LOCAL GOVERNMENT[1]

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Appellate decisions in the area of local government law during the year under review signaled no startling developments, but, on the contrary, followed familiar patterns in the law.

CITIES

Zoning

Cases in the area of municipal zoning were primarily concerned with the techniques by which judicial review of the actions of zoning officials might be secured.

The court of appeals considered the problem raised by a zoning ordinance which in its own terms applied uniformly but which zoning officials were applying discriminatorily. The question was whether the city might refuse to permit a cemetery in a zone of a given type in a designated area while cemeteries were permitted in zones of the same type in other parts of the city. The court held that "zoning ordinances not only must be non-discriminatory and reasonable, but must be applied in a non-discriminatory manner and are to be strictly construed in favor of the landowner."[2] Thus the city's refusal to issue a permit for the proposed cemetery " . . . is unreasonable and discriminatory and without reasonable basis to be justified or made valid under the police power of the city."[3] The court failed to explain why zoning ordinances "are to be strictly construed in favor of the landowner."

Several techniques for securing judicial review of zoning determinations were considered during the year. Applying the familiar rule requiring the exhaustion of administration remedies prior to seeking

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1. The article MUNICIPAL CORPORATIONS in previous SURVEY issues dealt only with cities and the developments in the law with respect to counties and other units of local government were ignored. This article will deal with the law pertaining to cities, counties and other units of local government, and the title LOCAL GOVERNMENT seems more adequately to describe the scope of the proposed treatment.
2. City of Rome v. Shadyside Memorial Gardens, Inc., 93 Ga. App. 759, 763, 92 S.E.2d 734 (1956).
3. *Ibid.*

the aid of the judiciary, the supreme court denied equitable relief to one refused a building permit who had not followed and exhausted his administrative remedy.[4]

The court held that the writ of mandamus would not issue for a building permit after the adoption of a zoning plan which prohibited the use for which the building was designed.[5] The petition for the writ of mandamus would appear to be an inappropriate technique for seeking judicial review of zoning determinations in Georgia.

A petition for injunction to enjoin a prosecution under a municipal ordinance which made violation of the zoning ordinance a punishable offense was refused where it was alleged that the ordinance was unconstitutional but failed to allege that any arrest had been made or that any property had been levied upon or that there has been any other interference with the person or property rights of the petitioner but only alleged a threat or mere apprehension of prosecution.[6]

Tort Liability

Courts continued to deal with the problem of adjusting the right of pedestrians and the liability of municipalities. The court of appeals had occasion to observe: "While a municipal corporation owes to those using its streets and sidewalks the duty to exercise ordinary care in keeping them in a safe and usable condition, . . . even a violation of this duty will not result in a recovery by an injured plaintiff if, by the use of ordinary care for her own safety, she could have avoided the results of the negligence of the defendant [city]."[7]

A city may be liable for permitting a sidewalk to remain in an unsafe condition even though natural causes produced the unsafe condition. The question of sufficient duration of the unsafe condition so as to charge the city with the knowledge thereof is for the jury.[8]

By legislative enactment, the requirements of the demand prerequisite to suit for injury to person or property by municipal corporations have been made uniform for all cities.[9]

Regulation

The close relation between substance and procedure in the law was

4. Coffey v. City of Marietta, 212 Ga. 189, 91 S.E.2d 482 (1956).
5. Gay v. Mayor and Council of Lyons, 212 Ga. 438, 93 S.E.2d 352 (1956).
6. Sikes v. City of Dublin, 211 Ga. 880, 89 S.E.2d 500 (1955). The court cited GA. CODE § 55-102 (1933): "Equity will take no part in the administration of the criminal law. It will neither aid criminal courts in the exercise of their jurisdiction, nor will it restrain or obstruct them." See also Todd v. City of Dublin, 212 Ga. 36, 89 S.E.2d 889 (1955).
7. White v. City of Manchester, 92 Ga. App. 642, 644, 89 S.E.2d 581 (1955).
8. Duren v. City of Thomasville, 92 Ga. App. 706, 89 S.E.2d 840 (1955).
9. Ga. Laws 1956, p. 183 amending GA. CODE ANN. § 69-308 (Supp. 1955).

clearly illustrated in this area during the year. The City of Baxley attempted to discourage labor organizations principally by requiring a license fee of each paid organizer of $2,000 per year and $500 for each member secured. An attack on the validity of the ordinance in equity was denied because of the availability of an adequate remedy at law in defending a criminal prosecution.[10] The defense of invalidity of the ordinance was unavailing in the criminal prosecution because it was made upon the ordinance as a whole rather than upon sections of the ordinance. The court further seemed to limit the availability of the defense of the invalidity of the ordinance by stating that a defendant who had made no effort to secure a license is in no position to claim that any section of the ordinance is unconstitutional or otherwise invalid.[11]

The question of the standard to be applied in testing the reasonableness of city ordinances received attention during the year: "[A] municipal ordinance can be declared void because of its being unreasonable and is not to be measured by the more extensive powers of the State Legislature . . . [but] an ordinance that requires no more . . . than does the general law of the State cannot be deemed unreasonable."[12]

A city ordinance providing that " . . . it shall be unlawful for any person to idle, loiter or loaf upon any of the streets, sidewalks, alleys, lanes, parks or squares of said City of Vidalia, or in any public building in said city" was held to be so arbitrary and unreasonable as to be void when applied to one sitting in his lawfully parked automobile.[13]

The court considered the problem of the personal liability of municipal officials for their official acts.[14] The question was whether a mayor who had notified the plaintiff that his permit to operate an abattoir had been revoked (which revocation was void)[15] was liable.

10. Staub v. Mayor of Baxley, 211 Ga. 1, 83 S.E.2d 606 (1954), commented on in 7 MERCER L. REV. 8 and 74 (1955).
11. Staub v. City of Baxley, 94 Ga. App. 18, 93 S.E.2d 375 (1956). A Federal district court has jurisdiction under Section 1343 of the Federal Judicial Code (28 U.S.C. § 1343 (1952)) over a union's suit for declatory and injunctive relief against the enforcement of a municipal ordinance imposing a license fee of $1,000 plus $100 per day upon union organizers and agents and authorizing 50 days imprisonment and $100 fine for its violation. Denton v. City of Carrollton, 25 U.S. Law Week 2059 (5th Cir. 1956).
12. Goodman v. Henton, 93 Ga. App. 592, 594, 92 S.E.2d 590 (1956).
13. Soles v. City of Vidalia, 92 Ga. App. 839, 90 S.E.2d 249 (1955)
14. "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." GA. CODE § 69-208 (1933).
15. City of Thomson v. Davis, 92 Ga. App. 216, 88 S.E.2d 300 (1955), commented on in 7 MERCER L. REV. 104 (1955).

After construing the Code section as creating liability under such conditions as when municipal officials commit a tort, the court held that no violation of the plaintiff's right had occurred and that no damage had been shown.[16]

Municipal Property

The court had occasion to reiterate the rule that before a municipality can acquire by dedication an easement over land for use by the public as a street there must be acceptance of the dedication by the municipality. Acceptance may be implied from improvements longitudinally on a portion of the street by the municipality pursuant to a dedication, but there can be no implied acceptance of any street over which the corporate authorities have never assumed control. Furthermore, where there has been no acceptance after thirty years, there is the presumption that the dedication has been declined.[17] Title by prescription can not be acquired against a municipality.[18]

Equity will not enjoin as a nuisance the construction of a "Half-Way House" on a municipal golf course where there is no showing with "reasonable certainty" that the proposed building would constitute a nuisance.[19]

In an unsatisfactory head-note opinion the supreme court held that the City of Augusta could not sell land to a corporation for private purposes to which it had fee-simple title and had been "dedicated" by the city for public use as a public park and playground.[20]

Municipal Utilities[21]

The supreme court continued,[22] in most unfortunate language, to uphold discrimination in rates charged by municipally owned utilities for service to customers within and outside of municipalities. The court held that a city may discriminate in charges for water to non-resident customers on the basis of whether they receive water only or water and electricity.[23] The court's reasoning was unfortunate, since the contract to supply water to non-resident customers is a "voluntary

16. Davis v. Johnson, 92 Ga. App. 858, 90 S.E.2d 426 (1955).
17. Hames v. City of Marietta, 212 Ga. 331, 92 S.E.2d 534 (1956).
18. Thurston v. City of Forest Park, 211 Ga. 910, 89 S.E.2d 509 (1955).
19. Stephens v. Bacon Park Comm'rs, 212 Ga. 426, 91 S.E.2d 509 (1956).
20. City Council of Augusta v. Newsome, 211 Ga. 899, 89 S.E.2d 485 (1955).
21. For a discussion of one phase of the problems arising when municipal utilities and rural electric memberships cooperatives are in competition see City of Moultrie v. Colquitt County Rural Electric Co., 211 Ga. 842, 89 S.E.2d 657 (1955).
22. Earlier cases involving this problem are Messenheimer v. Windt, 211 Ga. 575, 87 S.E.2d 402 (1955); Barr v. City Council of Augusta, 206 Ga. 753, 58 S.E.2d 823 (1950); Collier v. City of Atlanta, 178 Ga. 575, 173 S.E. 853 (1953).
23. City of Moultrie v. Burgess, 212 Ga. 22, 90 S.E.2d 1 (1955).

contract," it is subject to review by the courts only in the manner as any other private contract; thus the courts are not to determine whether its provisions are arbitrary, unreasonable or discriminatory! The court seemed to ignore the fact that one of the parties to the "voluntary contract" was a city to which the Fourteenth Amendment of the United States Constitution is always applicable.

Successive city councils are not bound by water rates prescribed by a previous council even when they were fixed by contract as consideration for the use of a spring.[24] The court relied upon the Code provision that "[o]ne council may not by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government."[25] The Federal question was neither raised nor considered.

Nature of Municipal Government

A municipal traffic court cannot be empowered to try violations of state traffic laws for the reason that state cases must be tried in state courts.[26] Where the power to enact ordinances has been vested in the mayor and general council, composed of councilmen and aldermen, a resolution by the board of aldermen is not an ordinance.[27]

COUNTIES

Fiscal Affairs

An attempt of the tax commissioner of DeKalb County to increase property tax assessments by a fixed percentage "across the board" was held to violate the constitutional requirement[28] of uniformity of assessment.[29] When the commissioner of roads and revenue attempted to avoid the consequences of that invalid assessment by raising the tax rate on the old assessment the court held that the mere fact of an increase in taxation would not render invalid the amendatory tax rate order.[30]

The county commissioners of Troup County by resolution fixed the salary of the tax commissioner at $8,000 per year less the fees he received for collecting state taxes. This formula was held to violate the statutory requirement that the tax commissioner's compensation was not changed during his term of office.[31]

24. City of Warm Springs v. Bullock, 212 Ga. 149, 91 S.E.2d 13 (1956).
25. GA. CODE § 69-202 (1933).
26. City of Atlanta v. Landers, 212 Ga. 111, 90 S.E.2d 583 (1955).
27. Hunter v. City of Atlanta, 212 Ga. 179, 91 S.E.2d 338 (1956).
28. GA. CONST. art. VII, §1, ¶ 3, GA. CODE ANN. § 2-5403 (1948 Rev.).
29. Hutchins v. Howard, 211 Ga. 830, 89 S.E.2d 183 (1955)
30. Bang v. Williams, 211 Ga. 921, 89 S.E.2d 639 (1955).
31. Bruce v. County of Troup Comm'rs, 92 Ga. App. 786, 90 S.E.2d 60 (1955).

The Code requirement that "[a]ll contracts entered into by the ordinary with other persons in behalf of the county shall be in writing and entered on his minutes"[32] was considered in two cases. The provision was held not to apply to the payment of salaries of county officials and employees.[33] An authorization by a board of county commissioners to a county employee to purchase a dump truck without stating from whom it was to be purchased and at what price violated this code provision in addition to being an illegal delegation of authority.[34]

A petition for an injunction to enjoin a county from retaining counsel to obstruct "in any lawful manner" the construction of a toll road through the county was denied because the court could not say as a matter of law that the county could not under any circumstances or state of facts be authorized to file suit against the Ocean Highway and Port Authority, a Florida public corporation.[35]

Zoning

In construing the statutory zoning powers of the commissioner of roads and revenue of DeKalb County the court held that he was without authority to sign and promulgate on December 31, 1954 an amendment to the zoning resolution that was passed upon at a hearing held February 16, 1954 at which hearing a determination of the matter then under consideration was not continued to a named date in the future.[36] The court also held invalid a building permit issued under the void amendment to the zoning resolution.[37]

The continuing[38] effort to establish a cemetery in Cobb County raised important questions in county zoning law. The court held that a county planning commission appointed by the advisory board of Cobb County is not a "governing authority" of the county within the meaning of the constitutional requirements[39] relative to repositories of zoning power.[40] The further question was whether a zoning ordinance, valid when enacted, might later become arbitrary and unreasonable as applied to particular land. The court found that the great changes in the uses of land adjacent to or near the land in question were suffi-

32. GA. CODE § 23-1701 (1933).
33. First National Bank of Atlanta v. Mann, 211 Ga. 706, 88 S.E.2d 361 (1955).
34. Floyd v. Thomas, 211 Ga. 656, 87 S.E.2d 846 (1955).
35. Casey v. Proctor, 211 Ga. 904, 89 S.E.2d 506 (1955).
36. Toomey v. Norwood Realty Co., 211 Ga. 814, 89 S.E.2d 265 (1955).
37. Taylor v. Shetzen, 212 Ga. 101, 90 S.E.2d 572 (1955).
38. For the earlier phase of this litigation see Humthlett v. Reeves, 211 Ga. 210, 85 S.E.2d 25 (1954), commented on, 7 MERCER L. REV. 37 and 177 (1955).
39. GA. CONST., art. III, § 7, ¶ 23 and Ga. Const., art. III, § 7, ¶ 26 (1877 as amended), GA. CODE ANN. §§ 2-1923, 2-1826 (1948 Rev.)
40. Humthlett v. Reeves, 212 Ga. 8, 90 S.E.2d 14 (1955).

cient to render the present application of the zoning ordinance so capricious and arbitrary as to be invalid.[41]

Public Schools

The question arose whether one who had been sentenced by a United States District Court to a term of five years on probation by the court on a plea of guilty to an indictment for presenting false claims against the United States had been convicted of a crime involving moral turpitude.[42] The court had no difficulty in answering the question in the affirmative.[43]

A contract between a county board of education and an independent city board of education requiring that certain proposed actions be approved by both boards was held to violate the constitutional provision[44] relative to the powers of county boards of education.[45]

Nature of County Powers

A proposed constitutional amendment to authorize county commissioners of Richmond County to regulate business outside of municipalities was held to affect the entire county and thus should be submitted to all qualified voters in the county rather than only to those in unincorporated areas.[46]

41. *Ibid.*
42. "Before any person shall be qualified or eligible to the office of county superintendent of schools, he shall . . . be a person of good moral character, never convicted of any crime involving moral turpitude." GA. CODE § 32-1004 (1933).
43. Huff v. Anderson, 212 Ga. 32, 90 S.E.2d 329 (1955).
44. GA. CONST., art. VIII, § 5, ¶ 1, GA. CODE ANN. § 2-6801 (1948 Rev.)
45. Tipton v. Speer, 211 Ga. 886, 89 S.E.2d 633 (1955).
46. County of Richmond v. Headley, 212 Ga. 103, 90 S.E.2d 569 (1955).