



Top Legal Issues Faced by County Officials

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I. Where Does Your Power Originate?



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Georgia Constitution

- Article 9 – counties & municipalities
- County home rule
- Planning & Zoning power
- Intergovernmental Agreements

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Georgia Constitution

- Supplementary powers
 - Police
 - Fire
 - Public Housing
 - Parks and Recreation
 - Water and Sewer
 - Sanitation
 - Other

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Georgia Constitution

- Taxation Power
- Limitations on Debt
- Revenue Bonds
- Special service districts
- General law takes precedence over local law

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II. How To Conduct County Business



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Open Meetings

- The Act provides a framework for managing business by public agencies through posting agendas, keeping minutes, and dealing with personnel issues.
- The Act provides a mechanism for an aggrieved citizen who believes a governmental agency has improperly denied access to a meeting.

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Open Meetings

What is a “Meeting”?

- Gathering of a Quorum of the Members of the Public Body
- Based on a Call or Notice at a Time and Place

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Open Meetings

What is a “Meeting”?

- At which any public matter, official business, or policy of the public body is to be:
 - Discussed, presented, or at which official action is to be taken, or
 - For a Committee: Recommendations on any public matter, official business, or policy to the governing authority are to be formulated, presented, or discussed. [Remember the Advisory Committee problem]

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Open Meetings

What Meetings Must be Open?

- Meetings of the governing bodies of all public agencies must be open to the public, unless a specific statutory exception applies.
- Unless exempted, all meetings shall be open to the public.

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Open Meetings

Exceptions to the Open Meetings Act

A governing body of a public agency may hold an executive session (closed meeting) during a regular, special or emergency meeting, only after the presiding officer publicly identifies the specific exception under the Act for having a closed meeting, and a majority of the members present votes to hold an executive session.

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Open Meetings

Closed Meetings a/k/a “Executive Sessions”

- Pending Litigations
- The Future Acquisition of Real Estate (Special Rules)
- Employment (Special Rules)

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Open Records

Public Policy of the Open Records Act

The Open Records Act was enacted to allow residents to have a free and open examination of public records and the meetings of government agencies.

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Open Records

What is a “Public Record?”

Georgia law does not restrict the concept of a “public record” by focusing on the content, formal approval or format of a document.

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Open Records

Situations to Watch

- Email
- Settlement Agreements
- Drafts
- Internet Usage History
- Cookies

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Open Records

Official on Leave While Officials Review Racy E-mails

- Christopher Quinn – *Atlanta Journal-Constitution*

The [REDACTED] for [REDACTED] has been on leave the past six weeks while officials review thousands of e-mails that include photos of naked women, bedroom talk and lewd jokes he exchanged with his girlfriend, county employees and others.

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Open Records

An example of a situation involving emails:

<http://www.wsbtv.com/news/23701230/detail.html>

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III. Interaction with Constitutional Officers



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Ga. Const. Art. 9, § 1, ¶ III

- **Paragraph III. County Officers; Election; Term; Compensation**
 - (a) The **clerk of the superior court, judge of the probate court, sheriff, tax receiver, tax collector, and tax commissioner**, where such office has replaced the tax receiver and tax collector, shall be elected by the qualified voters of their respective counties for terms of four years and shall have such qualifications, powers, and duties as provided by general law.

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How County Commissioners and Constitutional Officers are Different

<u>Officers</u>	<u>Commission</u>	<u>Constitutional</u>
Taxation	Power to adopt millage, impact fees, call for bonds, call for Special Purpose Local Option Sales Tax, GO bonds.	No such power.
Budgeting	Must adopt a county-wide budget to include funding for constitutional officers.	Submits a proposed budget only.
Control	Budget control and discretion, adopt ordinances, contracts, hire County Manager, establish County vision and goals.	Operate constitutional offices independent of Commissioners.
Indemnity	Typically acquire and pay premiums for insurance that covers all county employees, county assets, and constitutional officers.	Provided liability coverage via this insurance.
Buildings	Owned and maintained by the County.	Occupy and use County-provided space.

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DeKalb Judge to CEO: Fund Courts or Face Legal Action

- Megan Matteucci – *Atlanta Journal-Constitution*
- Chief Superior Court Judge Cynthia J. Becker sent correspondence to DeKalb County CEO Burrell Ellis demanding that all constitutional offices be fully funded, or she would have no choice but to pursue legal action against the CEO.

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Is Conflict Inevitable?

- Political entities will occasionally resist funding entities over which they have no meaningful control.
- Occasionally, constitutional officers are viewed with envy (and perhaps resentment) because they are not required to set a budget or raise taxes – thereby making them a lesser target for public criticism.

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Real Steps That Can Be Taken to Avoid Disputes and Foster Strong Working Relationships

- Purposeful interaction between senior county staff, commissioners, and constitutional officers.
- Endeavor to allow constitutional officers to be part of the budgeting process.
- Discuss with constitutional officers the potential need for significant budget-saving measures (i.e., furloughs, unpaid holidays, no COLAs, reductions in force); do not simply announce that these are going to occur.

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Real Steps That Can Be Taken to Avoid Disputes and Foster Strong Working Relationships

- Resist making county-wide policy changes that impact constitutional officers without advanced warning (computer usage policies, purchasing policies).
- For Commissioners – spend time getting to know the duties and operations of the constitutional officers.
- For commissioners – endeavor to demonstrate respect and appreciation that the constitutional officer is an independent center of power and should be purposefully treated differently than a department head.
- Get the numbers right! (When discussing budget concerns with constitutional officers, ensure that you are using honest, accurate numbers – as this will build legitimacy and credibility.)
- Be flexible, slow to anger, and check the ego at the door.
- Attempt to resolve issues with constitutional officers one-on-one. Avoid public criticism whenever possible.

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IV. Zoning Procedures Law



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What is Zoning?

"Zoning" means the power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.

- Georgia Zoning Procedures Law, O.C.G.A. § 36-66-3(3)

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Before Adopting a Zoning Ordinance, a County Must:

- Advertise hearing at least 15 days and no more than 45 days prior.
- Conduct a hearing to adopt policies & procedures.
- Conduct a public hearing to adopt standards governing exercise of zoning power.
- Following the hearing, governing should formally adopt the standards.

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Zoning Considerations and Issues

- Zoning concerns regarding unconstitutional “takings.”
- Zoning decisions must be made by governing authority.
- Conflict of interest in zoning actions.

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Conflict of Interest in Zoning Actions:

- In October 2010, a [REDACTED] County Commissioner was indicted on one count of bribery and two counts of failing to disclose a financial interest.
- The two counts of “failure to disclose” involve two zoning actions wherein the Commissioner had a financial interest in the outcome of the rezoning.

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V. Immigration Laws



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E-Verify/SAVE

E-Verify, O.C.G.A. § 13-10-91

This statute has two (2) components:

- “Public employers” must use the federal E-Verify Program to verify the citizenship or alien status of all potential new employees.
- Contractors and subcontractors on public works projects must provide to the local government employer affidavits verifying their utilization of the E-Verify Program for their new employees, and public work contracts must include certain regulatory verbiage prepared by the Georgia Department of Labor (the Georgia Department of Transportation for road construction projects).

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E-Verify/SAVE

Systematic Alien Verification for Entitlements (“SAVE”), O.C.G.A. § 50-36-1

This statute requires local governments to procure affidavits of citizenship/alien status from all applicants for “public benefits.” The term “public benefits,” defined by a combination of the state statute and 8 U.S.C. § 1611, includes: grants, contracts, loans, professional licenses, commercial licenses, retirement, welfare, health coverage, disability, housing, postsecondary education, food assistance, and unemployment. Benefits excluded from the statutory requirements include: short-term, noncash, in-kind emergency relief; certain immunizations; and soup kitchens. The statute requires the Georgia Attorney General by August 1 of each year, beginning in 2010, to provide a detailed written report regarding what benefits are implicated by the SAVE statute. It is noteworthy that this statute in combination with O.C.G.A. § 13-10-91, discussed previously, implicate four (4) different State agencies: Attorney General; Department of Labor; Department of Transportation; and Department of Community Affairs.

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VI. Land Acquisition

- **Eminent Domain**
- **Right of Way for Roads**
- **Land for Parks and Greenspace**
 - Discuss Purchase price in executive session
 - Approve contract in open meeting
 - Build in time for public hearing
 - Release appraisal prior to closing
 - Have as much transparency as possible
 - No ward courtesy

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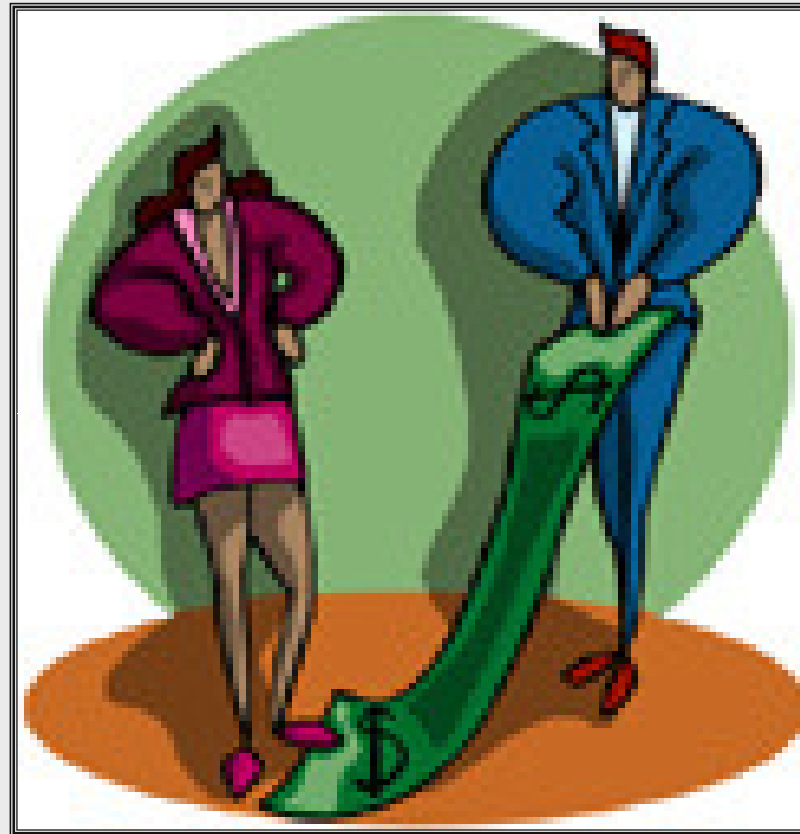
VII. One Board Cannot Bind the Legislative Affairs of Another

“It is fundamental that rezoning is legislative in nature and that one county commission cannot deprive or restrict a succeeding commission in the exercise of its 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, 744(3), 187 S.E.2d 835 (1972). Accord Hall Paving Co. v. Hall County, 237 Ga. 14, 16, 226 S.E.2d 728 (1976).

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VIII. Budget Issues



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January 2010-Budget Cuts to Severely Impact Clerk of Superior Court Office

Fulton – Fulton County Clerk of Superior Court, Cathelene “Tina” Robinson (Atlanta Judicial Circuit), provides feedback on the severe impact of budget cuts for the largest court system in the State of Georgia and especially to the Fulton County Clerk of Superior Court Office.

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Furloughs in Commerce, Jackson County – May 28, 2010

Today marks the start of a 4-day weekend for government workers in Jackson County and in the City of Commerce: government employees are taking furlough days today, and they'll be out of the office for Monday's Memorial Day holiday. And you'll need to get your Hall County government business done today: Hall County government offices are closed next Monday and Tuesday, closed Monday for Memorial Day and closed Tuesday for another furlough day.

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March 30, 2010
County Furloughs on Hold

- **Jamie Jones – *Dalton Daily Citizen***

DALTON – Whitfield County won't furlough any employees through at least June, according to commissioners.

August 30, 2010 – Sheriff Offices and County Commissions Battle Over Budgets in Lean Times

- **Jeffry Scott – *Atlanta Journal-Constitution***

CUMMING – “The sheriff’s budgeting process is unlike any in state government. Commissioners hold the purse strings; but sheriffs – who are elected and otherwise autonomous by state law – have their own levers of power. Commissioners facing declining revenue can’t chop the expenditures of a sheriff’s office unless the sheriff agrees. ...To save money, [Sheriff] Paxton has eliminated overtime for deputies and he’s gone three years without buying new squad cars to replace his agency fleet, which means last year he spent \$16,000 on maintenance for a squad car with a book value of \$1,800.”

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The Budget is Under the Control of the County Commission

The budget is under the control of the county commission, which, subject to some limitations, has authority to amend or change estimates of required expenditures presented by another officer acting under his statutory duty. The action of the county commissioners in making such appropriations may be reviewed only for abuse of discretion. Bd. of Commissioners v. Wilson, 396 S.E.2d 903 (Ga. 1990).

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Layoffs/Reductions in Force

- If a reduction in force (“RIF”) is implemented – government officials should ensure that your own RIF policies are followed. Failure to do so could result in the RIF being declared unlawful. Hayes v. City of Atlanta, 249 Ga. App. 290 (2008).
- Work to facilitate communication with County staff to explain the need for the RIF.
- Anticipate that work force morale will be affected by a RIF.

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Freeze on Pay Increases

- The general rule in Georgia is that public employees have no vested right to a within-grade pay increase. *Buskirk v. State of Georgia*, 267 Ga. 769 (1997).
- One overarching reason that public employee “automatic” pay increases are not sanctioned by the courts is the statutory mandate that “one council or commission cannot bind itself or its successors with respect to legislative matters such as the control of county property and revenue.” O.C.G.A. § 36-30-3(a).
- A wise County government will ensure that employee handbooks make clear that future pay increases are necessarily conditioned upon the availability of funds in the budget.

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Teachers Groups Angry Over Furloughs – July 23, 2009

- ***The Atlanta Journal-Constitution***
 - Georgia teacher groups said Wednesday that furloughs announced Tuesday by Gov. Sonny Perdue will be detrimental to students as well as the teachers.

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Can the Board of Commissioners Dictate to a Constitutional Officer That Their Employees be Furloughed?

Probably not, as forced manpower reductions would likely be deemed as too invasive into the day-to-day operations of the constitutional office. However, the authorities seem to strongly suggest that if furloughs are necessary, the Board of Commissioners could simply calculate the amount of cost savings that might be enjoyed if the constitutional office participated in the furlough, and adjust the budget accordingly. The constitutional officer, in turn, will have to then determine how to adjust manpower, resources, etc., to respond to this budget reduction.

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IX. Storm Water Issues



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Cities Threatened with Lawsuits Over September Floods

- **Ralph Ellis – *Atlanta Journal Constitution*, June 1, 2010**

Large number of claims made against local governments regarding the flooding that occurred during the fall of 2009. Claims stated that the flooding was foreseeable and due to “the cities allow[ing] development in flood-prone areas,” which “created too much non-absorbent, impervious surface in the form of rooftops and parking lots.” The claims also alleged that the cities did not do enough to properly maintain storm water runoff systems.

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Examples of Storm Water Controls

- Storm Water Utility
- New laws that require local governments to study their flood plains to better identify properties at risk.
- New laws that require developers to better control runoff downstream.
- Growing use of storm water utilities to fund repairs and upgrades of drainage features.
- Laws requiring that more water be captured on site.
- The use of trees and other plants to soak up rainwater on site.
- Extensive use of porous pavement.
- Using plants on rooftops to absorb rain.

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X. Federal Civil Rights



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42 U.S.C. § 1983

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.”

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42 U.S.C. § 1983

Section 1983 is not itself a source of substantive rights but merely provides a method for vindicating federal rights elsewhere confirmed.

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42 U.S.C. § 1983

Typical causes of action:

- First Amendment
- Fourth Amendment
- Eighth Amendment
- Fourteenth Amendment

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First Amendment

- Did the employee's speech involve a matter of public concern?
- Did the employee's interest in speaking outweigh the government's legitimate interest in efficient public service?
- Did the speech play a substantial part in the government's challenged employment decision?
- Would the government have made the same employment decision in the absence of the protected conduct?

--Bryson v. City of Waycross, 888 F.2d 1562 (11th Cir. 1989)

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Fourth Amendment

- “A warrantless arrest without probable cause violates the Fourth Amendment and forms a basis for a § 1983 claim.” Marx v. Gunbinner, 905 F.2d 1503, 1505 (11th Cir. 1990).
- All claims that a law enforcement officer has used excessive force during the course of an arrest are governed by the “objective reasonableness” standard of the Fourth Amendment. ... The determination of whether a particular use of force was objectively reasonable “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” Graham v. Connor, 490 U.S. 386, 395-396 (1989)

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Eighth Amendment

The Eighth Amendment prohibition against “cruel and unusual” punishment mandates that those who are incarcerated...must not be subjected to punishment that involves “the unnecessary and wanton infliction of pain.” Gregg v. Georgia, 428 U.S. 153, 173, 96 S. Ct. 2909, 2925 (1976). The Supreme Court has held that “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976).

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Fourteenth Amendment

- “While the conditions under which a prisoner is held are subject to scrutiny under the Eighth Amendment, the conditions under which a pretrial detainee is confined are scrutinized under the Due Process Clauses of the Fifth and Fourteenth Amendments.” Jordan v. Doe, 38 F.3d 1559, 1564 (11th Cir. 1994).
- The standard for establishing a stigmatization claim under the Fourteenth Amendment requires the following: “(1) a false government statement; (2) of a stigmatizing nature; (3) attending a governmental employee’s discharge; (4) made public; (5) by the governmental employer; (6) without a meaningful opportunity for employee name clearing.” Buxton v. Plant City, 871 F.2d 1037, 1042 (11th Cir. 1989).

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