

# COUNTIES & THE LAW

This special edition of *Counties & the Law* includes a decision of major importance to county attorneys. It will be covered in expanded format in a later, regular edition of *Counties & the Law*.

We welcome your suggestions and opinions regarding *Counties & the Law*. Please contact Jim Grubiak at [jgrubiak@accg.org](mailto:jgrubiak@accg.org) or Joe Scheuer at [jscheuer@accg.org](mailto:jscheuer@accg.org) with your comments.

## ***JUDICIAL SALARIES***

### ***Heiskell v. Roberts***

Supreme Court of Georgia  
October 6, 2014; S14A0779

This case involves a dispute under Article VI, Section VII, Paragraph V of the 1983 Constitution regarding judicial salaries. A state court judge retired from office after 26 years of service. The vacancy was filled via gubernatorial appointment. The former judge was making over \$172,000.00 per year. Prior to taking office in 2011, the newly appointed judge agreed to a salary of \$100,000.00. That state court judge was defeated at the 2012 nonpartisan general election. The state court judge filed a mandamus against the sole commissioner of Walker County seeking to recover the difference between his salary and the salary the former judge had been receiving alleging that Art. VI, Sec. VII, Para. V did not permit the county to decrease the salary. The trial court granted the mandamus claim. On appeal, the Supreme Court reversed. The view of the trial court was that the appointee was serving the remainder of the unexpired term of the former judge. Under the Constitution of 1983 appointees to fill vacancies on appellate, superior, and state courts follow a different “scheme”. Paragraph III of Art. VI, Sec. VII requires that vacancies be filled by appointment of the Governor, but, Paragraph IV then says that an appointee “shall serve until a successor is duly elected and qualified and until January 1 of the year following the next general election which is more than six months after such person’s appointment.” The Supreme Court stated that the effect of these provisions “is to create an entirely new and shortened initial term of office for the appointed judge.” Citing the *Palmour* and *City of Villa Rica* cases, the Court further distinguishes appellate, superior, and state court appointees from other public offices and from other judicial appointees noting that they do not serve out the “unexpired term” of their predecessors. The clear intent of the Constitution is further found in amendments to O.C.G.A. 15-10-20(e) which refer specifically to Paragraphs III and IV and do not contain any language regarding ‘unexpired terms’. Consequently, the appointed state court judge in this case was not serving the remainder of his predecessor’s unexpired term but was serving his own 15 month term of office and there was no violation of Paragraph V because he received a lower salary. *{The case also deals with questions regarding judicial immunity and attorney’s fees and the interested reader is directed to the full text of the case for those matters.}*