LOCAL GOVERNMENT

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In undertaking this survey of the field of Local Government decisions, the same general outline that was utilized last year is followed again this year. Changes in the outline result primarily from additions or absences of subject matter to be considered. Where it appears to be justified major headings are set forth in lieu of various subheadings. This year's variation on the outline is as follows:

Municipal Corporations
- (a) Claims
- (b) Contracts
- (c) Finance and Taxation
- (d) Municipal Legislation
- (e) Pensions
- (f) Powers
- (g) Streets

Counties
- (a) Claims
- (b) Contracts
- (c) Finance and Taxation
- (d) Officers
- (e) Powers
- (f) Public Property
- (g) Streets

Elections
Eminent Domain
Zoning
Statutes

MUNICIPAL CORPORATIONS

(a) CLAIMS

Peek v. City of Albany,[1] involving the statutory notice of injury under GA. CODE ANN. §69-308 (1957 Rev.), held that a city official without actual or delegated authority may not stop or waive the right of a city to have written notice of a damage claim filed with the governing body within 6 months after the claimed injury before suit

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1. 101 Ga. App. 564, 114 S.E. 2d 451 (1960).

can be brought, even if the officer is a proper party for service of process on the city and is a member of the governing body.

Misfeldt v. Hospital Authority of the City of Marietta[2] is authority for the proposition that a city hospital authority may be held liable for a mentally disturbed patient's self-inflicted injuries if responsible agents of the authority have some notice of the patient's mental condition and fail to take proper precautions.

In a case involving an injury which occurred in a municipal airport lunch counter,[3] the Court of Appeals held that the city and the operator of the lunch counter do not have an absolute duty to maintain an areaway floor in absolutely safe condition, but only a duty to exercise ordinary care to maintain the floor in a reasonably safe condition. To predicate their liability, facts must be shown as to actual knowledge or inferred knowledge of a dangerous substance on the floor.

City of Griffin v. McKneely[4] held that a city has a duty of exercising ordinary care in supplying a utility service. A jury must decide whether this duty has been discharged in the installation of electric wires underground in close proximity to a gas line and without continuous inspection.

City of Bainbridge v. Youngblood[5] reiterated the principle that a city is liable for injuries resulting from a violation of its duty to keep sidewalks in a reasonably safe condition for travel in the ordinary mode. *Grayson v. City of Atlanta*[6] affirmed the same principle and further held that a pedestrian is not negligent, as a matter of law, in failing to observe even a patent defect that he could have seen if he would not have fully appreciated the danger. Even prior knowledge of the defect will not necessarily bar recovery.

In an action to recover damages for injuries sustained in an accident which left the plaintiff physically and mentally disabled,[7] the Court of Appeals, in construing GA. CODE ANN. §69-308, held that under such conditions the time limit for giving notice is tolled until he regains capacity, until a guardian is appointed and actually does act for him, or until such time as one bona fide acting for him as next friend actually gives notice.

City of Fairburn v. Clanton[8] is further authority for the proposition

2. 101 Ga. App. 579, 115 S.E. 2d 244 (1960).
3. Wootton v. City of Atlanta, 101 Ga. App. 779, 115 S.E. 2d 396 (1960).
4. 101 Ga. App. 811, 115 S.E. 2d 463 (1960).
5. 102 Ga. App. 195, 115 S.E. 2d 696 (1960).
6. 101 Ga. App. 575, 114 S.E. 2d 459 (1960).
7. City of Atlanta v. Barrett, 102 Ga. App. 469, 116 S.E. 2d 654 (1960).
8. 102 Ga. App. 556, 117 S.E. 2d 197 (1960).

that a municipal corporation may be held liable for negligence in performing authorized work beyond the limits of the municipality.

(b) CONTRACTS

In *Russell v. City of Atlanta*,[9] the plaintiff brought action for breach of contract. The court held that a letter from the municipal auditorium manager which was a confirmation of dates discussed in connection with the proposed use of the auditorium did not establish a written contract to rent the auditorium to the plaintiff.

(c) FINANCE AND TAXATION

A provision exempting property to be annexed to a city from a percentage of the city's ad valorem tax until certain municipal services are available for the property does not make a local act for annexation unconstitutional under Article VII, Section 1, Paragraph 3 of the Constitution of Georgia, which provides that "All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."[10]

City of Atlanta v. Gower[11] held that a general tax ordinance, in so far as it purports to tax professions licensed by the state, in excess of the amount authorized by Ga. Laws 1953, pp. 207-8, is ultra vires and void. The city sought to impose a license of $50.00 on attorneys when the general law specified $15.00.

In a bond validation proceeding,[12] the Court of Appeals held that where a solicitor general or the Attorney General fails to file a validation petition within 20 days after receiving notice of a resolution authorizing revenue bonds, any such petition filed thereafter, without a prior order of the court directing such filing, is a nullity.

(d) MUNICIPAL LEGISLATION

A defendant may be bound over to a state court on the state offense of driving while under the influence of intoxicants even if at the same time he is tried and convicted in a municipal court for a violation of a city ordinance for the use of profanity, and even if the violation took place in the same series of events. Such an ordinance does not cover the same subject matter or transaction as this state law, and, therefore, this ordinance is not void on the ground of being based on a special law governing a subject matter regulated by the state.[13]

Central of Georgia Ry. Co. v. Brower[14] was a suit for damages

9. 103 Ga. App. 365, 119 S.E. 2d 143 (1961).
10. Parker v. Mayor & c. of Savannah, 216 Ga. 210, 115 S.E.2d 555 (1960).
11. 216 Ga. 368, 116 S.E. 2d 738 (1960).
12. State of Georgia v. Smallwood, 103 Ga. App. 400, 119 S.E. 2d 297 (1961).
13. Shirley v. City of College Park, 102 Ga. App. 10, 115 S.E. 2d 469 (1960).
14. 102 Ga. App. 462, 116 S.E. 2d 679 (1960).

which collaterally involved the constitutionality of a city ordinance prohibiting the obstruction of a crossing in excess of 5 minutes. The railroad contended that the ordinance did not apply to moving trains and if so construed it would be an unconstitutional attempt to regulate the speed and size of a train engaged in interstate commerce. The court did not decide this issue, however, holding that there was no showing wherein the ordinance was not applicable, wherein it would be unreasonable, or in what way there was an attempt to regulate the speed and size of trains.

(e) PENSIONS

Golphin v. City Council of Augusta[15] followed the well-established rule that acts creating pension funds and like benefits resulting from employment are to be given liberal construction in favor of the employee. Accordingly, under the act in question, the surviving widow of a retired employee who died before receiving pension benefits in an amount equal to the sum paid into the pension fund by the employee has a right of action for the balance paid in without interest.

In another suit involving the construction of a pension fund act,[16] the Court of Appeals held that where there were no facts evidencing an intent to withdraw from the fund or resign permanently, the wife of a member of the policemen's pension fund was entitled to a widow's pension even though her husband had died while on a leave of absence after 17 years of active service.

(f) POWERS

A charter provision permitting residents of the county who own realty in the municipality to vote for municipal officials does not violate the equal protection clauses of the federal and Georgia constitutions on the ground that it dilutes the voting power of municipal residents and is therefore discriminatory class legislation. The General Assembly has the exclusive constitutional power to prescribe who shall exercise the corporate powers of a municipality and to provide how such officers may be chosen.[17]

The general law of the state (GA. CODE ANN. §32-2701) controls the operation of a public municipal library, even though it was established under a prior general law, a special law, an ordinance or a contract before the enactment of the general law. Therefore, under

15. 103 Ga. App. 53, 118 S.E. 2d 281 (1961).
16. Davis v. Trustees of the Policemen's Pension Fund, 103 Ga. App 425, 119 S.E. 2d 378 (1961).
17. Bobo v. Mayor & c. of Town of Savannah Beach, Tybee Island, Georgia, 216 Ga. 12, 114 S.E. 2d 374 (1960); following Harris v. McMillan, 186 Ga. 529, 198 S.E. 250 (1938).

the general law, a library board of trustees is authorized to discharge the director of public libraries.[18]

In *MacDonell v. Village of North Atlanta*,[19] the plaintiff sought to enjoin an advertisement and sale of his property for business license costs on the ground that the act under which the municipality was incorporated was unconstitutional. However, the court held that the charter could not be thus collaterally attacked.

(g) STREETS

Three cases[20] decided during the survey period involved application of the rule that a municipal corporation is bound to use ordinary care to keep its public streets and sidewalks in a reasonably safe condition for passage, and for failure to exercise such care it will be liable for resulting injuries, no matter by what cause the street or sidewalk might have become defective or unsafe, if the city knew or should have known of the defect in time to repair it or give warning of its existence. The *Caldwell* case further held that whether a sidewalk is part of a park or public street for purposes of determining whether its maintenance is a ministerial or government function depends on the place, purpose, characteristics, and functions of the sidewalk, even if it is within the right of way of the street.

In *R. G. Foster & Co. v. Fountain*[21] the Supreme Court ruled that the State Highway Department has to pay damages or compensation for land damaged or taken in the widening of a highway if it only holds an implied dedication to use this land for sidewalk and curbing purposes. If title to a public road is not shown to be in the public by express grant, the owner of a lot abutting any such road is presumed to own the fee to that half of the road contiguous to his land, even though his deed to the land refers to the road as a boundary to the land. Acceptance or use by the public of part of an express dedication extends to the limits of the dedication, but in cases of implied dedication there is no dedication implied beyond the use.

COUNTIES

(a) CLAIMS

The statutory provision that the State Highway Department shall not be liable for damages occurring on additional state-aid roads taken into the system until such roads have been opened to traffic by the State Highway Board restricts owners of property not adjoining

18. Settelmayer v. Hartsfield, 216 Ga. 246, 115 S.E. 2d 520 (1960).
19. 216 Ga. 559, 118 S.E.2d 460 (1961).
20. Grayson v. City of Atlanta, 101 Ga. App. 575, 114 S.E.2d 459 (1960); Caldwell v. Mayor & c. of Savannah, 101 Ga. App. 683, 115 S.E.2d 403 (1960); City of Bainbridge v. Youngblood, 102 Ga. App. 195, 115 S.E.2d 696 (1960).
21. 216 Ga. 113, 114 S.E.2d 863 (1960).

such roads from suits for damages for loss of access until the roads are opened. This statutory provision as applied to such loss of access to non-abutting property does not violate the constitutional provisions against the deprivation of property except by due process, or the taking or damaging of property for public purposes without adequate compensation being first paid since the property would not be taken or physically damaged. A county as a subdivision of the state is not liable to suit for any cause of action unless made so by statute or by necessary implication from some provision of the constitution. In a suit for damages based on a cause of action originating on a highway, over which jurisdiction has been assumed by the State Highway Department under the terms of the law containing the above statutory provision, the remedy is a suit against the county in a local court for the whole damage with service on the Department which must defend the action and is ultimately liable. In this case one judge concurred in holding that there was no taking or damage as is set forth in the constitution but that the statutory provision would be unconstitutional if applied to such a taking or damage since just compensation must be first paid. A strong dissent by two judges holds that (1) the constitutionality of the statute was in issue in addition to the specific application; (2) the action was only for a declaration of rights to enable the Highway Department to know if it must defend and could be liable; (3) the property owner's damages might be constitutional damages requiring just compensation first; (4) the statute in issue expressly restricts damages to those accruing on the highways by users and not as decided in several prior cases to properties damaged or taken for right of way, and, therefore, the statute has a possible constitutional interpretation; (5) the county should pay for damages to private property; and (6) the statutory provision as interpreted by the majority is unconstitutional.[22]

A letter from county commissioners, informing a condemnee that a specified amount has been earmarked for the expense of moving his house and informing him that he has the option of moving the house, is only an offer to pay after the work of moving is completed. If a condemnee cashes and retains the proceeds of a warrant marked payment for parcel in full, he may not collect more money for the condemned property, even if a paper is attached to the warrant which itemizes the bases for payment without listing the claimed additional costs.[23]

The statutory date for the filing of county tax commissioners'

22. State Highway Department of Georgia v. McClain, 216 Ga. 1, 114 S.E.2d 125 (1960).
23. Marsh v. State Highway Department, 216 Ga. 54, 114 S.E.2d 411 (1960).

annual accounting reports starts the running of the three-year statute of limitation on actions against any commissioner's surety unless the commissioner has committed fraud. A recorded execution by a county against a tax commissioner for money wrongfully withheld is not a sufficient statutory demand on a commissioner's surety so as to start interest running on the money against the surety, even if a representative of the surety attends a meeting in which the county commissioners voted to issue execution against bond for the year which includes the date for the filing if his annual accounting report. The surety is subject to payment for a wrongful withholding of tax money by the tax commissioner, even though the wrongful withholding was made of tax payments for the prior year when another official bond was in effect.[24]

In *Lorenz v. DeKalb County*[25] the Court of Appeals held that a suit for damages and injunction by a landowner against a county for water damages to his lot from construction of a school, must be brought within 12 months from the time of damage under the statute of limitation on claims against counties.

(b) CONTRACTS

There was only one case during the survey period to be included under this subheading. However, upon investigation it appears that the matter is not a mere case but possibly a career! Actually beginning as *Southern Airways Co. v. Williams*,[26] the airways company and DeKalb County have been disputing over an airport lease. The lease was for a period of 15 years and was to begin on the date of the completion of the airport and provided that any time the federal government would be in possession would not be chargeable against lessee. The federal government took possession before lessee due to the outbreak of World War II and retained possession for approximately 13 years. In *Southern Airways Co. v. DeKalb County*,[27] the Supreme Court reversed the Court of Appeals' ruling that a lease of a municipal airport was void because the lease was to take effect only on the happening of events which might not occur within 21 years with no measuring life being involved. The rule against perpetuities was violated. The Supreme Court, relying on the proposition that a lease may be validly made even though the term thereof is to begin in the future, held that while the rule as between private parties is that a lease for a term exceeding five years prima facie

24. Employers Liability Assurance Corp., Ltd. v. Lewis, 101 Ga. App. 802, 115 S.E.2d 387 (1960).
25. 102 Ga. App. 9, 115 S.E.2d 487 (1960).
26. 213 Ga. 38, 96 S.E.2d 889 (1957).
27. 216 Ga. 358, 116 S.E.2d 602 (1960); *reversing* 101 Ga. App. 689, 115 S.E.2d 207 (1960).

conveys an estate for years, if, upon examination of the lease agreement, it appears that the parties, either by express terms or by necessary implication, intended that the lessee should enjoy only the right to possession and use of the leased premises, and it was not the purpose of the agreement to convey to the lessee any interest in the leased premises, the lease will be construed as creating the relationship of landlord and tenant and not as creating an estate for years. In short: The lease agreement gave only a usufruct in the premises, not an interest in the realty, and consequently, the rule against perpetuities would not apply. Following the settling of this point, the case was returned to the Court of Appeals[28] where the following issues, *inter alia,* were determined: (1) A county owning an airport may properly contract with private parties for operating it, in whole or in part. In so doing, the governing authority of the county is engaged in a proprietary function and may, by such contract, bind its successors in office for a period of years. (2) A contract by a county granting a usufruct of an airport to a private corporation for a period of years is not a disposition of county property requiring the antecedent resolution of county authorities under GA. CODE ANN. §91-602. (3) Where proceedings for validation of revenue anticipation certificates expressly provided for leasing all or a portion of the county airport, the county has authority to make a contract providing for operation of all or a portion of the airport by a private corporation. (4) A provision in a contract requiring a county to furnish water and sewerage facilities without charge during 15 years, to begin at an undetermined future date, is invalid under GA. CODE ANN. §69-202 (1957 Rev.), forbidding one council to bind itself or its successors so as to prevent free legislation in matter of municipal government.

(c) FINANCE AND TAXATION

A nonprofit corporation without capital stock which issues to customers approved by it, regardless of need, contracts for premiums obligating it to pay hospital bills in a limited amount for a limited time is not entitled to a tax exemption under the Georgia Constitution as an institution of "purely public charity" even though its authorizing statute and charter classify it as such an institution and even though it serves a benevolent purpose.[29]

State of Georgia v. Chatham County,[30] involving a petition for confirmation and validation of county highway bonds, held that

28. Southern Airways Co. v. DeKalb County, 102 Ga. App. 850, 118 S.E.2d 234 (1960).
29. United Hospitals Service Ass'n. v. Fulton County, 216 Ga. 30, 114 S.E.2d 524 (1960).
30. 103 Ga. App. 390, 119 S.E.2d 120 (1961).

where the issuance of such bonds was authorized, not by a bond election under the constitution, but by an election ratifying an amendment to the constitution itself, which expressly authorized issuance without limiting the time thereof, the county commissioners could wait 8 years to authorize issuance and the lower court did not lack jurisdiction of validation proceedings because of alleged non-compliance with the statute requiring notice of election to the Solicitor General, where the notice of resolution authorizing issuance of the bonds was given on the date of instituting the validation proceedings five days after the passage of such resolution.

(d) OFFICERS AND EMPLOYEES

Where a discharged county employee seeks reinstatement, if the statutory proceedings before a civil service board are quasi-judicial, and there is no statutory provision for appeal, alleged errors may be presented for possible correction to the superior court by writ of certiorari. However, if the board is given statutory power to be triers of fact, the superior court cannot review these facts unless the board's judgment is erroneous as a matter of law.[31]

Timbs v. Straub[32] concerned the disposition of public property and stands for the proposition that the commissioner of roads and revenue is a public officer occupying a fiduciary position in which he may not sell public property with legislative sanction unless its use shall have been abandoned by or become unserviceable to the country, and when a sale does take place, he must obtain the most advantageous price. Further, citizens and taxpayers have such an interest in county property as authorizes them to prevent an illegal disposition thereof and in their efforts to do so may enlist the aid of equity.

In a similar situation,[33] the county was the proper party plaintiff to maintain suit against its former commissioners and another to recover sums allegedly paid an attorney for services pursuant to an agreement which was purportedly the result of a breach of trust.

(e) POWERS

The unilateral action of one governmental subdivision does not impose liability on another governmental subdivision even though the action is taken under a statute authorizing a co-operative effort unless the statute provides for such liability.[34] Therefore, a county is not severally liable in tort for a city's refusal to grant a building permit or house number on the basis that the property is within the

31. Thompson v. Dunn, 102 Ga. App. 164, 115 S.E.2d 754 (1960).
32. 216 Ga. 451, 117 S.E.2d 462 (1960).
33. Gwinnett County v. Archer, 102 Ga. App. 813, 118 S.E.2d 97 (1960).
34. Madden v. Fulton County, 102 Ga. App. 19, 115 S.E.2d 406 (1960).

right of way of a proposed highway even if the city's action is taken under a statute authorizing a co-operative effort with the county.

(f) PUBLIC PROPERTY

The *Southern Airways* case, *supra,* and *Timbs v. Straub, supra,* might properly be noted under this subheading. Each has been considered in detail elsewhere and will not be discussed further at this point.

(g) STREETS

Carroll v. DeKalb County[35] reiterated the familiar proposition that a board of county commissioners has authority to lay out and alter streets.

ELECTIONS

Three cases[36] decided during the survey period involved contested elections. Both the *Middleton* case and the *Hamilton* case were mandamus actions by unsuccessful candidates following a recount of ballots pursuant to the Primary Recount Act (GA. CODE ANN. §34-3223). Each candidate saw victory turned into defeat during the recount proceedings and subsequent to the certification of results by the recount committee to the county democratic executive committee brought action seeking to contest the results of the recount. In both instances the Supreme Court held that under the Recount Act the report and findings of the recount committee is final and shall be adopted, promulgated, published and certified by authority of the party under whose jurisdiction the primary had been held. Accordingly, any attempt of the executive committee to entertain and hear a contest after the recount committee had filed its report was an absolute nullity.

The *Kemp* case, in addition to the mandamus proceeding which was denied, involved an injunction against the executive committee seeking to prevent tallying of votes cast within an independent school district in an election for county school superintendent. In upholding the injunction, the Supreme Court held that where voters in an independent school district were allowed to vote for a county superintendent of schools, in violation of a general law, and their votes so intermingled with legally cast votes that it was impossible to tell which were legal votes and which were illegal votes, and it could not be determined which candidate actually received the highest number of votes, such election was ultra vires, illegal and void.

35. 216 Ga. 663, 119 S.E.2d 258 (1961).
36. Middleton v. Moody, 216 Ga. 237, 115 S.E.2d 567 (1960); Kemp v. Mitchell County Democratic Executive Committee, 216 Ga. 276, 116 S.E.2d 321 (1960); and Hamilton v. Smith, 216 Ga. 345, 116 S.E.2d 565 (1960).

In *Cox v. Williams*[37] a referendum election was voided because of various violations of the election laws.

EMINENT DOMAIN

Under GA. CODE ANN. §36-6, after the payment of a compensation award into the registry of the superior court and the judgment vesting fee simple title to the property taken, the condemnor may proceed with the work and remove improvements from the property. The statutory provisions providing for this action are not unconstitutional as taking property without first paying adequate compensation. The time of judgment fixes the time of taking and the value of the property taken.[38]

In response to a question certified by the Court of Appeals, the Supreme Court held[39] that the State Highway Department can appeal a condemnation award after it pays the amount of the award into the registry of the court without tendering the amount to the condemnee. Thereafter, upon further consideration of the case by the Court of Appeals,[40] it was held that delivery of a check to the clerk of the superior court does not constitute payment into the registry of the court if there are not sufficient funds to pay the check on deposit during the time for, or if there is no agreement to accept the check as payment. An appeal on this basis may be dismissed even if the condemnee retains the check and receives payment after the time for appeal.

In a slight variation of the facts in the *Farmer's Gin* case, *supra,* two cases[41] held that under GA. CODE ANN. §36-11 a condemnor does not have to tender the amount of the condemnation award to the apparent owner of that land involved before the condemnor may appeal to a superior court jury if the award has been paid into the registry of the superior court within the time provided for the filing of the appeal. A condemnee receiving such an award from the registry may still attack the validity of the appeal.

To the same effect were *Tillman v. State Highway Department,*[42] *Slocumb v. Housing Authority of Columbus,*[42] and *Hunt v. State Highway Department.*[43]

37. 216 Ga. 535, 117 S.E.2d 899 (1961).
38. Anthony v. State Highway Department, 215 Ga. 853, 113 S.E.2d 768 (1960).
39. State Highway Department v. Farmers Gin Co., 216 Ga. 70, 114 S.E. 2d 537 (1960).
40. State Highway Department v. Farmers Gin Co., 102 Ga. App. 35, 115 S.E.2d 760 (1960).
41. State Highway Department v. Taylor, 216 Ga. 90, 115 S.E.2d 188 (1960); and State Highway Department v. Sumner, 216 Ga. 92, 115 S.E.2d 189 (1960).
42. 216 Ga. 70, 114 S.E.2d 537 (1960).
43. 101 Ga. App. 797, 115 S.E.2d 384 (1960).

Dougherty County v. Edge[44] and *Dougherty County v. Pylant*[45] followed earlier decisions in holding that a condemnee must plead and prove that a state aid road has been formally reopened by the State Highway Department for traffic controls before a condemnation award may be obtained for damages caused by the construction of an interchange on a state aid road.

A condemnee is not authorized to obtain an additional condemnation award from the State Highway Department for loss of lateral support of right of way property to a building on the condemnee's land despite proper preparation of a highway if the condemnor city has already paid for the right of way and consequential damages to property not taken.[46]

A condemnee cannot recover an amount paid under written contract to a person to act as condemnee's assessor, agent, and representative for a percentage of the recovery of a guaranteed amount. Such a contract is void as illegal, immoral, and against public policy because it violates the required assessor's oath "to do equal and exact justice between the parties according to law."[47]

Johnson v. Burke County[48] held that adequate compensation must be paid for any substantial interference with a landowner's easement of access to a highway abutting his land, but the landowner is not entitled to access to his land at all points on the boundary between his land and the highway. A landowner is not entitled to the use of a highway right of way abutting his land for unauthorized parking of his customers' vehicles. The alleged access obstruction was a six-inch concrete leader curb on the highway right of way abutting a concrete island of filling station pumps.

In a condemnation proceeding in which a taxpayer sought to intervene and enjoin the disbursement of funds derived from condemnation proceedings, the Supreme Court held[49] that such taxpayer may file appropriate pleadings or intervention and come in and be heard on any claim to the funds or interest therein.

A county attorney may prosecute and appeal a condemnation award for the State Highway Department in the name of the Attorney General if there is a written contract between the Department and his county for such action and the Attorney General's Department

44. 216 Ga. 100, 114 S.E.2d 862 (1960); *reversing* 100 Ga. App. 856, 112 S.E.2d 334 (1959).
45. 216 Ga. 102, 114 S.E.2d 861 (1960); *reversing* 100 Ga. App. 856, 112 S.E.2d 334 (1959).
46. Woodside v. State Highway Department, 216 Ga. 254, 115 S.E.2d 560 (1960).
47. Jones v. Faulkner, 101 Ga. App. 547, 114 S.E.2d 542 (1960).
48. 101 Ga. App. 747, 115 S.E.2d 484 (1960).
49. Timbs v. Straub, 216 Ga. 451, 117 S.E.2d 462 (1960).

authorizes the specific proceedings. Such a contract is valid only if such services are to be furnished without expense to the Department.[50]

ZONING

A party is not entitled to an injunction when, with full knowledge of his rights, he has been guilty of delay and laches in asserting them, has negligently suffered large expenditures to be made by another party and when great injury would be inflicted by the grant of the injunction.[51]

In *Branton v. Phillips*[52] defendant was permanently enjoined from erecting a building in violation of the zoning ordinance. After the Board of Adjustment ratified the permit and defendant continued building, on application of plaintiff, defendant was held in contempt. The Supreme Court reversed on the ground that if the plaintiff desired to contest the validity of the actions of the Board of Adjustment, his remedy was to appeal to the superior court under the zoning act, and not by a rule for contempt.

STATUTES

Very few statutes were enacted during the 1961 session of the General Assembly which had general application. As usual, however, a host of local statutes were passed which will not be considered. It is recommended that attorneys consult the various local acts in order to remain abreast of developments in their particular locale.

GA. CODE ANN. §32-909, 937 (1952 Rev.), was amended to implement Art. 8, Sec. 13, Par. 1 of the Georgia Constitution by providing grants of state and local funds for school children desiring to attend private schools rather than public schools.[53]

GA. CODE ANN. §32-910 (1957 Rev.) was amended by redefining the school systems from which appeals may be taken to the State Board of Education and the procedure for such appeals.[54]

Another act[55] authorized state aid to counties in defraying the cost of property valuation and equalization programs for ad valorem tax purposes.

Grants were also authorized to counties, municipalities, or any combination thereof to assist in construction of projects which would

50. State Highway Department v. Sumner, 102 Ga. App. 1, 115 S.E.2d 787 (1960).
51. Black v. Barnes, 215 Ga. 827, 114 S.E.2d 38 (1960).
52. 216 Ga. 266, 116 S.E.2d 217 (1960).
53. Ga. Laws 1961, p. 35.
54. Ga. Laws 1961, p. 39.
55. Ga. Laws 1961, p. 107.

qualify for federal aid and assistance under the Federal Water Pollution Control Act.[56]

Municipalities were authorized to expend funds to map, plat, catalog, index and appraise taxable property, to make re-evaluations of taxable property, and to search out and appraise unreturned property or to purchase such information from any county or political subdivision of the State of Georgia.[57]

The Structural Pest Control Act was amended by removing the provisions limiting the licensing power of municipalities.[58]

Another act[59] provided for the construction and maintenance of portions of state-aid roads lying within the corporate limits of a municipality to be the responsibility of the State Highway Board. Municipalities were relieved of liability occasioned by defects in such highways.

Counties were authorized to enact building, housing, electrical, plumbing and gas codes and provide for inspectors, inspection fees, and penalties.[60]

56. Ga. Laws 1961, p. 109.
57. Ga. Laws 1961, p. 435, amending GA. CODE ANN. §92-4003 (1961 Rev.).
58. Ga. Laws 1961, p. 460.
59. Ga. Laws 1961, p. 469.
60. Ga. Laws 1961, p. 560.