on all

county ad valorem property taxes levied for county governmental purposes. Ad valorem property taxes levied for county school district purposes may be included in the computation of tax allocation increments for a county tax allocation district if the board of education of the county school district or the local legislative body of the county, whichever is authorized to establish the ad valorem tax millage rate for educational purposes, consents to such inclusion by resolution duly adopted by said board of education or local legislative body, respectively.

(d) When a tax allocation district is created within the area of operation of a consolidated government by the local legislative body of the consolidated government, property taxes for computing tax allocation increments shall be based on all consolidated government ad valorem property taxes levied for consolidated government purposes. Ad valorem property taxes levied for school district purposes within the boundaries of the consolidated government may be included in the computation of tax allocation increments for a consolidated government tax allocation district if the board of education of such school district or the local legislative body of the consolidated government, whichever is authorized to establish the ad valorem tax millage rate for educational purposes within the school district, consents to such inclusion by resolution duly adopted by said board of education or local legislative body, respectively.

(e) The resolution of any county, municipality, consolidated government, or board of education consenting to the inclusion of ad valorem property taxes in the computation of tax increments shall not specify the inclusion of any ad valorem property taxes not specified in the resolution creating the tax allocation district.

(f) A county may pledge all or part of county general funds derived from a municipal tax allocation district for payment or security of payment of tax allocation bonds issued by the municipality and for payment of other redevelopment costs of the tax allocation district if the local legislative body of the county consents to the use of such general funds by resolution duly adopted by said local legislative body.

(g) Any consent by a local board of education to the inclusion of educational ad valorem property taxes as a basis for computing tax allocation increments and any authorization to use such funds for such purposes that was approved before January 1, 2009, and not rescinded or repealed prior to April 22, 2009, is ratified and confirmed pursuant to the authority granted by Article IX, Section II, Paragraph VII of the Constitution, as amended by a resolution ratified at the November, 2008 general election, Ga. L. 2008, p. 777, to authorize the use of county, municipal, and school tax funds, or any combination thereof, for redevelopment purposes and programs notwithstanding Article VIII, Section VI or any other provision of the Constitution and regardless of

whether any county, municipality, or local board of education approved the use of such tax funds for such purposes and programs before or after January 1, 2009.

History.

Code 1981, § 36-44-9, enacted by Ga. L. 2009, p. 158, § 2/HB 63; Ga. L. 2012, p. 775, § 36/HB 942.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2009, "prior to April 22, 2009," was substituted for "prior to the effective date of this Code section" in subsection (g).

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26, 2013 Ga. LEXIS 493 (2013).

Validation of bonds. — Trial court's validation of three bonds at issue was upheld because the record supported the trial court's decision to defer to the city's view that redevelopment served a beneficial public purpose and while not all residents, including the intervenors, shared the city's vision for the area, that did not mean that the project was illegal. Franzen v. City of Atlanta, 359 Ga. App. 462, 857 S.E.2d 237, 2021 Ga. App. LEXIS 224 (2021).

36-44-10. Determination of tax allocation increment base of tax allocation district; annual notice.

(a) No later than the effective date of the creation of the tax allocation district, the redevelopment agency shall apply, in writing, to the state revenue commissioner for a determination of the tax allocation increment base of the tax allocation district. Within a reasonable time, and not exceeding 60 days after the effective date of the creation of the tax allocation district, the state revenue commissioner shall certify such tax allocation increment base, as of the effective date of the creation of the tax allocation district, to the redevelopment agency, and such certification, unless amended pursuant to subsection (b) of this Code section, shall constitute the tax allocation increment base of the tax allocation district.

(b) If the local legislative body of a political subdivision adopts an amendment to the resolution which created a tax allocation district and such amendment changes the boundaries of that tax allocation district so as to cause additional redevelopment costs for which tax allocation increments may be received by the political subdivision, the tax allocation increment base for the revised or amended district shall be redetermined pursuant to subsection (a) of this Code section as of the effective date of such amendment. The tax allocation increment base as

redetermined under this subsection is effective for the purposes of this chapter only if it exceeds the original tax allocation increment base determined under subsection (a) of this Code section.

(c) It is a rebuttable presumption that any property within a tax allocation district acquired or leased as lessee by the political subdivision, or any agency or instrumentality thereof, within one year immediately preceding the date of the creation of the district was so acquired or leased in contemplation of the creation of the district. The presumption may be rebutted by the political subdivision with proof that the property was so leased or acquired primarily for a purpose other than to reduce the tax allocation increment base. If the presumption is not rebutted, in determining the tax allocation increment base of the district, but for no other purpose, the taxable status of the property shall be determined as though such lease or acquisition had not occurred.

(d) For each political subdivision whose area of operation includes a tax allocation district, the county board of tax assessors, joint city-county board of tax assessors, or board of tax assessors for a consolidated government, as the case may be, shall identify upon the tax digests of the political subdivision those parcels of property which are within each existing tax allocation district, specifying the name of each district. A similar notation shall appear on tax digests submitted to the state revenue commissioner pursuant to Code Section 48-5-302, relative to the submission of tax digests to the state revenue commissioner.

(e) The county board of tax assessors, joint city-county board of tax assessors, or consolidated government board of tax assessors shall annually give notice to the county tax collector or tax commissioner and to the municipal official responsible for collecting municipal ad valorem property taxes as to both the current taxable value of property subject to ad valorem property taxes within each tax allocation district and the tax allocation increment base. The notice shall also explain that any taxes collected as a result of increases in the tax allocation increment base constitute tax allocation increments and shall be paid to the appropriate political subdivision as provided by subsection (b) of Code Section 36-44-11.

History.
Code 1981, § 36-44-10, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-11. Positive tax allocation increments.

(a) Positive tax allocation increments of a tax allocation district shall be allocated to the political subdivision which created the district for

each year from the effective date of the creation of the district until that time when all redevelopment costs and all tax allocation bonds of the district have been paid or provided for, subject to any agreement with bondholders. General funds derived from the tax allocation district which have been pledged for payment or security for payment of tax allocation bonds and other redevelopment costs of the tax allocation district shall also be allocated to the political subdivision which created the district for each year from the effective date of the creation of the district until that time when all redevelopment costs and all tax allocation bonds have been paid or provided for, subject to any agreement with bondholders.

(b)(1) Each county tax collector or tax commissioner, municipal official responsible for collecting municipal ad valorem property taxes, or consolidated government official responsible for collecting consolidated government ad valorem property taxes shall, on the dates provided by law for the payment of taxes collected to the respective political subdivisions, pay over to the appropriate fiscal officer of each political subdivision having created a tax allocation district, out of taxes collected on behalf of such political subdivision, including but not limited to taxes collected for a political subdivision or board of education consenting, pursuant to Code Section 36-44-9, to inclusion of its ad valorem property taxes in the computation of tax allocation increments for that tax allocation district, that portion, if any, which represents positive tax allocation increments payable to such political subdivision.

(2) In addition, each county shall, upon receipt, pay over to the appropriate fiscal officer of each municipality having created a tax allocation district that portion, if any, of its general funds derived from the tax allocation district which have been pledged for payment or security for payment of tax allocation bonds and for payment of other redevelopment costs of the tax allocation district pursuant to Code Section 36-44-9.

(c) All positive tax allocation increments received for a tax allocation district shall be deposited into a special fund for the district upon receipt by the fiscal officer of the political subdivision. All general funds derived from the tax allocation district which have been pledged for payment or security for payment of tax allocation bonds and other redevelopment costs of the tax allocation district shall be deposited upon receipt into the special fund. Any lease or other contract payments made under the district's redevelopment plan shall also be deposited upon receipt into the special fund. Moneys derived from positive tax allocation increments, general fund moneys, and moneys derived from lease or other contract payments shall be accounted for separately within the special fund. Moneys shall be paid out of the fund only to pay

redevelopment costs of the district or to satisfy claims of holders of tax allocation bonds issued for the district. The local legislative body shall irrevocably pledge all or a part of such special fund to the payment of the tax allocation bonds. The special fund or designated part thereof may thereafter be used only for the payment of the tax allocation bonds and interest until they have been fully paid, and a holder of said bonds shall have a lien against the special fund or said designated part thereof pledged for payment of said bonds and may either at law or in equity protect and enforce the lien. General funds derived from the tax allocation district may be used for payment of tax allocation bonds only to the extent that positive tax allocation increments and lease or other contract payments in the special fund are insufficient at any time to pay principal and interest due on such bonds. Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other funds of the political subdivision. Except as provided in Code Section 36-44-20, general funds derived from the tax allocation district may be used for payment of tax allocation bonds only to the extent that positive tax allocation increments and lease or other contract payments in the special fund are insufficient at any time to pay the principal and interest due on such bonds. After all redevelopment costs and all tax allocation bonds of the district have been paid or provided for, subject to any agreement with bondholders, if there remains in the fund any moneys derived from positive tax allocation increments, they shall be paid over to each county, municipality, consolidated government, or county or independent board of education whose ad valorem property taxes were affected by the tax allocation district in proportion to the aggregate contribution of such taxes by such political subdivision less aggregate payments to such political subdivision pursuant to subparagraph (G) of paragraph (8) of Code Section 36-44-3 and in the same manner as the most recent distribution by the county tax collector or tax commissioner, municipal official responsible for collecting municipal ad valorem property taxes, or consolidated government official responsible for collecting consolidated government ad valorem property taxes. If there remains in the fund any other moneys, they shall be paid over to each political subdivision which contributed to the fund in proportion to the respective total contribution each made to the fund.

History.
Code 1981, § 36-44-11, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-12. Termination of tax allocation districts.

The existence of a tax allocation district shall terminate when the local legislative body, by resolution, dissolves the district, but no such

resolution may be adopted until all redevelopment costs have been paid.

History.
Code 1981, § 36-44-12, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-13. Payment of redevelopment costs.

Payment of redevelopment costs may be made by any of the following methods or any combination thereof:

(1) Payment by the political subdivision from the special fund of the tax allocation district;

(2) Payment from the general funds of a political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20;

(3) Payment out of the proceeds of the sale of revenue bonds issued by the political subdivision pursuant to Chapter 61 of this title, the "Urban Redevelopment Law," and revenue bonds may be issued under such law for redevelopment purposes within the meaning of this chapter;

(4) Payment out of the proceeds of the sale of tax allocation bonds issued by the political subdivision under this chapter;

(5) Payment from the proceeds from any loans made to a political subdivision pursuant to the authority of Code Section 36-44-16; and

(6) Lease payments and other payments pursuant to contracts under a redevelopment plan.

History.
Code 1981, § 36-44-13, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-14. Issuance of tax allocation bonds; authorization of tax allocation notes and other obligations; increasing security and marketability amount; certificate of validation; interest; redevelopment cost anticipation notes.

(a) Only for the purpose of paying redevelopment costs for a tax allocation district created under this chapter, the local legislative body may issue tax allocation bonds. Tax allocation bonds are declared to be negotiable instruments. Tax allocation bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(b) All tax allocation bonds, notes, and other obligations shall be authorized by resolution of the local legislative body, adopted by a

majority vote of the members thereof at a regular or special meeting and without the necessity of a referendum or any electoral approval. The resolution shall state the name of the tax allocation district and the aggregate principal amount of the tax allocation bonds authorized.

(c) Tax allocation bonds, notes, or other obligations issued by a local legislative body under this chapter shall be payable solely from the property pledged, mortgaged, conveyed, assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds, notes, or other obligations, which property shall be limited to real or personal property acquired pursuant to this chapter and the proceeds from any source from which redevelopment costs may be paid under Code Section 36-44-13, but subject to the limitations of Code Sections 36-44-9 and 36-44-20. Each such bond, note, or other obligation shall contain recitals as are necessary to show that it is only so payable and that it does not otherwise constitute an indebtedness or a charge against the general taxing power of the political subdivision or county or independent board of education consenting to the use of property taxes as a basis for computing tax allocation increments or consenting to the use of general funds derived from the tax allocation district.

(d) To increase the security and marketability of tax allocation bonds, notes, or other obligations, a local legislative body may:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom; and

(2) Make covenants and do any and all acts not inconsistent with the Constitution or this chapter as may be necessary or convenient or desirable in order additionally to secure tax allocation bonds, notes, or other obligations or tend to make them more marketable according to the best judgment of the local legislative body.

(e) Tax allocation bonds, notes, or other obligations shall bear such date or dates, shall mature at such time or times not more than 30 years from their respective dates, shall bear interest at such rate or rates which may be fixed or may fluctuate or otherwise change from time to time, shall be subject to redemption on such terms, and shall contain such other terms, provisions, covenants, assignments, and conditions as the resolution authorizing the issuance of such bonds, notes, or other obligations may permit or provide. The terms, provisions, covenants, assignments, and conditions contained in or provided or permitted by any resolution of the local legislative body authorizing the issuance of such tax allocation bonds, notes, or other obligations shall bind the members of the local legislative body then in office and their successors.

(f) The local legislative body shall have power from time to time and whenever it deems it expedient to refund any tax allocation bonds by

the issuance of new tax allocation bonds, whether or not the bonds to be refunded have matured, and may issue such bonds partly to refund bonds then outstanding and partly for any other purpose permitted under this chapter. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed upon, or may be sold at such price as the local legislative body may determine and the proceeds applied to the purchase or redemption of the bonds to be refunded.

(g) Tax allocation bonds may not be issued in an amount exceeding the estimated aggregated redevelopment costs for the tax allocation district. Any limitations with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of this title, the "Revenue Bond Law," the usury laws of this state, or any other laws of this state shall not apply to tax allocation bonds, notes, or other obligations of a local legislative body.

(h) All tax allocation bonds issued by a local legislative body under this chapter shall be issued and validated under and in accordance with Article 3 of Chapter 82 of this title, the "Revenue Bond Law," except as provided in this chapter.

(i) Tax allocation bonds issued by a local legislative body may be in such form and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide.

(j) Tax allocation bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the county in which the issuing local legislative body is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(k) In lieu of specifying the rate or rates of interest which tax allocation bonds to be issued by a local legislative body are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest, which rate may be fixed or may fluctuate or otherwise change from time to time, specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate so specified, which rate may be fixed or may fluctuate or otherwise change from time to time; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of a local legislative body to sell such tax allocation

bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(l) The term "redevelopment costs" shall have the meaning prescribed in this chapter whenever that term is referred to in tax allocation bond resolutions of a local legislative body, in tax allocation bonds, notes, or other obligations of a local legislative body, or in notices or proceedings to validate such bonds, notes, or other obligations of a local legislative body.

(m) Subject to the limitations and procedures provided by this chapter, the agreements or instruments executed by a local legislative body may contain such provisions not inconsistent with law as shall be determined by the local legislative body.

(n) The proceeds derived from the sale of all tax allocation bonds, notes, and other obligations issued by a local legislative body shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this chapter, redevelopment costs or for the purpose of refunding any tax allocation bonds, notes, or other obligations issued in accordance with this chapter.

(o) Issuance by a local legislative body of one or more series of tax allocation bonds, notes, or other obligations for one or more purposes shall not preclude it from issuing other tax allocation bonds, notes, or other obligations in connection with the same redevelopment plan or with any other redevelopment plan; but the proceeding wherein any subsequent bonds, notes, or other obligations are issued shall recognize and protect any prior loan agreement, mortgage, deed to secure debt, trust deed, security agreement, or other agreement or instrument made for any prior issue of bonds, notes, or other obligations, unless in the resolution authorizing such prior issue the right is expressly reserved to the local legislative body to issue subsequent bonds, notes, or other obligations on a parity with such prior issue. Once the political subdivision certifies by resolution that all tax allocation bonds contemplated by the redevelopment plan and all amendments thereto have been issued and all other redevelopment costs within a tax allocation district have been paid, all positive tax allocation increments collected within a tax allocation district shall be used to retire outstanding tax allocation bonds prior to their stated maturities, subject to any agreements made by the political subdivision with bondholders.

(p) A local legislative body shall have the power and is authorized, whenever tax allocation bonds of the local legislative body shall have been validated as provided in this chapter, to issue from time to time its notes in anticipation of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether or not the notes to be renewed have matured. The local legislative body may issue

such bond anticipation notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. Such notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the local legislative body may sell such notes at public sale or at private sale. Any resolution or resolutions authorizing such notes of the local legislative body or any issue thereof may contain any provisions which the local legislative body is authorized to include in any resolution or resolutions authorizing bonds of the local legislative body to any issue thereof; and the local legislative body may include in any such notes any terms, covenants, or conditions which the local legislative body is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

History.
Code 1981, § 36-44-14, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

JUDICIAL DECISIONS

Validation of bonds. — Trial court's validation of three bonds at issue was upheld because the record supported the trial court's decision to defer to the city's view that redevelopment served a beneficial public purpose and while not all residents, including the intervenors, shared the city's vision for the area, that did not mean that the project was illegal. Franzen v. City of Atlanta, 359 Ga. App. 462, 857 S.E.2d 237, 2021 Ga. App. LEXIS 224 (2021).

36-44-15. Determining tax millage rate; no freeze to ad valorem tax millage.

For the purpose of fixing the tax millage rate to fund the annual budget of each political subdivision or county or independent board of education having the power to levy taxes or set ad valorem tax millage rates on property located within a tax allocation district, which has consented to the inclusion of its ad valorem property taxes for the computation of tax allocation increments as provided in Code Section 36-44-9, the taxable value of property subject to ad valorem property taxes within a tax allocation district shall not exceed the tax allocation increment base of the district until the district is terminated. Nothing in this chapter shall be construed to freeze the ad valorem tax millage rate of any political subdivision or county or independent board of education consenting to the inclusion of its ad valorem property taxes as a basis for computing tax allocation increments, and any such rate may be increased or decreased at any time after the creation of a tax allocation district in the same manner and under the same authority that such

rate has been previously fixed by such political subdivision or county or independent board of education.

History.
Code 1981, § 36-44-15, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-16. Loans for financing redevelopment costs.

As an additional source for financing redevelopment costs, a political subdivision or its redevelopment agency may borrow funds from financial institutions and, in connection therewith, may pledge or assign lease contracts or revenue received from lease contracts on property owned by the political subdivision or its redevelopment agency within a redevelopment area. A political subdivision or its redevelopment agency is authorized to enter into contracts with financial institutions for the purpose of exercising the authority provided by this Code section, and such contracts may obligate the political subdivision or its redevelopment agency for any number of years not exceeding 25. Contractual obligations incurred by a political subdivision pursuant to this Code section shall not constitute debt within the meaning of Article IX, Section V of the Constitution.

History.
Code 1981, § 36-44-16, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-17. Limitation on creation of tax allocation district.

No political subdivision may create a tax allocation district when the total current taxable value of property subject to ad valorem property taxes within the proposed district plus the total current taxable value of property subject to ad valorem property taxes within all its existing tax allocation districts exceeds 10 percent of the total current taxable value of all taxable property located within the area of operation of the political subdivision.

History.
Code 1981, § 36-44-17, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-18. Application of Urban Redevelopment Law.

It is specifically provided that Code Section 36-61-16 of the "Urban Redevelopment Law," which Code section provides for cooperation among public bodies for redevelopment purposes under said law, shall be applicable to the exercise of redevelopment powers provided by this chapter.

History.
Code 1981, § 36-44-18, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-19. Contracting with private individuals or entities.

A political subdivision may enter into any contract relating to the exercise of its redevelopment powers under this chapter with any private persons, firms, corporations, or business entities for any period not exceeding 30 years. Such contracts may include, without being limited to, contracts to convey or otherwise obligate real property for redevelopment under this chapter although that property has not yet been acquired at the time of contracting by the county or municipality.

History.
Code 1981, § 36-44-19, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-20. Requirement of insufficiency.

(a) Notwithstanding any other provisions of this chapter, a local legislative body may use, pledge, or otherwise obligate its general funds for payment or security for payment of tax allocation bonds issued or incurred under this chapter but only if those general funds are derived from a designated tax allocation district and used for payment or security for payment of tax allocation bonds issued or incurred under this chapter for redevelopment of that district and only to the extent that positive tax increments or lease or other contract payments in that district's special fund are insufficient at any time to pay principal and interest due on such bonds.

(b) The requirement of insufficiency provided for in subsection (a) of this Code section may be satisfied by adoption of a resolution of the local legislative body finding that positive tax increments or lease or other contract payments in the district's special fund will be insufficient to pay principal and interest on bonds to be issued to finance redevelopment costs for the redevelopment described in the redevelopment plan.

History.
Code 1981, § 36-44-20, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-21. Public employees and officials prohibited from holding interest disclosures; voidability of prohibited transactions; misconduct in office.

(a) No elected or appointed official or employee of a political subdivision or a board, commission, or redevelopment agency thereof shall voluntarily acquire any interest, direct or indirect, in any property

included or planned to be included in a redevelopment area, or in any contract or transaction or proposed contract or transaction in connection with the redevelopment of that redevelopment area. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local legislative body and such disclosure shall be entered upon the minutes of the local legislative body. Any such elected or appointed official or employee who, within two years immediately prior to the date the plan is submitted to a local legislative body under subsection (b) of Code Section 36-44-7, acquires ownership or control of any interest, direct or indirect, in any property which is included in the redevelopment area designated in that plan and who retains that ownership or control at the time that such plan is so submitted shall, at least 30 days prior to the date scheduled for the local legislative body to adopt the plan, disclose the interest in writing to the local legislative body and such disclosure shall be entered upon the minutes of the local legislative body, and that person shall not participate in any action by the political subdivision, board, commission, or redevelopment agency thereof which affects that property. Any disclosure required to be made by this subsection shall concurrently be made to the redevelopment agency.

(b) Any contract or transaction in violation of subsection (a) of this Code section or disclosure of which is not made as provided in that subsection (a) shall be voidable by the local legislative body. This subsection shall not apply to any indenture, agreement, contract, or transaction which constitutes security, direct or indirect, for payment of bonds or other obligations incurred pursuant to a redevelopment plan, and the judgment and order confirming and validating any such bonds or other obligations shall constitute a final and conclusive adjudication as to any such security.

(c) Failure by an official or employee to comply with subsection (a) of this Code section shall constitute misconduct in office.

History.
Code 1981, § 36-44-21, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

36-44-22. Approval of local law; expansion of authorities by localities prohibited.

Redevelopment powers under this chapter may not be exercised by any political subdivision unless so authorized by a local law relating thereto, which local law may limit but may not expand those redevelopment powers established by this chapter as to the local political subdivision to which the local law is applicable. Such local law, and all amendments thereto, shall become effective only if approved in a special election by a majority of the qualified voters voting of each

political subdivision directly affected, which special election shall be held as provided in that local law, but in conformity with the requirements for special elections pursuant to Title 21.

History.
Code 1981, § 36-44-22, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

JUDICIAL DECISIONS

Authorization of redevelopment powers. — Trial court properly held that nothing in the Redevelopment Powers law repealed the city's existing authority to create Tax Allocation Districts. O.C.G.A. § 36-44-22 only required that redevelopment powers may not be exercised by any political subdivision unless so authorized by a local law relating thereto and because the city had already passed a local law authorizing the city's redevelopment powers, this claim had no merit. Franzen v. City of Atlanta, 359 Ga. App. 462, 857 S.E.2d 237, 2021 Ga. App. LEXIS 224 (2021).

36-44-23. Cumulative and supplemental powers.

The powers provided by this chapter are intended by the General Assembly to be cumulative and supplemental to any powers heretofore provided by law for counties, municipalities, and consolidated governments of this state and not in lieu of any such heretofore existing powers.

History.
Code 1981, § 36-44-23, enacted by Ga. L. 2009, p. 158, § 2/HB 63.

CHAPTER 45

MUNICIPAL TRAINING

Article 1

In General

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36-45-3. Definitions.
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Article 2

Clerks of Governing Authorities of Municipalities

36-45-20. Training course.

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For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990).

ARTICLE 1

IN GENERAL

36-45-1. Short title.

This article shall be known and may be cited as the "Georgia Municipal Training Act."

History.
Code 1981, § 36-45-1, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 2004, p. 983, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter".

36-45-2. Legislative findings and intent.

The General Assembly finds and declares that it is in the best interests of the citizens of this state to require newly elected members of a municipal governing authority to attend a course of training and education on matters pertaining to the administration and operation of municipal government. The purpose of such course shall be to instruct such individuals in the powers, duties, and responsibilities of their positions of public trust.

History.
Code 1981, § 36-45-2, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 2004, p. 983, § 1.

36-45-3. Definitions.

As used in this article, the term:

(1) "Institute" means the Harold F. Holtz Municipal Training Institute.

(2) "Municipal governing authority" means the governing authority of a municipal corporation.

(3) "State" means the State of Georgia and any department, board, bureau, commission, or other agency thereof.

(4) "Vinson Institute" means the Carl Vinson Institute of Government of the University of Georgia.

History.
Code 1981, § 36-45-3, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 1997, p. 860, § 1; Ga. L. 2004, p. 983, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in the introductory language.

36-45-4. Training of elected members of municipal governing authority.

(a) All persons elected as members of a municipal governing authority who were not serving as members of a municipal governing authority on July 1, 1990, shall enroll in, attend, and satisfactorily complete a course of training and education on matters pertaining to the administration and operations of municipal governments. Such course of training and education shall include, but not be limited to, orientation in local government finance and budgeting; methods of taxation; planning; public works and utilities; parks and recreation; environmental management; public safety; personnel management; responsiveness to the community; the ethics, duties, and responsibilities of members of a municipal governing authority or a chief executive officer; and such other matters as may be deemed necessary and appropriate by the Vinson Institute.

(b) All expenses incurred by a newly elected member of a municipal governing authority related to the course of training and education authorized and required by subsection (a) of this Code section, including the reasonable costs of housing, travel, and meals, shall be paid from public funds appropriated for such purposes. All expenses not paid for by state funds shall be paid from municipal funds by the municipal governing authority whose newly elected member or members shall attend such course.

History.
Code 1981, § 36-45-4, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 2004, p. 983, § 1.

36-45-5. Harold F. Holtz Municipal Training Institute.

(a) There is created and established the Harold F. Holtz Municipal Training Institute. Except as otherwise provided in Code Sections 36-45-4 and 36-45-20, all costs of operating and conducting the institute shall be paid for from public funds appropriated for such purposes.

(b) The Vinson Institute shall establish, in consultation with the Georgia Municipal Association, a committee of elected municipal officials to design, implement, and administer the course of training and education required by Code Sections 36-45-4 and 36-45-20.

(c) The course of training and education required by Code Sections 36-45-4 and 36-45-20 shall be conducted by the institute under such rules, regulations, procedures, policies, requirements, and standards as prescribed from time to time by the committee established pursuant to subsection (b) of this Code section.

(d) The committee established pursuant to subsection (b) of this Code section shall establish guidelines and procedures to permit any person elected or appointed as a member of a municipal governing authority after January 1 of a calendar year or any person who is unable to attend or complete the course of training and education when offered by the institute due to medical disability, providential cause, or any other reason deemed sufficient by such committee, to comply with the requirements of Code Sections 36-45-4 and 36-45-20.

(e) The committee established pursuant to subsection (b) of this Code section shall perform such other duties and have such other powers and authority as may be necessary and proper or as prescribed by general law.

History.
Code 1981, § 36-45-5, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 1992, p. 1899, §§ 1, 2; Ga. L. 1997, p. 860, § 2; Ga. L. 2004, p. 983, § 1; Ga. L. 2005, p. 60, § 36/HB 95.

36-45-6 through 36-45-8. [Reserved].

History.
Ga. L. 1990, p. 1642, § 2; Ga. L. 1992, p. 1899, §§ 1, 3; Ga. L. 1997, p. 860, § 2; Ga. L. 1999, p. 637, § 1; repealed by Ga. L. 2004, p. 983, § 1, effective May 17, 2004.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, these Code sections were "reserved" following their repeal by Ga. L. 2004, p. 983, § 1.

36-45-9. Report on accomplishments of institute.

On or before February 1 of each year, the Vinson Institute shall file a report to the Governor, the chairperson of the Senate State and Local Governmental Operations Committee, and the chairperson of the House Committee on State Planning and Community Affairs. The

report shall include a summary of the accomplishments of the institute during the preceding calendar year, including, but not limited to, the total number of members of a municipal governing authority who attended the course of training and education offered by the institute; an outline of the institute's programs for the current calendar year; an evaluation of the programs and services offered by the institute; and recommendations, if any, for legislation as may be necessary to improve the programs and services offered by the institute.

History.
Code 1981, § 36-45-9, enacted by Ga. L. 1990, p. 1642, § 2; Ga. L. 1995, p. 10, § 36; Ga. L. 2004, p. 983, § 1.

ARTICLE 2

CLERKS OF GOVERNING AUTHORITIES OF MUNICIPALITIES

36-45-20. Training course.

(a) As used in this article, the term "clerk of the governing authority of a municipality" means an individual holding the office of city clerk pursuant to a municipal charter and who is normally employed in that capacity for 40 hours per week.

(b) Any person hired or appointed to serve as the clerk of the governing authority of a municipality shall attend and complete a course of training on matters pertaining to the basic performance of his or her official duties. A city official who is an acting city clerk or who carries the dual responsibilities of both city manager and city clerk is exempt from such training.

(c) The personnel of the Carl Vinson Institute of Government are authorized to work with the members of the Georgia Municipal Clerks and Finance Officers Association and the Georgia Municipal Association in establishing and operating the training course provided for in subsection (b) of this Code section.

(d) All reasonable expenses of attending the training course required by this Code section shall be paid from funds appropriated by the municipal governing authority for such purposes.

History.
Code 1981, § 36-45-20, enacted by Ga. L. 1992, p. 1899, § 4; Ga. L. 1993, p. 91, § 36; Ga. L. 1997, p. 860, § 3; Ga. L. 2004, p. 983, § 1; Ga. L. 2025, p. 1029, § 36(16)/SB 153, effective July 1, 2025.

Amendments.
The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted "As used in" for "For purposes of" in subsection (a).

CHAPTERS 46 THROUGH 59
[RESERVED]

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