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NUISANCES

Health Hazard: Enable Counties and Municipalities to Require Owners to Repair or Demolish Buildings Used for Illegal Drug Activities

CODE SECTIONS: O.C.G.A. §§ 41-2-7 to -11 (amended)
BILL NUMBER: HB 810
ACT NUMBER: 597
SUMMARY: The Act amends the statutory definition of an unfit building to include vacant, dilapidated structures that are used in connection with the commission of drug crimes; a county or municipality may require the repair, closing, or demolition of buildings found to be unfit. The Act also provides investigative standards for determining when a building is unfit and for notice requirements.
EFFECTIVE DATE: July 1, 1989

History

In 1951, the Georgia Supreme Court held that Georgia's nuisance laws regarding unfit buildings were a valid exercise of the state's police power.¹ Those laws were designed to protect the public from the safety and sanitary hazards associated with buildings which are unfit for human habitation or commercial use.²

More recently, Savannah officials' concern over the number of vacant structures in Savannah being used for drug-related activities prompted the introduction of HB 810.³ HB 810 was introduced to give a county or municipality the power to demolish unfit buildings used for illegal drug activities and to provide an effective way to hold the owners of such buildings or structures accountable.⁴ In a demonstration of state-wide concern, the General Assembly passed HB 810 without opposition or amendment.⁵

1. *See* Telford v. Gainesville, 208 Ga. 56, 65 S.E.2d 246 (1951).

2. *Id.* at 65-66, 65 S.E.2d at 252.

3. Telephone interview with Representative Diane Harvey Johnson, House District No. 123 (Mar. 28, 1989) [hereinafter Johnson Interview].

4. Telephone interview with David Gellatly, Chief, Savannah Police Department (Mar. 28, 1989) [hereinafter Gellatly Interview].

5. Johnson Interview, *supra* note 3.

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The Act enlarges the scope of Georgia's nuisance law by adding "vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed" to the definition of "unfit buildings."⁶ The Act defines "drug crime" as any act that violates the Georgia Controlled Substances Act.⁷ Structures found to fall within the statutory definition of unfit buildings are nuisances per se.⁸

The Act also amends section 41-2-9, which delineates procedures to notify building owners that a structure may be determined unfit and injurious to the public health, safety, and welfare.⁹ When complaints by a public officer or by five residents of a municipality or unincorporated area of a county indicate that a structure is vacant, dilapidated, and used in connection with drug crimes, a public officer must conduct a preliminary investigation.¹⁰ If the investigation reveals a basis for the charges, the public officer will serve a complaint and provide notice of a hearing to interested parties, including the owner of the property in question.¹¹

After the hearing, the appointed public officer has the power to determine whether the building is unfit.¹² If the building is found to be unfit, and therefore a public nuisance, the owner may choose to repair the building if the repair can be made at a reasonable cost relative to the value of the building.¹³ If the building cannot be repaired at a reasonable cost, the owner may be required to remove or demolish the building.¹⁴ A county or municipality cannot require the removal or destruction of any building whose repair costs are less than one-half the value of the repaired structure.¹⁵

The primary purpose behind the introduction of HB 810 was to provide a county or municipality with the authority to require that buildings be rehabilitated for occupancy and to demolish vacant buildings found to be used for drug-related activities.¹⁶ The sponsors intended that the prospect of demolition would give owners an interest in eliminating drug-related activities on their property.¹⁷

6. O.C.G.A. § 41-2-7(a) (1989).

7. O.C.G.A. § 41-2-8(2) (1989).

8. *Atlanta v. Aycock*, 205 Ga. 441, 444, 53 S.E.2d 744, 747 (1949).

9. 1982 Ga. Laws 2107 (formerly found at O.C.G.A. § 41-2-9 (1982)).

10. O.C.G.A. § 41-2-9(b)(2) (1989).

11. *Id.*

12. O.C.G.A. § 41-2-9(b)(3) (1989).

13. O.C.G.A. § 41-2-9(b)(3)(A) (1989).

14. O.C.G.A. § 41-2-9(b)(3)(B) (1989).

15. O.C.G.A. § 41-2-9(b)(3) (1989).

16. Telephone interview with Don Mendonsa, Savannah City Manager (Apr. 4, 1989); Johnson Interview, *supra* note 3.

17. Gellatly Interview, *supra* note 4.

The Act also enlarges the grounds for determining when a building is unfit for human habitation or commercial use.¹⁸ In addition to other grounds, a public officer may determine that a building is unfit if it is "vacant, dilapidated and being used in connection with drug crimes by personal observation or through a law enforcer's report and evidence of the commission of drug crimes."¹⁹

Finally, the Act allows municipalities and counties to authorize a public officer to investigate buildings that may be unfit which are located in unincorporated areas.²⁰ Prior to HB 810, the nuisance law did not expressly provide for investigation by public officers.²¹ The Act now provides for investigations of vacant buildings suspected of being used in connection with drug crimes.²²

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18. O.C.G.A. § 41-2-10(b) (1989).

19. *Id.*

20. O.C.G.A. § 41-2-11(1) (1989).

21. 1982 Ga. Laws 2107 (formerly found at O.C.G.A. § 41-2-11(1) (1982)).

22. O.C.G.A. § 41-2-11(1) (1989).