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LOCAL GOVERNMENT Municipalities: Waiver of Sovereign Immunity

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LOCAL GOVERNMENT

Municipalities: Waiver of Sovereign Immunity

CODE SECTION:	O.C.G.A. § 36-33-1 (amended)
BILL NUMBER:	HB 1471
ACT NUMBER:	1619
SUMMARY:	The Act declares the public policy of the State to be that municipal corporations are immune from liability for legislative or judicial actions. The purchase of liability insurance by the municipal corporation will not waive this immunity except as provided in O.C.G.A. § 33-24-51, or unless the insurance policy covers the occurrence, and then only to the extent of the insurance policy coverage.

History

Protection from liability for municipal corporations was first established in 1880 in *Rivers v. City Council*.¹ In *Rivers*, the Georgia Supreme Court held that a municipal corporation was not liable for failure to perform or for performing erroneously its judicial or legislative functions.² Similarly, in *Collins v. Mayor of Macon*,³ the Georgia Supreme Court held that a city was not liable in performing acts of a legislative or judicial nature, "for they are deemed to be a part of the state's power, and, therefore, under the same immunity."⁴

The first codification of municipal immunity occurred in 1895,⁵ reflecting the rule announced in *Rivers* and *Collins*. The doctrine of sovereign immunity, however, has undergone numerous modifications resulting in the expansion of municipal liability. In 1960, Georgia law authorized the waiver of municipal sovereign immunity for suits involving motor vehicles.⁶

Significant infringement of municipal sovereign immunity occurred

1. 65 Ga. 376, 378 (1880).

2. *Id.* at 379-380.

3. 69 Ga. 542 (1882).

4. *Id.* at 544. (Municipalities or counties are not granted sovereign immunity from liability resulting from ministerial acts.)

5. 1895 Ga. Laws 211, § 748.

6. 1960 Ga. Laws 673, codified at O.C.G.A. § 33-24-51 (Supp. 1986).

with the adoption of the 1983 Georgia Constitution, which granted the General Assembly the authority to waive the sovereign immunity of counties, municipalities and school districts.⁷ Concurrent with article IX, article I of the Georgia Constitution demanded the waiver of sovereign immunity for "the state and all its departments and agencies" in the presence of liability insurance protection.⁸

In 1985, the Georgia Supreme Court held in *Toombs County v. O'Neal* that a county was liable for its negligence in the presence of general liability insurance.⁹ In *Toombs*, the plaintiff was injured in a fall in the county jail lobby. The county stipulated that its liability insurance covered such claims. The trial court, relying squarely upon the waiver provisions of article I § 2, ¶ 9 of the Constitution, denied the county's motion to dismiss the plaintiff's negligence action. The Georgia Supreme Court affirmed and held that article I expressly reserved sovereign immunity, but not to the extent that the county's conduct was covered by liability insurance. Relying on case precedent and the intention of the electorate, the court concluded that the 1983 Constitution waived the sovereign immunity of the State and counties to the extent of liability insurance.¹⁰

HB 1471

HB 1471 was originated by the Georgia Municipal Association in an attempt to limit the holding in *Toombs*.¹¹ HB 1471 as originally proposed stated that there would be no waiver of immunity except in a case where the city possessed motor vehicle insurance as provided in O.C.G.A. § 33-24-51.¹² The House Committee Substitute further added that a city will not lose its immunity by purchasing insurance "unless the policy of insurance issued covers an occurrence for which the defense of sovereign immunity is available, and then only to the extent of the limits of such insurance policy."¹³ This additional language was incorporated in the final version of the bill.¹⁴

The bill as passed simply codified the holding in *Toombs*. The purpose of the Act is to prevent the purchase of liability insurance from automatically causing waiver of municipal immunity and to encourage the careful drafting of insurance policies.¹⁵ The language of article I of the constitution did not refer to either counties or municipalities. However, since the

7. GA. CONST. art. IX, § 2, ¶ 9 (1983). See 1982 Ga. Laws 2546, § 1.

8. GA. CONST. art. I, § 2, ¶ 9 (1983).

9. 254 Ga. 390, 330 S.E.2d 95 (1985).

10. *Id.* at 392, 330 S.E.2d at 97.

11. Telephone interview with Walter E. Somner, Lead Counsel, Georgia Municipal Ass'n (May 15, 1986) [hereinafter cited as Somner Interview].

12. HB 1471, 1986 Ga. Gen. Assem.

13. HB 1471 (HCS), 1986 Ga. Gen. Assem.

14. O.C.G.A. § 36-33-1 (Supp. 1986).

15. Somner Interview, *supra* note 11.

Georgia Supreme Court has held that the language in article I refers to counties, it appears that the court would also construe the language to refer to municipalities.¹⁶

In conclusion, O.C.G.A. § 36-33-1 allows the waiver of sovereign immunity for a municipal corporation where insurance coverage has been purchased, only if the claim against the city would be otherwise dismissed because of sovereign immunity. In certain instances, such as civil rights and nuisance actions, in which the city is not traditionally immune from liability, insurance is available to pay the damages if the city is found liable.¹⁷ The Act does not affect litigation pending on July 1, 1986.¹⁸

16. See *Toombs County v. O'Neal*, 254 Ga. 390, 392, 330 S.E.2d 95, 97 (1985); *Nelson v. Spalding County*, 249 Ga. 334, 290 S.E.2d 915 (1982); see also Sentell, *Georgia Local Government Tort Liability: The "Crisis" Conundrum*, 2 GA. ST. U.L. REV. 19 (1986).

17. Telephone interview with Janet Bolt, Attorney for Georgia Municipal Ass'n (Apr. 4, 1986).

18. O.C.G.A. § 36-33-1 (Supp. 1986).