

## MEMORANDUM

TO: LOST File  
FROM: Jim Grubiak  
RE: Supplementary Powers Clause/Relationship to LOST Negotiations  
DATE: July 2012

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During LOST negotiations, some cities have asserted that certain county-provided services, e.g. judicial services, are not to be considered in determining county shares of LOST distributions. Specifically, those cities assert that OCGA § 48-8-89 (a)(2) stands for the notion that only services listed in Article IX, Section II, Paragraph III of the constitution can be taken into account. Under that theory, services not enumerated in the supplemental powers list can't be used in the calculations. That claim relies on OCGA 48-8-89 (a)(2) which says, in part, that the proceeds of the LOST are to be used to fund

*“...services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.”*

This is an argument being promoted by a number of cities and their consultants. It assumes that county officials will not read Article IX, Section II, Paragraph III of the constitution in its entirety, but will accept the city's assertion at face value.

Here's what the Art. IX, § II Para III, the Supplementary Powers clause actually says:

*“(a) In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services:*

- (1) Police and fire protection.*
- (2) Garbage and solid waste collection and disposal.*
- (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.*
- (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.*
- (5) Parks, recreational areas, programs, and facilities.*
- (6) Storm water and sewage collection and disposal systems.*
- (7) Development, storage, treatment, purification, and distribution of water.*
- (8) Public housing.*
- (9) Public transportation.*
- (10) Libraries, archives, and arts and sciences programs and facilities.*
- (11) Terminal and dock facilities and parking facilities.*
- (12) Codes, including building, housing, plumbing, and electrical codes.*
- (13) Air quality control.*

*(14) The power to maintain and modify heretofore existing retirement or pension systems, including such systems heretofore created by general laws of local application by population classification, and to continue in effect or modify other benefits heretofore provided as a part of or in addition to such retirement or pension systems and the power to create and maintain retirement or pension systems for any elected or appointed public officers and employees whose compensation is paid in whole or in part from county or municipal funds and for the beneficiaries of such officers and employees.”*

Note the critical introductory phrase highlighted in (a) above. It clearly says “In addition to and supplementary of all powers possessed by or conferred upon any county, municipality or combination thereof, any county ... may exercise the following powers and provide the following services...”

The effect of reading the introductory phrase together with the list is to confirm that counties may provide all services authorized under statutory law as well as those expressly listed in (1) through (14). What that means for LOST negotiations is that court services that counties are required to provide per Title 15 as well as the numerous other services authorized or required by state law, but not listed above, should all be accounted for in the LOST calculations.

In case there is any doubt as to the above reading, subsection (b) of the Supplementary Powers paragraph makes it clear that the Supplementary Powers paragraph distinguishes the listed services in the paragraph from the broader array of services referenced in the introductory phrase. See subparagraph (b) of Art. IX, § II Para III which expressly limits how and where counties and cities “exercise any of the powers listed” in the previous paragraph.

The Attorney General’s recent opinion on LOST negotiations (attached) is also instructive. Overall it stands for the proposition that services that counties offer on a countywide basis, as opposed to unincorporated basis, should be considered in the LOST negotiations. Note in particular the last sentence of the next to last paragraph on page 2. It says:

*“Since the county provides some services, such as its court system, jail, elections and park and recreation, to all of its residents, including residents of municipalities, such services should be considered as part of the county’s service delivery responsibilities as well.”*

None of the three county services underlined above in the AG’s opinion are included in the list of Supplementary Powers.

Bottom line: there is no reason to buy any city’s argument that only services listed in Article IX, Section II, Paragraph III of the constitution can be taken into account in calculating shares of LOST revenues.

JFG