

COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between August 20, 2016, and August 26, 2016.

We welcome your suggestions and opinions regarding Counties & the Law. Please contact Kelly Pridgen at kpridgen@accg.org or Joe Scheuer at jscheuer@accg.org with your comments.

CONDEMNATION

Summerour v. City of Marietta

Georgia Court of Appeals
August 26, 2016; A16A0640

A city wanted to expand a park and, in June, 2010, contacted a property owner regarding its intent to purchase his property. The contact letter noted the city had hired an appraiser and would make an offer based upon the appraised value. Several more contact letters were sent by the city which included specific offers but the owner responded to none of the letters. In 2013, even more letters were sent. Finally the owner responded and traded offer amounts. Eventually, in 2014, the city commenced condemnation proceedings in superior court and a special master was assigned. The owner argued for dismissal due to the city's failure to comply with O.C.G.A. 22-1-9(3) which required that the city provide a summary of the basis for the amount it established as just compensation. The Court of Appeals vacated the condemnation. Neither the 2010 nor the 2103 contained the required summary. Further, the summary was required to have been provided prior to the commencement of negotiations, and it was not.

CRIMINAL MATTERS

Loveless v. State

Georgia Court of Appeals
August 24, 2016; A16A0161

Evidence was seized without a warrant following a traffic stop. It was supported by observable facts and was undertaken only after the officer accessed the state-maintained computer records. The officer observed a cracked taillight and a hole in the lens which violated O.C.G.A. 40-8-7(b)(2). This act was a valid basis for a traffic stop. The Court of Appeals held that the stop was justified by specific articulable facts giving the officer a reasonable suspicion of a traffic violation. In addition, the suspect, when

questioned, gave false information (false name and birthday) in violation of O.C.G.A. 16-10-25. That action provided probable cause for arrest. Following arrest, officers were authorized to search the suspect and the vehicle for weapons or contraband incident to that arrest and the contraband so discovered was admissible as evidence.

State v. Rucker

Georgia Court of Appeals
August 26, 2016; A16A0047

Evidence consisting of a handgun was seized without a warrant following a knock-and-talk visit to a probationer's camper. A convicted felon on probation resided at the camper. As a condition of probation, the felon had agreed in writing that his residence could be searched without a warrant. Officers received an anonymous tip that illegal narcotics were being sold at the camper. The felon was not present but another individual allowed the officers to enter. A handgun was on a nightstand in plain sight. The felon was charged with illegal possession of a firearm by a convicted felon. The Court of Appeals held that the anonymous tip plus the execution of the waiver of 4th amendment rights supported the officers' decision to investigate and the decision was not unreasonable. No evidence in the record showed the officers acted in bad faith or had intent to harass.

TAXATION

Columbus, GA Board of Tax Assessors v. The Medical center Hospital Authority

Georgia Court of Appeals
August 24, 2016; A16A0639

Columbus Regional Healthcare System owned a continuing care retirement facility which it leased to The Medical Center Hospital Authority (HA). The Court of Appeals held that the leasehold interest was a public project within the scope of the HA Law, O.C.G.A. 31-7-70, et seq. A prior superior court bond validation conclusively established that the project further a legitimate interest of the HA. Since that validation judgement was not contested, the Court of Appeals is bound by it. Property of a HA is public property and thus exempt from taxation under O.C.G.A. 48-5-41(a)(1) as long as the use furthers a legitimate function of the HA. A leasehold interest that is held by a tax-exempt entity (in this case the HA), when severed from the taxable interest owned by another entity (here, Columbus Regional) takes on the tax exempt status of the holder. The Court analogized to the *Anneewakee* case.