Agenda for the Day

- Overview of Legal, Constitutional and Statutory of Local Governments in Georgia
- Forms of Local Government
- Roles, Responsibilities and Relationships
- Budgeting, finance and taxation
- Functions and Services
- Other Important Things to Know

United States
Patchwork Quilt of Governments
Georgia

Georgia County Governments - 159

Georgia City Governments - a sample of 535
Local Governments in Georgia

- Georgia has several types of local governments
- Some characteristics of our local governments vary from those found in other states
- The role of the State as it relates to the form and function of local governments varies from state to state

Defining Local Government

- **Special Purpose** Local Government
  - School Boards
  - Regional Governments
  - Elected Utility Boards
  - Authorities
- **General Purpose** Local Government
  - City Government
  - County Government
  - Consolidated Government

Special Purpose Local Governments

**School Districts - City and County**

School Districts - City and County School Boards
Georgia has:
- 159 - County Systems
- 21 - City Systems
- 180 - Total systems
Some Definitions

**County** – a political and geographic subdivision of a state providing governmental services

**City** – an incorporated municipality usually governed by a mayor and council

**City Government** – the governing body of a city, town or other district administering the local affairs of such area by its inhabitants

**County Government** – an administrative arm of state government; the agency that enforces state laws, provides for state mandated public health, welfare and education, plus providing infrastructure and services for the geographic area

There are 39 consolidated city-counties in the USA

Georgia has the most with 8
The Legal, Constitutional, and Statutory Framework of Local Government in Georgia

Hierarchy of Laws

Another View
Where do local governments in Georgia derive their authority?

How is it exercised and implemented?

Home Rule
Cooley Doctrine vs. Dillon's Rule

In the USA the legislative authority granted to local governments varies by state.

In home rule states an amendment to the state constitution grants cities and counties the ability to pass laws to govern themselves as they see fit so long as they obey state and federal law.

In other states only limited authority has been granted to local governments by passage of laws in the state legislature. In these states a city or county must obtain permission from the state legislature if it wishes to pass a law or ordinance which is not specifically permitted under existing state legislation. Most non-home rule states apply the principle known as Dillon's Rule to determine the bounds of a municipal government's legal authority.

Cooley Doctrine

Judge Thomas Cooley: “[i]t is axiomatic that the management of purely local affairs belongs to the people concerned, not only because of being their own affairs, but because they will best understand, and be most competent to manage them. The continued and permanent existence of local government is, therefore, assumed in all the state constitutions, and is a matter of constitutional right, even when not in terms expressly provided for. It would not be competent to dispense with it by statute.”

People v. Lynch, 51 Cal. 15 (emphasis added)
Dillon’s Rule

Judge John Dillon: "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control." Clinton v Cedar Rapids and the Missouri River Railroad, 24 Iowa 455 (1868).

Home Rule: Ga. Const. Art. 9, §2, ¶11

O.C.G.A. § 36-5-3(a): The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly.

• Governing authority authorized to adopt "clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government..."

• "...for which no provision has been made by general law..."

• "...and which are not inconsistent with this Constitution or any Charter provision applicable thereto."

Limits to Home Rule: O.C.G.A. § 36-35-6(a)

Local Government cannot legislate or amend related to:

• Composition, form, procedure for election or appointment, continuation in office and limitations thereon for members of the municipal governing authority

• Action defining any offense, also an offense under the criminal laws of Georgia, providing confinement exceeding six months and fines/forfeitures exceeding $1,000.00
Limits to Home Rule: O.C.G.A. § 36-35-6(a) cont.

- Action adopting any form of taxation beyond that authorized by law or by the Constitution
- Action affecting the exercise of the power of eminent domain
- Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution
- Action affecting the jurisdiction of any court
- Action changing charter provisions relating to the establishment and operations of an independent school system
- Or other areas preempted

Intergovernmental Contracts:
Ga. Const. Art. 9, §3, ¶I

- Not to exceed 50 years
- Between governmental entities
- Related to facilities or functions the governments are authorized to undertake

Limitation on Local Debt:
Ga. Const. Art. 9, §5, ¶I

- Shall never exceed 10% of assessed value of all taxable property
- Generally incur debt by vote
- Temporary loans authorized
Power to Tax:
Ga. Const. Art. 9, §4, ¶1
• May tax for valid municipal purposes
• May collect business & occupational license taxes & fees in the municipality

Where do Local Governments Derive their Authority?
• The Georgia Constitution
• The General Assembly via:
  o General Statutes
  o Local Legislation
  o Enabling acts
• Local Constitutional Amendments

Amendment 19
• After WWII Georgia experienced major urbanization of the suburbs in areas that were unincorporated. These developing areas increased the demand for urban services
• Prior to 1972 Georgia counties did not have universal authority to provide urban or city-like services
• Some metro counties had been granted these powers via local constitutional amendments
Amendment 19

- In 1972 Georgia voters passed constitutional amendment, 19 on the ballot, which authorized counties, municipalities or combinations of counties and municipalities to provide a full range of urban services

- This landmark change set the stage for Georgia’s cities and counties to be in the same service delivery space

How is Your Authority Exercised and Implemented?

It depends on:

- The authority mentioned previously

- Your city charter or county enabling act. There is variation, read yours if you haven’t before

Your Enabling Act

- Number of Commissioners
- How they are selected (at large, by district or a combination)
- What constitutes a quorum
- Power of the commissioners
- Power of the chair
- Form of government
- Other items unique to your county
Your Charter

• Basic government structure
• Form of government (strong or weak mayor, manager etc.)
• City limits
• Municipal powers (taxing, planning and zoning, public safety etc.)

How do Local Governments Exercise their Power?

Become familiar with:
• Ordinances and resolutions
  o Found in your minutes and code of ordinances
• Review special ordinances such as Zoning
• Guidelines, rules, policies and procedures
  o Rules or order (Roberts?)
  o What constitutes a quorum?
  o What constitutes a majority vote?
  o When do you have two readings of an ordinance?
  o How do you advertise your meetings?

Local Government Forms in Georgia

While the Georgia Constitution limits the number of counties (159) it does not specify the structure, so there is a lot of variation. Even with 535 incorporated municipalities in Georgia there are fewer forms of government though a lot of variation in practice.
**County Government Forms**

- Sole Commissioner
- Commission
- Commission-Administrator
- Commission-Manager
- Elected Executive-Council

**City Government Forms**

- Strong Mayor – Council
- Weak Mayor - Council
- Council-Manager
Roles and Relationships

Roles of Local Government Elected Officials

The City Council or County Board of Commissioners is the governing authority. It has the power to adopt ordinances, resolutions, and regulations relating to county property, county affairs, and the operation of local government.

Local elected officials govern through two different types of actions:
- Ministerial
- Legislative
Roles of Local Government

Elected Officials

**Ministerial** acts are those performed according to explicit directions by a subordinate official based on a given state of facts in obedience to the mandate of the legal authority. Following orders, little to no discretion

**Legislative** acts are discretionary and therefore allow freedom of decision or latitude of choice within certain legal bounds, sets policy. A land use decision is an example

Elected Official’s Role With Staff

- Depends upon your government’s form, but normally officials either directly or indirectly oversee the hiring and supervising of the executive management staff
- Staff performance directly reflects the elected officials
- Staff runs the day-to-day operations
- Sometimes citizens misunderstand the limits of a local elected official’s power

Constitutional Officers

To help counties administer state programs and conduct state courts, the state constitution originally created four elected county officers:
- Sheriff
- Tax Commissioner
- Clerk of Superior Court
- Judge of the Probate Court
Sheriff

- Title comes from Shire Reeve who was the King’s representative in each Shire
- The Sheriff enforces the law (state and local), maintains the peace, runs the jail and serves the courts
- Some counties have established a county police department which may supplement the enforcement ability of the sheriff but they do not replace the sheriff. Sheriff also still has jurisdiction in cities. His authority is county wide

Clerk of Superior Court

- Primary record keeper for the county
- Maintains all court records
- Supervises registration of property transactions (deed transfers)

Judge of the Probate Court

- Broad range of powers mostly unrelated to criminal matters
- Oversees matters pertaining to marriage licenses, guardianships, and wills
- In some counties, supervises elections and administers public oaths of office. To assist the judge the state has created a local board of election in almost every county
Tax Commissioner

- Offices of tax receiver and tax collector are consolidated in every county
- Responsibilities include:
  - Maintain tax digest
  - Receive tax returns
  - Collect and disburse county and state taxes
  - Issue executions against delinquent taxpayers

Local Elected Judicial Officers

- Judge of Superior Court
- District Attorney
- Judge of the State Court
- Solicitor-General of the State Court
- Chief Magistrate

Other Elected and Appointed Local Government Officials

- Circuit Public Defender (appointed)
- Coroner
- Medical Examiner (Fulton, Cobb and DeKalb)
- Surveyor (may be eliminated by the General Assembly)
- Treasurer (may be eliminated by the General Assembly)
- Emergency Management Director (appointed)
Authorities and Boards

- Authority: entity created by state or local government empowered to carry out a special project or mission
  - Economic Development Authority
  - Housing Authority
  - Water Authority
- Boards: created and dissolved locally with less authority/power as authorities
  - Planning Commission & Zoning Appeals/Adjustment Board
  - Library Board – with conditions
  - Parks and/or Recreation Boards

Public Services in Georgia

Remember Amendment 19?
The Local Government Landscape in Georgia has Changed

- Rise of the Urban County
- Post WWII growth of suburbs
- Demand for city-like services
- Planning and zoning decisions
- Economic development
- Increased citizen involvement (social media)
- Challenge of raising revenue

Service Mandated for Local Government

- Conduct local courts of law
- Voter registration and elections
- Motor vehicle tags
- File official records of property ownership
- Build and maintain county roads
- Probate wills
- Administer welfare and public assistance programs

Counties are Allowed to provide

- Water utilities
- Sewage and storm-water collection and disposal systems
- Public housing
- Public transportation
- Libraries, archives, and arts/sciences programs and facilities
- Terminal and dock facilities and parking facilities
- Codes, and inspection - including building, housing, plumbing, and electrical
- Air quality control
- Planning and zoning
And:

- Police and fire protection
- Garbage and solid waste collection and disposal
- Public health facilities and services, including hospitals, ambulances, emergency rescue, and animal control
- Street and road construction, including curbs, sidewalks, and street lights
- Parks, recreational areas, facilities, and programs
- Sewage and storm-water collection and disposal systems

City County Service Overlap

- This is when county governments transformed and authorized to provide additional services
- This is one of the main reasons why we now must go through the Service Delivery process regarding provision of services, who provides the services and the funding for these services.
- Amendment 19 put cities and counties in the same service space sometimes competing for customers

Georgia Planning Act of 1989

- The Georgia Planning Act of 1989 requires that cities and counties prepare a comprehensive plan
- An update to that plan is required every ten (10) years
- Department of Community Affairs promulgates rules that provide for minimum and optional plan requirements
Comprehensive Plan Elements

- All local government plans must contain:
  - Community goals, needs and opportunities, and community work programs
- Those that collect impact fees must have a capital improvement element
- Those with zoning or land use regulations must have a land use element
- Those that are HUD CDBG entitled must have a housing component

Zoning Procedures Law

O.C.G.A. §36-66-1 et seq. authorized by Ga. Const. Art 9, §2, ¶IV

- Authorizes administrative officers, bodies, or agencies to assist with zoning powers
  - Planning Commission
  - Zoning Board of Appeals
  - Other boards & committees
- Authorizes rules & regulations – Zoning Ordinance

What is a Zoning Decision?

- Ordinance & Zoning Map
- Amendment to ordinance
- Zoning of property from one zoning classification to another
- Special or conditional use permit
Procedures for Zoning Decisions

- Advertise hearing at least 15 days & no more than 45 days prior to meeting
- If a citizen rezoning property, sign must be posted at least 15 days in advance
- Public hearing – at least one
  - By BOC or City Council or is Planning Commission ok?
- If defeated, cannot be reconsidered for 6 months

Adoption of Hearing Policies

- “Shall” adopt policies governing public hearings
- Policies must specify minimum time period for each side; at least 10 minutes per side

Conflict of Interest in Zoning Decisions

- Disclosure of financial interests – if a member of the zoning authority has a financial interest in the property being zoned; they must announce and recuse
- Disclosure of campaign contributions
Annexation

- 100% (O.C.G.A. §36-36-20) – if 100% of all owners of the land to be annexed request it
- 60% (O.C.G.A. §36-36-30) – application by 60% of owners of land and 60% of electors residing in the area to be annexed
- Resolution & Referendum – for urban purposes and requires a successful referendum by those that can vote in the area to be annexed
- Local Act of General Assembly

Local Governments are Increasingly Interested in Alternative Service Delivery Methods

Alternative Service Delivery Options

- Services via Intergovernmental Agreement
  - City/County
  - County/County
  - Regional Commissions (RC's have authority to contract with local governments to provide services)
- Privatization of Services
Service Delivery Strategy Agreement

- Counties and the cities within the county are required to have an agreement on file with the Department of Community Affairs that:
  - Describes the types of services provided by each government
  - Defines the area being served,
  - Identifies the source of funding for the services, and
  - Confirms that there are no duplication of services

Need to Know Local Government Rules

- Cannot Bind Future Boards
  - O.C.G.A. §36-30-3
    - “One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government.”
    - Why does such a restriction make sense?
    - Some exceptions
      - Intergovernmental Agreements
      - Industrial wastewater treatment services (O.C.G.A. §36-60-2) – allows cities and counties to contract for as long as 50 years!
      - Valid multi-year contracts
Multi-Year Lease, Purchase, Lease-Purchase Agreements

O.C.G.A. §36-60-13

- Must terminate at close of calendar or fiscal year
- Automatic renewal unless positive action
- Total obligation stated
- Title to any supplies, materials, equipment or personal property shall remain with the vendor until fully paid for by municipality

Applies to agreements of “all kind for the acquisition of goods, materials, real and personal property, services, and supplies”

Some exceptions (may not result in a cumulative amount of debt loading in excess of 10% of the assessed value of all taxable property within such county or city)

Ante-Litem Notices (notice to serve)

- Claims against a municipality must be presented in writing within six months
- Claims against the county must be presented in writing within one year

Minutes

O.C.G.A. §36-32-24(d):
“The council shall maintain minutes of its meetings and such other records as it deems necessary.”
Minutes

O.C.G.A. §36-10-1:

All contracts entered into by the county governing authority with other persons in behalf of the county shall be in writing and entered on its minutes.

While there is no legal requirement for municipalities to ensure that all of their contracts are in writing and entered on their minutes, it is nevertheless a prudent procedure to follow.

Uniform Electronics Transactions Act

O.C.G.A. §10-12-1 et seq:

• Each government agency of the state shall determine whether, and the extent to which it will create and retain electronic records and convert written records to electronic records.

• If a law requires that a record be retained, such requirement shall be satisfied by retaining an electronic record.
  - Must accurately reflect record
  - Remains accessible for retention period required by law.

BUDGET PROCESS

O.C.G.A. 36-81-2 to 36-81-6

Discuss
• Departments, Citizens, Elected Body
• Process is as important as product

Adopt
• Ordinance or Resolution by first day of fiscal year
• Millage Adoption and Budget Adoption Alignment

Monitor
• Monthly at a minimum
• Operating (12 months recurring) and Capital
Cycle of Financial Management – Where does it start?

Budget

Revenues & Taxation

Accounting

Purchasing

Budgets and Audits

O.C.G.A. §36-81-1, et seq.

- Budget must be available to public & media the DAY submitted to governing authority (O.C.G.A. §36-81-1(f))
- Budget must have at least one public hearing – cannot adopt until following meeting
  - Act specifically anticipates that the governing authority may hold additional hearings!
- Budget ads cannot be published where legal notices appear
- Audit must be performed each fiscal year, with some exceptions for small municipalities

Who is Involved in the Budget?

- Citizens
- Governing Body
- Chief Executive
- Operating Departments
- News Media
Diversify Revenues

Understand Services

Ethics

O.C.G.A. §45-10-1:

Any person in government service should:

- Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
- Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
- Give a full day’s labor for a full day’s pay and give to the performance of his duties his earnest effort and best thought.
- Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
Ethics

O.C.G.A. §45-10-1:

- Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
- Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
- Expose corruption wherever discovered.
- Uphold these principles, ever conscious that public office is a public trust.

Open Records

All public records are open to the general public and subject to personal inspection and copying. Includes email and cell phone records.

Exceptions include:
- records of law enforcement on pending investigations
- personnel evaluations or issues during investigations
- personal demographic information (SNN, DOB, etc.)
- records part of attorney-client privilege

Private Contractors Covered

Records maintained by actors in the private sector doing business with or contracting with public agencies are subject to the same disclosure rules regarding the subject of their work on behalf of the public agency.
Open Records

Open Records Requests

• These may be made orally or in writing. An agency cannot require they be in writing, but best practice is for the agency to reduce an oral request to writing themselves.
• Public agencies have only three business days to respond to such requests.
• The absence of the public records custodian is not a valid excuse for delaying a response to a request.
• Denial of any part of a request requires written citation to the section, subsection, and paragraph of state law creating the exemption justifying refusal.

Open Meetings

What is a meeting?

“The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or the gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.”

O.C.G.A. Section 50-14-1(a)(3)(A).

Open Meetings

When is a meeting not really a meeting, but merely a gathering?

• When a quorum is inspecting facilities or property under their jurisdiction where no other business is discussed or action taken.
• Attendance at statewide, multijurisdictional, or regional meetings for training or seminars where no official action is to be taken.
• Meetings with state or federal legislative or executive officials at their offices where no official actions are taken.
Open Meetings

When is a meeting not really a meeting, but merely a gathering?

• Traveling to one of the previous type non-meetings
• Social occasions
• Provided that no discussion of official matters takes place

But wait…..

The exclusions/exemptions discussed above shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business

What is Required for an Agenda?

Must produce Written Agenda prior to any meeting,
The Public Body or committee must provide for all matters expected to be considered,
Agenda shall be available upon request, and
Posted at the meeting site, as far in advance of the meeting as reasonably possible, but not more than two weeks (14 days) prior.
Failure to include an item does not stop its consideration by the Public Body
Requirements for Minutes

Public agencies must keep written minutes of all meetings, and must make them available to the public. These minutes must include all measures proposed and the results of all votes taken.
Voting by secret or written ballot is prohibited.

Minutes – Technical Requirements

A SUMMARY of the subjects acted on and those members present at a meeting shall be written and made available within two (2) business days of adjournment; and

The minutes shall be promptly recorded and be open to public inspection once approved, but not later than the following regular meeting.

The minutes shall, at a minimum, include:
- Names of the members present;
- A description of each motion or other proposal made, and a record of all votes;
- The identify of the person making and seconding the motion or other proposal [new requirement]; and
- A record of all votes. However, if unanimous, the law assumes that we know who was at the meeting. However, if the vote is split, identify who was for and against.

Minutes – Executive Session

Traditionally, minutes were not required for executive session, except in the context of land acquisition

New rules require minutes of any executive session, which must include:
- a specification and brief description of each issue discussed
- the legislation is not specific regarding votes – but the preferred rule is to record motions and votes the same as in open session if attorney-client privilege, record fact that a privileged discussion occurred & its subject, but the substance of the discussion need not be recorded.

Executive session minutes shall not be open to the public, but are to be preserved in case of a court challenge.
Executive Session Affidavit

When an executive session occurs: the person presiding over such meeting – or the membership of the entire agency if the agency's policies so provide – shall execute and file a notarized affidavit affirming that the subject matter of the meeting was authorized by pertinent law.

If a discussion occurs in executive session on a topic not authorized by the law, the presiding officer shall declare the discussion out of order and the discussion shall cease. If the discussion continues, the meeting shall be adjourned.

Exceptions to the Open Meetings act

A governing body of a public agency may hold an executive session (closed meeting) during a regular, special or emergency meeting, when the specific reason for such closure is entered upon the official minutes. To close a meeting, there must be a vote by a majority of a quorum to close the meeting and the minutes shall reflect:

- The names of the members present; and
- The names of the members that voted to close the meeting; and
- The reason for the closure.

Executive Session Topics

Litigation Matters

When consulting with legal counsel regarding pending or potential litigation, settlement, claims, administrative proceedings, or other judicial action brought or to be brought by or against any agency or any officer or employee or in which the agency or any officer or employee may be directly involved.

Cannot close a meeting for advice/consultation on whether to close a meeting.

To discuss settlement of any matter which may be properly discussed in executive session, but a vote in executive session to settle shall not be binding until a subsequent vote is taken in open session.
Executive Session Topics

Land Acquisition Matters
Meetings when any agency is discussing or voting to:
▫ Authorize negotiations to purchase, dispose of, or lease property;
▫ Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
▫ Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote;
▫ Enter into an option to purchase, dispose of, or lease real estate subject to approval in a public vote

Caveat: No vote in executive session to acquire, dispose of, or lease real estate shall be binding on an agency until a subsequent vote is taken in open session. The mere authorization of negotiations & to secure appraisals have no requirement.

Executive Session Topics

Personnel matters – meetings when discussing or deliberating upon the:
▫ Appointment;
▫ Employment;
▫ Compensation;
▫ Hiring;
▫ Disciplinary action;
▫ Dismissal or periodic evaluation or rating of a public officer or employee; or
▫ [new section] interviewing applicants for the position of executive head of an agency.

Votes on any matter involving personnel issues must be taken in open session and otherwise will not be binding.

Executive Session Topics

Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to the Open Records Act is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.
Be Open

- Encourages ethical behavior
- Fosters trust between citizens and elected officials
- Increases civic engagement through understanding and participation
- In the end, it’s the public’s government not yours

What are specific ways your local government can promote open and transparent government

In the public eye, be careful

Media
- Local policy
- Media spokesperson
- Off the record?

Social Media
- Advantages
- Disadvantages

- Around town
  - Smart phones
  - 24 hours
  - Attendance

Questions or Comments?

Thank you

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