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LOCAL GOVERNMENT UPDATE

Gardner, Willis, Sweat & Handelmann, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

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If you and your employees are interested in learning more about a particular legal topic, we would be happy to provide a seminar on such topic at no charge. The seminar can be at your business location or at our firm's location in Albany. Let us know your choice.

Examples of seminars:

- General Banking Law
- Legal Issues in Agriculture
- Workers' Comp Overview
- Return to Work in Workers' Comp
- Sexual Harassment
- Americans with Disabilities Act
- Family and Medical Leave Act
- Negligent Hiring
- Estate Planning

Williford v. Lee County Board of Commissioners, 2012 WL 516609

Court of Appeals of Georgia · Decided February 17, 2012

The sole issue on appeal in this matter was how to define "motor vehicle" as used in O.C.G.A. §33-24-51. O.C.G.A. §33-24-51, which deals with insurance coverage on governmental motor vehicles, allows local government entities the discretion to purchase liability insurance for damages arising out of the "use of any motor vehicle." However, the statute allows for the waiver of sovereign immunity to the extent the local government entity purchases liability insurance for the "negligence of any duly authorized officer, agent, servant, attorney, or employee in the performance of his or her official duties" that is in excess of the monetary amount of sovereign immunity waived by O.C.G.A. §36-92-2. In other words, although O.C.G.A. §36-92-2 places a monetary cap on the amount a local government entity can waive its sovereign immunity in a variety of situations, by purchasing liability insurance, as provided for in O.C.G.A. §33-24-51, local government entities can waive their sovereign immunity in excess of the monetary cap. Sovereign immunity is waived under O.C.G.A. §33-24-51 to the extent the amount of the insurance policy exceeds the monetary cap defined in O.C.G.A. §36-92-1.

Williford was struck by a rock allegedly launched by a tractor-pulled lawnmower owned by Lee County. He sued Lee County arguing it had waived its sovereign immunity under O.C.G.A. §33-24-51, by purchasing a private insurance policy. The trial court interpreted "motor vehicle" to mean "any automobile, bus, motorcycle, truck, trailer, or semitrailer, including its equipment, and any other equipment permanently attached thereto, designed or licensed for use on the public streets, roads, and highways of the state," a definition found in O.C.G.A. §36-92-1(6). It held that Lee County had not waived its sovereign immunity because the tractor-pulled lawnmower is not a motor vehicle under the statute.

The Court of Appeals found the trial court's definition of motor vehicle too narrow and referenced the definition for motor vehicle adopted in Glass v. Gates, 311 Ga. App. 563 (2011). In Glass, the court defined "motor vehicle" as any vehicle that is capable of being driven on the public roads and is covered by a liability insurance policy carried by the local government. The Court of Appeals remanded the case to the trial court for a decision using the proper definition. By adopting a much broader definition of motor vehicle under O.C.G.A. §33-24-51, this decision makes it more likely that local government entities will waive sovereign immunity by purchasing private liability insurance policies.

BOARD OF COMMISSIONERS OF
MILLER COUNTY v. CALLAN, et al.
SUPREME COURT OF GEORGIA
Decided January 9, 2012

CARDINALE v. CITY OF ATLANTA, et al.
SUPREME COURT OF GEORGIA
Decided February 6, 2012

Constitutionality of Board amending local laws

The Miller County Board of Commissioners (the "Board") enacted an ordinance, containing sections two and three, that amended two local laws. Section two of the ordinance allowed Board members to transact business with the County if a majority of Board members approved the transaction and the taxpayers' interests would be served. The prior law prohibited Board members from transacting business with the County. Section three of the ordinance provided that all bills be paid by check and have at least two signatures from the chairman, vice-chairman, clerk, or chair of the Board's finance committee. The prior law stated that all bills be paid by check and be signed by the clerk and the chairman or vice-chairman.

County residents brought suit against the Board alleging violations of the state constitution. On summary judgment, the trial court held that the Board's ordinance was unconstitutional. It found that section two gives the chair of the finance committee executive powers without requiring him to be an elected official by allowing him to sign checks. The Supreme Court disagreed with this reasoning and found that the power given to the finance chair was administrative, not executive, and was, therefore, was constitutional.

The trial court found that section three was unconstitutional because it places a duty on the commissioners to consider proposed business transactions and make findings of fact by deciding whether to allow Board member to transact business with the County. The Supreme Court found that this power given to the Board is an additional option, at most, and does not negatively impact the commissioners' ability to carry out their duties. Both sections of the ordinance enacted by the Board were held to be constitutional.

Open Meetings Act

The City of Atlanta's council members took an annual retreat to the Georgia Aquarium. The retreat was considered a meeting required to be open to the public under O.C.G.A §50-14-1. During the retreat, the City Council Chair polled the members regarding the amendment of existing rules governing public comment at Council meetings. The minutes of the retreat state that the members were not in favor of amending existing law but did not note the names or votes of the individual members.

A citizen, Cardinale, filed suit against the City of Atlanta and several council members for failure to comply with the Open Meetings Act by omitting the names and votes of council members. The trial court dismissed Cardinale's complaint and the Court of Appeals affirmed the trial court's dismissal. However, the Supreme Court determined that even for a non roll-call vote, the Open Meetings Act requires the meeting minutes to include the names of those voting against or abstaining and the public may assume that those other members present voted for a proposal. If no votes are listed in the minutes, the public may assume that all members present voted for a proposal.

Significance: When a city council meeting falls under the Open Meetings Act so that it is required to be open to the public, minutes for that meeting must include the names of the members who are present. For a non roll-call vote, the minutes must also include the names of those members voting against or abstaining from a proposal. It is not required that the names of those members voting in favor of a proposal be included. One can assume that the present members who did not vote against or abstain, voted in favor of a proposal.

Sherman Willis is the Managing Partner of Gardner, Willis, Sweat & Handelman, LLP. His service areas include business, banking, local government, real estate and family wealth transfer. If you have questions, or there is any way we can serve you, please contact Sherman. All inquiries are held in strictest confidence. You may contact Sherman by phone at 229-883-2441, or through his e-mail address: sherman.willis@gwsh-law.com. 32-079-2012-03