IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

Gwinnett County, Georgia,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action File No. 09A01923-9
	:	
City of Auburn, Georgia; et al.,	:	
	:	
Respondents,	:	

FINAL ORDER

The above-styled case came before the Court for a bench trial during the week of August 2, 2010, the undersigned sitting by designation in the Superior Court of Gwinnett County. The instant petition was filed by Gwinnett County (or "County") pursuant to O.C.G.A. § 36-70-25.1(d)(2), which sets forth procedures where parties cannot otherwise resolve disputes arising under the Service Delivery Act, O.C.G.A. § 36-70-20 *et seq.* (the "Act" and/or SDS). All parties have been afforded sufficient opportunity to tender evidence, as well as make argument and present citations of legal authority. After a careful review of the entire record, this Court makes the following findings of facts and conclusions of law.

PROCEDURAL HISTORY

The fifteen cities within Gwinnett County are municipal corporations created by the General Assembly. See City Charters, Trial Exhibit "PT3R-98". By approving municipal charters and through subsequent grants of home rule and supplementary powers pursuant to the Supplementary Powers Clause, Article IX, Section II, Paragraph III, of the 1983 Georgia Constitution, the General Assembly vested each of the Cities with specific powers to provide certain services as well as the authority to enforce said

powers. Id.

In 1999, Gwinnett County and the fifteen Cities negotiated and entered into a service delivery strategy ("SDS") agreement pursuant to the Act ("1999 SDS Agreement"). See Trial Exhibit "P-1". The 1999 SDS described what services would be provided in what service area(s), who would provide the service, and how the services would be funded. Id.

Over the course of the last three years, the County and the Cities have attempted to renegotiate a new SDS; however, no agreement had been reached. Pursuant to the Act, mediation was ordered and attended by the parties during April, May and June of 2009. When mediation failed, the County filed a petition pursuant to the Act. Shortly thereafter, the Petitioner filed a motion for summary judgment and Respondents responded. On October 28, 2009, this Court entered an order construing the application of revenues not enumerated under Section 36-70-24(3)(B) where special service districts are required to be formed. Thereafter, on January 24, 2010 this Court lifted its order holding sanctions in abeyance and ordered the imposition of sanctions effective as of February 1, 2010 in accordance with O.C.G.A. § 36-70-25.5(d)(2). On May 24, 2010, the City Attorney for the City of Lilburn entered a separate appearance of counsel, thereby withdrawing the City from joint representation with the other 14 municipalities.

The Respondents, except Lilburn, filed a motion for summary judgment and Petitioner filed its response and a motion for reconsideration of the Court's October 28, 2009 order. A hearing on the motion for summary judgment was held on June 29, 2010. The Court denied all motions. This Court thereafter held an evidentiary hearing on all disputed issues during the week of August 2, 2010. On the first day of hearings, separate

counsel for the City of Lilburn announced to the Court that the City of Lilburn declined to present evidence at the hearings and consented to be bound by the final findings and order of this Court. Subsequently the City of Lilburn and the Petitioner entered a Settlement.

DISCUSSION

From the outset, the Court notes that this case presents a mixture of both legal and factual issues to be resolved by the court in order to reach a final resolution to this ongoing dispute. At the heart of this case is the question of the parties' respective authority and autonomy to provide local government services as defined by the Act, either independently or jointly to fund the provision of such services under the Act. Although the tension between county and municipal authority to provide and fund local government services is not new to the courts, the statutory context in which it comes before this Court, however, is.

This Court, therefore, begins its decision by addressing the following matters of law to be resolved: (a) the Court's Authority to resolve disputes under the Act; (b) the parties' authority to provide and fund local governmental services under the Act; (c) the requirements for a valid intergovernmental agreement; (d) the application of insurance premium taxes to fund local governmental services under the Act; and (e) the application of "Non-enumerated Revenues"[1] to fund local governmental services under the Act (see Order entered October 28, 2009). After resolving these legal issues of statutory construction, pursuant to O.C.G.A. § 36-70-25.1(d)(2), this decision makes findings of fact as to certain SDS Services at issue and resolves the provision and funding of each of those services.

[1] See Court Order of October 28, 2009.

I. Matters of Law to be Resolved

A. Role and Authority of the Court

The question arises does the Court have the authority to order the County to create special service districts? This matter causes this Court great philosophical turmoil. However, after much, much review of applicable law and constitutional authority including the separation of powers within the Georgia Constitution, this Court concludes as follows.

Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgment. Ga. Const. Art. VI, § I, Para. IV. Superior courts have authority to exercise original, exclusive, or concurrent jurisdiction of all causes of action granted to them by the Constitution and general laws of this state. O.C.G.A. § 15-6-8(1). Furthermore, superior courts have the authority to "exercise such other powers, not contrary to the Constitution, as are or may be given to such courts by law." O.C.G.A. § 15-6-8(6).

O.C.G.A. § 36-70-25.1(d)(2) plainly grants the Court the authority to resolve any and all issues remaining in dispute after alternative dispute resolution methods are unsuccessful. That same paragraph also prescribes the standard the Court must use to resolve those disputed issues: "In rendering a decision, the judge shall consider the required elements of a service delivery strategy with a goal of achieving the intent of this article as specified in Code Section 36-70-20." O.C.G.A. § 36-70-25.1(d)(2). The Act does not expressly identify the "required elements" of a service delivery strategy. However, the Act does specify the required components under O.C.G.A. § 36-70-23 and

the criteria for service delivery under O.C.G.A. § 36-70-24.

While considering the "required elements", the Court is charged with achieving the intent of the Act as stated in O.C.G.A. § 36-70-20. O.C.G.A. § 36-70-25.1(d)(2). To achieve the intent of the Act, the Court must assign the responsibility for providing SDS Services, define service areas, and describe the funding mechanism to be used for such services in a manner that "minimize inefficiencies resulting from a duplication of services and competition between local governments" and resolves disputes over "service delivery, funding equity, and land use". O.C.G.A. § 36-70-20.

Because the parties in this case could not reach agreement on the funding mechanism for service delivery, the Act's default funding mechanism is the creation of special service districts in which property taxes, insurance premium taxes, assessments, or user fees are levied or imposed within such districts as apply to the issue. See O.C.G.A. § 36-70-24(3)(B) and October 28, 2010 Order. Petitioner contends that the Court lacks any authority to order the formation of special service districts. Respondents contend that the Court has such authority. For the following reasons, the Court agrees with Respondents.

The Court's authority to render an enforceable decision which may result in a court ordered formation of special service districts is not an impermissible delegation of legislative power to the judiciary as contended by Petitioner. The superior courts shall "exercise original, exclusive or concurrent jurisdiction, as the case may be, of all causes, both civil and criminal, granted to them by the Constitution and laws." O.C.G.A. § 15-6-8(1). Furthermore, superior courts have the authority to "exercise such other powers, not contrary to the Constitution, as are or may be given to such courts by law." O.C.G.A. §

15-6-8(6). The legislature may not delegate legislative power to the courts. Ga. Const. Art. VI, Sec. III, Para. V. However, the "delegation to a court of power to ascertain a state of facts under which a statute is applicable" is not an unlawful delegation of legislative power to the judiciary. Harrell v. Courson, 234 Ga. 350 (1975). Thus, the legislature is not forbidden from conferring power on the courts to ascertain whether certain statutory requirements on the formation a service delivery strategy have been satisfied and ensure that the strategy is implemented. Id.

By way of analogy, there are instances where trial courts have exercised their power to compel governmental entities to comply with voter redistricting laws, including exercising the authority to redraw districts which is typically a legislative function. See e.g. Wright v. City of Albany, 306 F. Supp. 2d 1228, 1239 (M.D. Ga. 2003); Markham v. Fulton County Bd. of Registrations & Elections, 2002 U.S. Dist. LEXIS 27505, Docket No. 1:02-CV-1111-WBH (N.D. Ga. 2002). Also, in zoning cases superior courts have the authority to determine the constitutionality of zoning classification assigned by a local legislative body and, where unconstitutional, order the local governing authority to assign the property a constitutional zoning classification. See e.g. Alexander v. DeKalb County, 264 Ga. 362 (1994); City of Cumming v. Realty Development Corp., 268 Ga. 461 (1997). In the above cited cases, the respective courts were empowered to resolve issues and ensure that the local governing authority was in compliance with applicable federal and state law. The Court's power in the present matter is analogous to those cases.

Further, while not styled as a declaratory judgment, the Act does require the Court to resolve disputed items of service delivery and funding equity. O.C.G.A. § 36-70-25.5(d)(2). "The superior court is authorized to enter a declaratory judgment upon

petition therefor in cases of actual controversy (O.C.G.A. § 9-4-2 (a)), and to determine and settle by declaration any justiciable controversy of a civil nature where it appears to the court that the ends of justice require that such should be made for the guidance and protection of the petitioner, and when such a declaration will relieve the petitioner from uncertainty and insecurity with respect to his rights, status, and legal relations." Baker v. City of Marietta, 271 Ga. 210, 213 (1999) (internal quotations omitted); followed in Higdon v. City of Senoia, 273 Ga. 83, 84 (2000). In this case there is unquestionably an actual controversy between the County and Cities as to the provision of local governmental services and funding of those services. The Court's decision is needed to relieve the parties of uncertainty and insecurity given that sanctions have been imposed for lack of a certified service delivery strategy and the delivery and funding of SDS Services remains outstanding.

Moreover, O.C.G.A. § 36-70-24(3)(B) mandates that the County create special service districts to fund SDS Services when the parties cannot reach an agreement on the funding mechanism. This is a non-discretionary duty imposed by law for which there is no remedy other than for the Cities to seek a writ of mandamus to compel the County to form such districts. The Superior Courts of this State are vested with the authority to compel, through writs of mandamus, local governments to perform non-discretionary acts. 1983 Ga. Const. Art. VI, Sec. I, Par. IV. As such, it is clear that this Court has jurisdiction to issue an order directing Gwinnett County to form special service districts where required by the Act.

As further evidence that the General Assembly intended for the courts to completely resolve disputed issues, the Act expressly authorizes the Court "to utilize its

contempt powers to obtain compliance with its decision relating to the disputed items under review." O.C.G.A. § 36-70-25.1(d)(2). If the parties refuse to adhere to the Court's final decision, which directs the County to form special service districts, then the Court is authorized under the Act, section 36-70-25.1(d)(2), and O.C.G.A. §§ 15-6-8 and 15-1-4 to use its contempt powers to compel compliance with its decision.

In addition to and aside from the Court's contempt powers, the Court notes that the Court is empowered to enjoin the County from a levy of taxes which is not consistent with the Court's final decision. This Court "may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgment" including mandamus, specific performance, injunction and contempt. 1983 Ga. Const. Art. VI, § I, Para. IV.

Based on the foregoing, the Court finds as follows:

(1) The Act requires the Court to resolve disputed issues between the parties and decide the nature of the service delivery strategy with respect to those items.

(2) The "required elements" to be considered by the Judge are those found in O.C.G.A. §§ 36-70-23 and 36-70-24.

(3) The Court's resolution of disputed issues must work to achieve the intent of the Act: to "minimize inefficiencies resulting from a duplication of services and competition between local governments" and resolve disputes over "service delivery, funding equity, and land use." O.C.G.A. §§ 36-70-25.1(d)(2) and 36-70-20.

(4) The Court has the authority to declare who will provide local governmental services covered by the Act will be delivered and how said services will be funded in accordance with O.C.G.A. § 36-70-24(3).

(5) The Court has the authority to order the Gwinnett County Board of Commissioners to form special service districts in accordance with O.C.G.A. § 36-70-24(3) to comply with the Act.

(6) If the Court orders the formation of special districts, it has the authority to enforce the creation of said special districts through its contempt power and through injunction of future County tax levies, except for those local

government services expressly exempt from the Act under O.C.G.A. § 36-70-2(5.2).

B. Provision and Funding of Local Governmental Services Covered by the Act ("SDS Services")

1. Provision of SDS Services

The Supplementary Powers Clause, Article IX, Section II, Paragraph III, of the 1983 Georgia Constitution, subsection (a), authorizes each county and city to provide, in addition to all powers possessed or conferred by law, an enumerated list of fourteen (14) supplementary powers and services, (hereinafter, the "Supplementary Powers Clause"). See 1983 Ga. Const. Art. IX, Sec. II. Para. III.[2] Following the enumerated powers and services, the Supplementary Powers Clause states in subsection (b) that, "unless otherwise provided by law", no county or municipality may exercise any of the enumerated powers or provide any enumerated service listed in subsection (a) of the Supplementary Powers Clause outside its territorial boundaries except by contract with the other affected county or municipality. See 1983 Ga. Const. Art. IX, Sec. II. Para. III. Therefore, the exercise of a power as well as the provision of a service listed in subsection (a) of the Supplementary Powers Clause requires that the local government have at least one of three sources of authority. The county or municipality must have (1) possessed the right prior to the enactment of the 1983 constitutional amendment pursuant to its charter, enabling legislation or local act ("in addition to and supplementary of all

[2] It is axiomatic that cities and counties of this state possess the fundamental right to exercise police powers for the protection of the public. In 1972, a constitutional amendment known as "Amendment 19" provided that any county, municipality or combination thereof may exercise certain specified powers and provide certain specified services See Georgia Laws 1972 p. 1552. Amendment 19 was incorporated in the 1976 Georgia Constitution as Article IX, Section IV, Paragraph II and in the 1983 Constitution as Article IX, Section II, Paragraph III. Amendment 19 was a "grant of authority" by the General Assembly, in addition to any other powers already held by the governmental entity and was designed to "reduce the need for special legislation to enable these entities to act independently or together, in their own best interest." Sadler v. Nijem, 251 Ga. 375, 377 (1983); Kelley v. Griffin, 257 Ga. 407, 408 (1987).

powers possessed by or conferred upon"); (2) be subject to an alternative source of general law ("unless otherwise provided by law" pursuant to the opening clause of subsection (b)); or (3) have a valid written contract which is duly adopted by the local government in accordance with state law and local procedures and spread upon its minutes in order to be binding.[3]

Since its first enactment in 1972, the Supplementary Powers Clause has consistently referred to the exercise of powers and the provision of services as two distinct constitutional rights bestowed upon cities and counties. The General Assembly is presumed to speak with intention, and a court on review should construe a statutory or constitutional provision so as to uphold the plain meaning of each provision therein. SEIU v. Perdue, 280 Ga. 379, 380 (2006). "The judiciary has the duty to reject a construction of a statute which will result in unreasonable consequences or absurd results not contemplated by the legislature." Haugen v. Henry County, 277 Ga. 743, 746 (2004). Cardinal rules of constitutional construction require that all provisions be harmonized and a sensible and intelligent effect be afforded to each part. A court on review cannot presume that "the legislature intended that any part would be without meaning." Houston v. Lowes of Savannah, Inc., 235 Ga. 201, 203 (1975). See also Bennett v. Wheatley, 154 Ga. 591, 594 (1922) (duty to reject a construction which would render a statute unconstitutional) and Fulton Co. v. Perdue, 280 Ga. 807 (2006) (must construe intent to give meaning to all parts of constitutional provision and local amendment). Therefore, a

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[3] As an example, in Coweta County v. City of Newnan, 253 Ga. 457, 459 (1984), the Georgia Supreme Court upheld the municipality's argument that it was authorized to provide water services in the unincorporated area pursuant to a previously adopted local act. By contrast, the Georgia Supreme Court has limited a county's interference with a city's right to control the territory within the city's jurisdictional limits where there was neither an intergovernmental contract nor existing law. Macon County v. City of Oglethorpe, 229 Ga. 687 (1972). In City of Oglethorpe, the Supreme Court concluded that the county could not build a non-state road through the city without the city's consent in violation of the Supplementary Powers Clause because there was no contract or other source of authority.

court interpreting the Supplementary Powers Clause must conclude that "power" is not synonymous with "service" and that to be valid, the exercise of powers and the provision of services each must be supported by a valid intergovernmental contract or existing law.

The General Assembly has consistently treated powers and services separately; they are not synonymous terms. Houston v. Lowes of Savannah, Inc., 235 Ga. 201, 203 (1975). Just as general or special laws can confer authority, the General Assembly has expressly limited the County's service authority. O.C.G.A. § 36-1-20 is entitled "Ordinances for governing and policing of unincorporated areas of county" and is a special law which applies only to unincorporated areas of counties. Subsection (a) thereof provides that the governing authority of each county "is authorized to adopt ordinances for the governing and policing of the unincorporated areas of the county". O.C.G.A. § 36-1-20(a). By this statute, the General Assembly has authorized counties to exercise police powers only in the unincorporated area.

Based on the foregoing, the Court finds as follows:

(1) The Supplementary Powers Clause of the 1983 Constitution authorizes counties and cities to provide services in addition to the services that had been previously granted.

(2) That powers granted to a public entity are not synonymous with the services provided by a public entity.

(3) That unless otherwise provided by law, a County is not authorized to exercise the enumerated powers or provide any of the enumerated services listed in the Supplementary Powers Clause of the 1983 Constitution within a City's jurisdiction except by intergovernmental agreement.

2. Funding of SDS Services

The Act's funding provision (O.C.G.A. 36-70-24(3)) for SDS Services restricts the county's authority to levy taxes, assessments or fees within the incorporated areas of

the County. Counties and Cities of the State of Georgia derive all taxing authority from either the State Constitution or the General Assembly. Specifically Article IX, Section 4, Paragraph 1(a) of the State Constitution provides that "[e]xcept as otherwise provided in this paragraph, the governing authority of any county, municipality, or combination thereof may exercise the power of taxation as authorized by this Constitution or by general law." 1983 Ga. Const. Art. IX, Sec. IV, Para. 1(a). In the absence of general law, governing authorities of counties are authorized to levy by local law for the collection of business and occupational taxes and license fees only within the unincorporated areas of counties. 1983 Ga. Const. Art. IX, Sec. IV, Para. 1(b). The General Assembly may regulate how the revenues raised by such a tax or fee are spent for the provision of services within the unincorporated area of the County. Id.

The Georgia Supreme Court has upheld the constitutional limitation on a county's authority to levy taxes. In Chatham County v. Savannah Electric & Power Company, the Court held that "a county can only exercise the power of taxation as conferred upon it either directly by the constitution or by the General Assembly when authorized by the Constitution. If there is any doubt as to the power of the County to tax in a particular instance, it must be resolved in the negative." 215 Ga. 636, 637-638 (1960) (citations omitted); Bellsouth Telecommunications, Inc. v. Cobb County, 277 Ga. 314, 314-315 (2003). In addition, the Home Rule provisions of the Constitution contain prohibitions, one of which includes the prohibition on the adoption of any form of taxation beyond that authorized by the Constitution or the general laws of the State. 1983 Ga. Const. Art. IX, Sec. II, Para. I(c)(4); Peacock v. Ga. Municipal Association, Inc., 247 Ga. 740, 742 (1981).

The Supplementary Powers Clause, Article IX, Section IV, Para. II, grants counties and cities the authority to enact reasonable ordinances and to contract and combine with each other to effectuate and carry out the extensive supplementary powers granted. As a corollary, it is necessary that municipalities and counties have the authority to levy taxes and carryout the powers given. Id. The Supplementary Powers Clause provides additional powers to cities and counties which were not otherwise conferred in other provisions the Constitution or general law. The Clause retains in the General Assembly the power to regulate, restrict and limit through general laws the power and services conferred to cities and counties through the Supplementary Powers Clause. 1983 Const. Art. IX, Sec. II, Para. III(c).

To ameliorate funding inequities and minimize unnecessary duplication of SDS Services,[4] the Act expressly restricts the County's authority to levy taxes, assessments or fees within any incorporated areas to fund the provision of SDS Services. Specifically, Section 36-70-24(3)(A) of the Act provides that an SDS:

> shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area of the county shall be borne by the unincorporated area residents, individuals, and property owners who receive the service. Further, when the County and one or more municipalities jointly fund a countywide service, the County's share of such funding shall be borne by the unincorporated residents, individuals, and property owners that receive the service.

O.C.G.A. § 36-70-24(3)(A). Thus, with respect to the construction of the first sentence of O.C.G.A. § 36-70-24(3)(A), the County may not levy taxes, assessments or fees within the Cities to fund an SDS Service which is primarily for the benefit of the unincorporated area. On this point, both Petitioner and Respondents agree.

[4] See O.C.G.A. § 36-70-20.

Petitioner and Respondents, however, disagree on the funding effect of the second sentence of Section 36-70-24(3)(A). Interpretation of statutes, ordinances, and charters present a question of law for the Court to resolve. City of Buchanan v. Pope, 222 Ga. App. 716, 717 (1996). The Cities contend that the second sentence prevents the County from levying a county-wide tax for any SDS Service which will be funded by the county and at least one municipality. This construction is consistent with the fact that the General Assembly specifically limited the "county's share" of funding for a jointly funded SDS Service to the revenue raised from the residents, individuals and property owners who receive the service. Thus, County may not levy a tax within a municipality to pay for its share of a jointly funded SDS Service. The Cities also contend that if one or more of them agree to jointly fund an SDS Service with the County, then, unless the parties agree otherwise, the County must create a special service district consisting of those municipalities and that portion of the unincorporated area receiving the service and levy a property tax, user fee, or assessment within that district to fund the service. See, O.C.G.A. § 36-70-24(3)(B).

When construing undefined and ambiguous terms, Courts should construe the term in light of its context and look to effectuate the intent of the statute. Words must be given their plain and ordinary meaning, except for words which are terms of art or have a particular meaning in a specific context. O.C.G.A. § 1-3-1(b). Courts must seek to effectuate the intent of the legislature, O.C.G.A. § 1-3-1(a), and to give each part of the statute meaning and avoid constructions that make some language mere surplusage, Moritz v. Orkin Exterminating Co., 215 Ga. App. 255, 256-257 (1994). All parts of a statute should be harmonized and given sensible and intelligent effect, because

it is not presumed that the legislature intended to enact meaningless language. Gilbert v. Richardson, 264 Ga. 744, 747-748 (1994). Further, it is improper to interpret an isolated portion of a statute apart from the whole where to do so would fail to give effect to the entire provision. New Amsterdam Casualty Co. v. McFarley, 191 Ga. 334, 338 (1940). See also Alltel Ga. Communications Corp. v. Ga. Public Service Commission, 270 Ga. 105, 107 (1998) and Brown v. Liberty County, 271 Ga. 634 (1999).

The County contends that the second sentence applies only when all the municipalities in the county agree to jointly-fund an SDS Service which is provided to all the unincorporated area and all incorporated areas. To reach that conclusion the County construes term "county-wide" literally. The County's construction ignores the context of the sentence in which the term appears, and for the following reasons cannot be accepted.

Firstly, it is beyond debate that one of the purposes for the Act is to address funding inequities between county and cities (see O.C.G.A. § 36-70-20) in the provision of local governmental services and that the General Assembly's method to create greater funding equity is through O.C.G.A. § 36-70-24(3). Secondly, in the second sentence of O.C.G.A. § 36-70-23(3)(A), the General Assembly used the phrase "one or more municipalities" to describe with whom a county might jointly fund a "county-wide service". If it had intended for all municipalities to be included in the funding of the "county-wide" service, then it could have said "If ... *all* municipalities jointly fund a county-wide service...." Rather, the General Assembly recognized that not all municipalities in a county would agree to accept and fund all local governmental services provided by a county or by some other municipality. Thirdly, in the same sentence the General Assembly excluded unincorporated area residents, individuals and property

owners who do not receive a "county-wide" service from the burden of paying for it. Fourthly, the County's construction would render the qualifier "one or more municipalities" and the limitation on what part of the unincorporated area pays for the "county's share" mere surplusage and meaningless.

In short, when reading the word "county-wide" in the context of its sentence and subparagraph (A), it is clear that the General Assembly intended the word to include SDS Services which may range from being provided to at least a portion of the unincorporated area of a county and a single city, or include all of the incorporated area of a county and all its cities, or something in between. Thus, "county-wide" as used in the second sentence should be construed as an adjective distinguishing a service that is provided primarily for the benefit of the unincorporated areas of the county from a service that is provided to both an unincorporated area and an incorporated area. The Court finds that the General Assembly did not intend for the adjective "county-wide" to be construed as the entirety of the County, inclusive of all municipalities and all of the unincorporated area.

The County contends that it possesses long standing authority to levy taxes county-wide, inclusive of the incorporated areas of the County for county-provided services. In support of its position it relies on decisions which are not applicable as they pre-date the implementation of the Act and were not decided in light of the Act: Decatur Tax Payers League, Inc. v. Adams, 236 Ga. 871 (1976); DeKalb County v. Decatur, 247 Ga. 695 (1981); and Copeland v. State of Georgia, 268 Ga. 375 (1997).

Even if this principal was true historically, the General Assembly has restricted the County's taxation authority through its adoption of the Act. Moreover, the Georgia

Supreme Court's ruling in Decatur Tax Payers League v. Adams, Inc. acknowledges the possible need to "ameliorate tax inequities" 236 Ga. at 873. Likewise, the high Court noted in Copeland v. State of Georgia that the newly enacted Act provided "a framework within which local governments in each county can develop a service delivery system which is both efficient and responsive to the needs of its citizens." 268 Ga. at 378. Consistent with the Georgia Supreme Court's noted concerns in those two cases as well as the law's disfavor of taxation for unnecessary duplication of services (see Cobb County v. Allen, 236 Ga. 910 (1976)), the Act requires local governments to ameliorate tax inequities by expressly seeking "funding equity" for services provided and avoid the unnecessary duplication of services. See O.C.G.A. § 36-70-20.

In sum, the Court finds that the Act limits the County's taxation power within municipalities for SDS Services in the following ways:

(1) The County is without authority to levy taxes, assessments or fees on municipal residents, individuals, or property owners to fund SDS Services provided primarily for the benefit of the unincorporated area.

(2) The County is without authority to levy taxes, assessments or fees on municipal residents, individuals, or property owners whose municipality decides not to accept and jointly-fund a SDS Service.

Moreover, as this Court noted in its October 2009 Order, where the parties cannot agree on funding a mechanism to pay for the cost of SDS Services provided in the unincorporated area and/or one or more municipalities, the General Assembly requires the County to create special service districts in accordance with the Act. See O.C.G.A. § 36-70-23(3)(B). Special service districts must consist of the residents, individuals and property owners within the unincorporated area who receive a particular SDS Service and/or any municipality that desires to jointly fund the particular service.

Therefore, the Court also finds that, with the adoption of the Act, the General Assembly has expressly limited the taxation authority of the County to fund SDS Services through either (1) a mechanism agreed upon by the affected parties or (2) when no agreement is reached, the creation of special service districts in which property taxes, insurance premium taxes, assessments or user fees may be levied or imposed to fund the delivery of a particular service or services to particular areas of the County. See O.C.G.A. § 36-70-24(3) and Court Order filed October 28, 2009.

C. Threshold Requirements for a Valid Intergovernmental Agreement

The Act requires the parties reach an agreement on service delivery and the funding of same. For the agreement to be a binding intergovernmental agreement, one government must convey its legal authority or responsibility to perform a local governmental service to another government to be performed. See e.g. Ambac Indemnity Corporation v. Akridge, 262 Ga. 773 (1993) (the transfer of Berrien County's authority to provide garbage disposal services pursuant to the Supplementary Powers Clause to the Berrien County Resource Recovery Development Authority formed the legal consideration required for the formation of an intergovernmental agreement under the Intergovernmental Contracts Clause of the Georgia Constitution, Art. IX, Sec. III, Par. I.)

The mere existence of a secondary or indirect benefit to a City resulting from the County providing a particular service is not the substance of which enforceable intergovernmental agreements are made. The County has strenuously argued that the "availability" of a service or the "spill over benefit" to a neighboring jurisdiction is sufficient to hold another jurisdiction financially responsible for the County's operation costs. Simply because a city receives an indirect benefit from the County providing an

SDS Service in the unincorporated area or because the SDS service is available to the City residents is not consideration for the formation of an intergovernmental agreement nor is it sufficient to implicitly convey to the County authority to tax within a City for a SDS Service. Thus, for the County to have the enforceable right to provide a particular SDS Service within a City and likewise collect some form of payment from the taxpayers of that City, the City must convey its legal responsibility to provide and tax for such a service to the County by written agreement consistent with Art. IX, Sec. III, Par. I of the Georgia Constitution. Absent a City's written conveyance of such responsibility, the County lacks the right to provide or tax for the provision of an SDS Service. Ambac, 262 Ga. at 775-76.

D. Application of Insurance Premium Taxes to Fund SDS Services

Insurance premium taxes are one of the four sources of revenue enumerated in O.C.G.A. § 36-70-24(3)(B) on which a county may rely to fund local government services when the parties cannot agree to an alternative funding mechanism. The evidence reveals that Gwinnett County has been applying insurance premium taxes to defray the costs of the Gwinnett County Police Department. The County contends that the insurance premium taxes shall strictly be provided for service to the unincorporated area. The Cities contend that the intent of the legislature, as expressed in an amendment which was contemporary to the passage of the Service Deliver Strategy Act, demonstrates that application of insurance premium taxes is more expansive than the County's contention.

The cardinal rule of statutory construction is to determine the legislative intent, "keeping in view, at all times, the old law, the evil, and the remedy." O.C.G.A. § 1-3-1(a) and Ga. Marble Co. v. Whitlock, 260 Ga. 350, 354 (1990). The court should

consider the statutory scheme as a whole in light of existing law, give words their plain and ordinary meaning, and avoid a construction that results in some language being mere surplusage. Ellis v. Johnson, 263 Ga. 514, 515 (1993) and Slakman v. Continental Casualty Co., 277 Ga. 189, 191 (2003). It is improper to interpret an isolated portion of a statute apart from the whole where to do so would fail to give effect to the entire provision. New Amsterdam Casualty Co. v. McFarley, 191 Ga. 334, 338 (1940).

The County contends that under O.C.G.A. § 33-8-8.3, insurance premium taxes may only be expended on services which are provided "solely" to the inhabitants of the unincorporated area. The Cities disagree with this construction of section O.C.G.A. § 33-8-8.3 for two reasons. First, such a construction is contrary to the plain language of the code section, and second such a construction is contrary to the legislative history.

Code section 33-8-8.3(a)(1) provides in pertinent part:

> "(a) The proceeds from the county taxes levied for county purposes, as provided by this chapter, shall be separated from other county funds and shall be used by the county governing authorities solely for the purpose of either:
>
> (1) Funding the provision of the following services to inhabitants of the unincorporated areas of such counties directly or by intergovernmental contract as authorized by Article IX, Section III, Paragraph I of the Constitution of the State of Georgia:
>
> (A) Police protection, except such protection provided by the county sheriff;
> (B) Fire protection;
> (C) Curbside or on-site residential or commercial garbage and solid waste collection;
> (D) Curbs, sidewalks, and street lights;
> (E) *Such other services as may be provided by the county governing authority for the* ***primary*** *benefit of the inhabitants of the unincorporated area of the county...*"

O.C.G.A. § 33-8-8.3(a)(1) (emphasis added). By its plain and express terms, Section O.C.G.A. § 33-8-8.3 (a)(1) in no way prevents the County from applying insurance premium taxes to any of the services listed (A)-(D), even if the service was being provided to unincorporated area inhabitants in addition to incorporated area inhabitants by contract. There is no language therein excluding the application of County insurance premium taxes to any of the listed services just because the incorporated area may derive a benefit. To the extent subsection (E) imposes any implicit limitation on the use of the tax on the services in subparagraphs (A)-(D), it does so only in that the service must be for the primary benefit of the inhabitants of the unincorporated area. O.C.G.A. § 33-8-8.3(a)(1)(E). This section must be read in conjunction with the SDS Act as insurance premium taxes are specifically referenced as a revenue source.

The conclusions drawn from the plain language of the statute are supported also by the legislative history. "In all interpretations, the courts shall look diligently for the intention of the General Assembly, keeping in view, at all times, the old law, the evil, and the remedy." O.C.G.A. § 1-3-1(a). Turning to the old law, prior to its 1997 amendment, subparagraph (E) of section 33-8-8.3(a)(1) read as follows: "In the discretion of the governing authority of the county, such other services as may be provided by the county governing authority **solely to** the inhabitants of the unincorporated areas of the county...." O.C.G.A. § 33-8-8.3(a)(1)(E) (1989) (Emphasis added).

In 1997, the same year as the enactment of the Act, the General Assembly changed subparagraph (E) of section 33-8-8.3(a)(1) by striking "In the discretion of the governing authority of the county," and replacing "*solely for*" with "**for the primary benefit of.**" Said subparagraph now reads as follows: "Such other services as may be

provided by the county governing authority **for the primary benefit** of the inhabitants of the unincorporated areas of the county...." O.C.G.A. § 33-8-8.3(a)(1)(E) (emphasis added). Had the Legislature wanted the insurance premium tax to be exclusively used for the unincorporated area receiving that service, it could have left the "solely" language intact or added alternative language to clarify the statute's intent. The legislature did not.

In light of the plain language of the statute and its history, it is clear that the General Assembly did not intend for the insurance premium tax to be applied to the costs of services which are "solely" or exclusively for the benefit the inhabitants of the unincorporated area. Ellis, 263 Ga. at 515. Rather, the General Assembly changed the language thereby allowing for an application of insurance premium taxes to fund services which are provided primarily for the benefit of the unincorporated area and which may also provide a secondary benefit to incorporated areas. To interpret the insurance premium statute otherwise would require this Court to disregard the actions of the General Assembly and create new legislation contrary to existing law. New Amsterdam, 191 Ga. at 338. This the Court will not do.

Moreover, the Legislature expressly permits the use of insurance premium taxes to fund SDS Services under the Act. See, O.C.G.A. § 36-70-24(3)(B)

Based on the foregoing, the Court hereby concludes as follows:

(1) That O.C.G.A. § 33-8-8.3 does not mandate that the County apply its insurance premium taxes to the cost of a service which is provided solely or exclusively to the unincorporated areas of the County.

(2) That rather O.C.G.A. § 33-8-8.3 requires that the County apply its insurance premium taxes to any one of the services listed under O.C.G.A. § 33-8-8.3(a)(1) or for any other service which is for the primary benefit of the unincorporated area, even if the incorporated areas receive some secondary benefit; and

(3) That the County may apply its insurance premium taxes to fund local government services within special service districts formed pursuant to the Act.

E. Application of "Non-Enumerated Revenues" to Fund Local Governmental Services

The Court was presented with no evidence which would cause it to alter its previous Order entered on October 28, 2009 which controls the application "Non-enumerated Revenues" as described therein. Said Order remains effective against the parties.

II. Findings of Fact Regarding Local Governmental Services At Issue

Under the Act, the Court must resolve any and all issues remaining in dispute after alternative dispute resolution methods are unsuccessful. O.C.G.A. § 36-70-25.1(d)(2). "In rendering a decision, the judge shall consider the required elements of a service delivery strategy with a goal of achieving the intent of this article as specified in Code Section 36-70-20." Id.

A. Findings of General Fact

The Court makes the following findings of general facts.

1. After the formation of Gwinnett County, the Georgia General Assembly created fifteen cities and vested each city with certain powers, duties, and authorities in their respective charters. See City Charters, Trial Exhibit "PT3R-98".
2. The 1999 SDS Agreements were executed by the County and all 15 Cities. See Trial Exhibit "P-1".
3. Thirteen of the cities have adopted resolutions specifying, *inter alia*, what police-related services and functions each City will provide and which services each City authorizes the County to provide within the municipal boundaries. See Trial Exhibit "PT3R-135".
4. The Cities which did not adopt said resolutions, Lilburn and Rest Haven, as of 2000 had respective populations of 11,307 and 113, and as of 2008 had respective populations of 11,599 and 106. See Trial Exhibit "PT3R-65"
5. In 2008, approximately 150,508 (19.87%) of the total County population lived in the incorporated area compared to 606.792 (80.13%) in the unincorporated

area. See Geer and Kerlin Testimony.

6. The 2010 Census population of the County is 805,321, with estimates of the county-wide population at the time of hearings between 795,000 and 805,000 with less than 20% of the population living in the incorporated area and more than 80% living in the unincorporated area. See 2010 Census Results and Geer and Tillman Testimony.
7. The County contains an estimated 437 square miles, of which approximately 100 square miles are located within the incorporated area and 337 square miles is located in the unincorporated area. See Kerlin Testimony.
8. As of 2008, approximately 150,508 (19.87%) of the total County population lived in the incorporated area compared to 606.792 (80.13%) in the unincorporated area. Id.
9. There are approximately 15,959 acres (36.92%) of commercial and industrial acreage in the incorporated area and 27,270 acres (63.08%) in the unincorporated area of the County. Id.
10. Based on the 2009 digest, approximately 23.66% of the ad valorem tax base for the entire County is located in the incorporated area and approximately 76.43 % of the tax base is located in the unincorporated area. Id.
11. In 2009, a total of 348,000 residential housing units are located in Gwinnett County of which 63,312 housing units (18.19%) were located in the incorporated areas compared to 284,698 (81.18%) in the unincorporated area. Id.
12. There are approximately 14 (21.88%) County parks within the Cities and 50 (78.13%) in the unincorporated area. See Geer and Kerlin Testimony.
13. There are approximately 53 (32.52%) County schools in the incorporated area and 110 (67.48%) in the unincorporated area. Id.
14. Two health services facilities (66.67%) are located within the incorporated areas as compared to one health service facility (33.33%) in the unincorporated area. Id.
15. 9 (60%) libraries are located in the incorporated area compared to 6 (40%) in the unincorporated area. Id.
16. In 2008, approximately 29 sewerage pumping stations (13%) were located in the incorporated area compared to 194 (87%) located in the unincorporated area. Id.
17. There are 2 (40%) tag offices in the incorporated area compared to 3 (60%) in the unincorporated area. Id.
18. There are 2 Driver Services offices within the incorporated areas of the County. Id.
19. The 1 employment center in the County is located within an incorporated area.
20. The County fairgrounds is located in the unincorporated area. Id.
21. The Gwinnett Braves stadium is located in the unincorporated area of the County. Id.
22. The Gwinnett Justice and Administration Center is located within the incorporated area of the City of Lawrenceville. Id.
23. All 3 hospitals in the County are located within the incorporated area. Id.
24. The 3 major shopping malls in the County are all located in the

unincorporated area. Id.

25. The County has a special fund for E-911 service which collects fees from users. See Geer Testimony.
26. The E-911 service is provided to both the incorporated and unincorporated areas of the County.
27. The 800 mega hertz radio system service is utilized not only by the County Police Department but also by fire, emergency management and other public service functions. See Whitehead Testimony.
28. Chemical/Biological Hazard Disposal (CBRNE) is provided by both the County fire and police departments depending on the nature of the hazard.
29. Emergency management services is handled by both the County Fire and Police Departments.
30. The County utilizes a highly sophisticated accounting software program called "SAP". See Trial Exhibits "P-36 and P-37." See also Geer and Bovos Testimony.
31. Trial Exhibits "PT3R-32" and "PT3R-153" demonstrate in part the sophistication of the County's accounting system, which contains more that 1700 line items of revenues and expenses for different services.
32. The County is capable of segregating revenues and expenses into separate and distinct funds or accounts. See Geer and Bovos Testimony.
33. Sanitation collection is a service which the County provides primarily for the benefit of the unincorporated area. See Geer Testimony and County's Pre-Trial Stipulation.
34. Zoning services is a service which the County provides primarily for the benefit of the unincorporated area. See County's Pre-Trial Stipulation.

B. Resolutions Adopted by Cities and Funding SDS Services Not In Dispute

All Cities, except Lilburn and Rest Haven, have adopted resolutions setting forth the services they each intend to provide themselves to the exclusion of the County providing or taxing for such services within their respective jurisdictions. These resolutions also set forth those services which the respective Cities are willing to accept from the County and jointly fund with the County through the formation of special service and tax districts. See Trial Exhibit "PT3R-135". Lilburn and Petitioner have reached a settlement. Rest Haven, having fewer than 500 residents, is not involved in the sanctions of O.C.G.A. § 36-70-27(a).

The Court notes that the resolutions contain services which are not local governmental services or SDS Services as defined under the Act and thus not subject to the Act or this Final Order. Furthermore, the Court notes that all the resolutions contain severability clauses. Therefore, the Court finds that only the following services identified in the resolutions are SDS Services subject to the Act and this Final Order:

1. The Following Police Services and Functions:

    a. Accident Investigation
    b. Alcohol & Vice
    c. Asset Forfeitures
    d. Aviation
    e. Bomb Disposal (EOD)
    f. Commercial Vehicle Enforcement
    g. Crime Analysis
    h. Crime Prevention
    i. Crime Scene Investigation
    j. Crime Suppression
    k. Criminal Intelligence Analysis
    l. Crossing Guards
    m. DUI Task Force
    n. Field Intelligence
    o. Gang Unit
    p. Highway Interdiction
    q. Joint Terrorism Task Force
    r. K-9 Teams
    s. Motor Unit
    t. Narcotics
    u. Park Police
    v. Persons/Property Investigations
    w. Property / Evidence
    x. Red Light Camera Enforcement
    y. Scene Investigation
    z. SWAT
    aa. General Law Enforcement Administration
    bb. Technical Support
    cc. Uniform Police Patrol

dd. Prosecution of Traffic Violations Occurring within any City

2. Fire/Emergency Medical Services (EMS)
3. Zoning, Development, Licensing and Permitting
4. Code Enforcement
5. Solid Waste
6. Other Services:

a. Animal Welfare
b. Chemical/Biological Hazard Disposal CBRNE)
c. Corrections
d. Elections (State, County or Federal elections)
e. Emergency Management (EM)
f. Geographic Information Systems
g. Graffiti Eradication
h. Health and Human Services
i. Indigent Defense
j. Indigent Medical Care
k. Inmate Medical Care
l. Library
m. Long Range Comprehensive Planning
n. Medical Examiner
o. Mental Health
p. Parks and Recreation
q. Pauper Burial
r. Tax Assessment
s. Tourism Promotion
t. Transit System
u. 800 MHz Radio
v. 9-1-1

From the above list and based upon the finding of general facts, the Court orders that the SDS Services under the topic number 6 entitled "Other Services" be funded through the County's formation of a special service district consisting of all incorporated and unincorporated areas of Gwinnett County and in accordance with O.C.G.A. 36-70-24(3)(B) and this Court's October 28, 2010 Order -- the County shall, after the application of any revenues derived from the provision of the specified services, assess

and apply property taxes, insurance premium taxes, assessments or user fees within said special service district. The provision and funding of all the other SDS Services (those under topic numbers 1-6) is discussed in the following subsections of this Final Order.

C. Police Services

Findings of Fact

The Court makes the following findings of facts with regard to Police Services. (For purposes of this Final Order "Police Service" shall mean those police services/functions identified under Section II.B.1 of this Final Order.)

1. The Cities of Auburn, Braselton, Duluth, Lilburn, Lawrenceville, Loganville, Norcross, Snellville, and Suwanee provide police services within their respective jurisdictions ("Police Cities"). See Walters and Whitehead Testimony.
2. The County provides police services to the Cities of Berkeley Lake, Buford, Dacula, Grayson, Rest Haven, and Sugar Hill ("Non-Police Cities"). See Walters and Whitehead Testimony.
3. Each of the Respondent Cities is empowered under their Charters to exercise police powers and provide police services for the benefit of their citizens. See Exhibit "PT3R-98"[5] and Whitehead Testimony.
4. Each City has the power to enforce its ordinances through a municipal court, City marshal, or code enforcement board. See Trial Exhibit "PT3R-98"[6] and Whitehead Testimony.
5. The nine Police Cities provide necessary law enforcement services directly or by intergovernmental agreement. See Whitehead Testimony and Trial

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[5] City of Auburn Charter Sections 1.12, 1.13(i) and 1.13(x); City of Berkeley Lake Charter Sections 1.12(a), 1.12(b)(9) and 1.12(b)(24); Town of Braselton Charter Sections 1.12(a) and 1.12(b); City of Buford Charter Sections 1.12(a), 1.12(b)(9) and 1.12(b)(24); City of Dacula Charter Sections 1.12 and 1.13; City of Duluth Charter Sections 1.12 and 1.13; City of Grayson Charter Sections 12 and 13; City of Lawrenceville Charter Sections 1.12, 1.13(9) and 1.13(24); City of Lilburn Charter Sections 1.12 and 1.13; City of Loganville Charter Sections .1.12, 1.13(16), 1.13(20) and 1.13(36); City of Norcross Charter Sections 1.13, 1.14(9) and 1.14(25); City of Snellville Charter Sections 1.12, 1.13(10) and 1.13(26); City of Sugar Hill Charter Sections 1.12, 1.13(10) and 1.13(25); and City of Suwanee Charter Sections 1.12 and 1.13.

[6] City of Auburn Municipal Code Sections 4.10 and 4.13; City of Berkeley Municipal Code Sections 4.10, 4.13; City of Braselton Municipal Code Sections 4.10 and 4.13; City of Buford Municipal Code Sections 5.10 and 5.13; City of Dacula Municipal Code Sections 4.10 and 4.13; City of Duluth Municipal Code Sections 4.10 and 4.13; City of Grayson Municipal Code Section 22-31; City of Lawrenceville Municipal Code Sections 4.10 and 4.13; City of Lilburn Municipal Code Sections 4.10 and 4.13; City of Loganville Municipal Code Sections 4.10 and 4.13; City of Norcross Municipal Code Sections 4.10 and 4.13; City of Snellville Municipal Code Sections 4.10 and 4.13; City of Sugar Hill Municipal Code Section 4.10 and 4.13; City of Suwanee Municipal Code Sections 4.10 and 4.13.

Exhibits "PT3R-66 and PT3R-67".

6. Thirteen of the cities have adopted resolutions specifying, *inter alia*, what police-related services and functions each City will provide and which services each City authorizes the County to provide within the municipal boundaries. See Trial Exhibit "PT3R-135".
7. The Police Cities, except Lilburn, have expressly stated the desire of each City to preclude the County from providing and taxing for Police Services within their respective jurisdictions. See Trial Exhibit "PT3R-135"
8. The Gwinnett County Police Department, ("GCPD") does not regularly provide uniform patrol services within the Police Cities. See Whitehead Testimony.
9. If a 911 call originates from inside the geographic boundaries of a Police City, the call is transferred to that City's police department, unless the caller specifically request County police subject to the Intergovernmental Agreement between the Petitioner and the City of Lilburn. See Walters Testimony.
10. The Computer Aided Dispatch ("CAD") reports are the most accurate and reliable record of County police activities maintained by the Gwinnett County Police Department ("GCPD"). See Walters and Savage Testimony.
11. The 2009 CAD reports reflect 66,100 activities (9.58%) in the incorporated areas and 623,646 activities (90.42%) in the unincorporated area. See Whitehead Testimony. See Whitehead Testimony.
12. The 2009 CAD reports reflect 19,179 activities (2.78%) in the Police Cities. Id.
13. The CAD reports for 2009 reflect 46,921 activities (6.8%) in the Non-Police Cities. Id.
14. The CAD reports for 2009 reflect 670,567 activities (97.22%) in the Non-Police Cities and unincorporated areas. Id.
15. There is a substantially higher demand for Gwinnett County police services from the unincorporated area of Gwinnett County than the incorporated areas. See Whitehead Testimony.
16. GCPD does not set or schedule patrol routes for the purposes of crime prevention. See Walters Testimony.
17. Preventative patrols are patrols done routinely in residential and commercial subdivisions to provide an ongoing police presence to deter crime and the uniform division should spend approximately one third of their time providing preventative patrol. Id.
18. The Police Cities' Police Departments provide preventative patrol as a routine part of their police functions. Id.
19. GCPD does not provide preventative patrols but rather responds to calls for service or initiates their own service calls based upon observations of the field. Id.
20. Of the 6 County police stations, only 1 (16.67%) is located within or adjacent to an incorporated area whereas 5 (83.33%) are located within the unincorporated area. Id.
21. The recommended national average for response times is 4 minutes to respond

to an emergency call and 7 minutes to respond to a non-emergency call. See Whitehead Testimony.

22. GCPD has a response time of approximately 7-9 minutes for emergency police calls and 15-20 minutes for non-emergency calls. See Walters, Savage and Whitehead Testimony.
23. The Police Cities' response time averages 3 minutes and 10 seconds for emergency calls and 5 minutes 40 seconds for non-emergency calls. See Whitehead Testimony.
24. GCPD designates approximately 450 sworn officers to the uniform patrol division of Gwinnett County. See Walters Testimony.
25. The County ratio of sworn officers to population is approximately 0.98 sworn officers per 1,000 residents of Gwinnett County. See Trial Exhibit "PT3R-8" at page 13 as well as Walters and Whitehead Testimony.
26. A ratio of 0.98 is below Gwinnett County's 2030 Unified Plan target and significantly lower than other metro Atlanta police departments as well as "peer" police departments identified by the County. Id.
27. The average sworn officer ratio for the Police Cities is approximately 2.5 sworn officers per 1,000 residents of the Police Cities. See Whitehead Testimony.
28. The County should have approximately 2.5 sworn officers per 1,000 in order to adequately provide police services to all residents of Gwinnett County. Id.
29. GCPD would need to at least double its current patrol force in order to provide adequate patrol services just to the unincorporated area of Gwinnett County. Id.
30. GCPD department is understaffed to adequately serve just the unincorporated area. Id.
31. GCPD does not report crime statistics to the Georgia Bureau of Investigation ("GBI") on behalf of any of the cities with police departments; each City Police Department reports its own crime statistics to the GBI. Id.
32. The County has a special fund for E-911 service which collects fees from users. See Geer Testimony. T
33. The 800 mega hertz radio system service is utilized not only by the County Police Department but also for fire, emergency management and other public service functions. See Whitehead Testimony.
34. Some Police Cities own or control frequencies used to make up the 800 megahertz radio system utilized by the County. Id.
35. The GCPD provides animal welfare/control services within the incorporated areas of Gwinnett County by City ordinances which expressly authorize enforcement by the County within the jurisdictional boundaries of those receiving municipalities. See Walters, Savage and Whitehead Testimony.
36. Chemical/Biological Hazard Disposal (CBRNE) is provided by both the County fire and police departments depending on the nature of the hazard.
37. Gwinnett County levies a property tax paid by taxpayers in both the incorporated, including the Police Cities, and unincorporated area to pay in part for the cost of the GCPD. See Geer Testimony.
38. The taxpayers in the Police Cities pay city taxes to pay the cost of each City

police department. Id.

39. The County does not pay any money to the Cities to fund the provision of police services provided by the Police Cities. Id.
40. Municipal code violations are enforced in the Cities' Municipal Courts. See Whitehead Testimony.
41. Violations of the Uniform Act Regulating Traffic on Highways which occur in the Police Cities are enforced in the Municipal Courts of the respective Police Cities. See Walters and Whitehead Testimony.
42. Violations of the Uniform Act Regulating Traffic on Highways which occur in the Non-Police Cities and the unincorporated area are enforced in the Recorder's Court of Gwinnett County. See Walters and Whitehead Testimony.
43. The Recorder's Court of Gwinnett County enforces the County codes.
44. In 2009 the Recorder's Court processed in excess of 157,410 code and traffic violations and generated in excess of $6.5 Million above the cost of the operation of the Court. See Trial Exhibit "PT3R-32".

Analysis of Police Services

In addition to the foregoing facts, as a matter of law the Court finds that the County's jurisdictional authority to enforce state law within the Cities is permissive; a discretionary authority granted by general law. See e.g. O.C.G.A. § 36-8-5; O.C.G.A. § 15-16-13. A city's police powers and service may not be displaced by another local government unless otherwise provided by the General Assembly. See e.g. State v. Gehris, 242 Ga. App. 384 (2000) (Doraville police officers authorized to patrol portion of unincorporated DeKalb did not relinquish authority over defendant or waive right to investigate by contacting DeKalb police officer for assistance). The County cannot impose police protection services absent a written agreement, a local act or general law which displaces the Cities' right to provide police protection. See e.g., Weldon v. State, 291 Ga. App. 309 (2008); Kelley v. City of Griffin, 257 Ga. 407 (1987); Coweta County v. City of Newnan, 253 Ga. 457 (1984); Macon County v. City of Oglethorpe, 229 Ga. 687 (1972). If the County lacks authority to provide police services within a City, then it

follows that the County does not have the authority to tax or charge for such a service within the City. Peacock v. Georgia Municipal Association, Inc., 247 Ga. 740 (1981).

Notwithstanding any "jurisdiction" the Gwinnett County Police Department may share with these municipal police departments the power to enforce state law, the County has no legal authority to enforce municipal laws or provide police protection services within any of these Cities absent an agreement.[7] Presently, the County has SDS agreements with only six Cities to provide police services on their behalf. See 1999 SDS and O.C.G.A. § 36-70-28(b).

Finally, the Court acknowledges that the County appears to have very comprehensive police department, but the nature and cost of providing County police services and to whom are decisions made by the Board of Commissioners. In making those decisions, the Board of Commissioners should take into account the service area and tax base subject to the Board's limited authority. Likewise, the decision of each City to provide or contract for police services and the nature and cost of such service is a decision of the respective City Councils. In either case, "[i]f the electors of [their respective] political subdivision disagree with the position taken by their elected officials, the remedy is the ballot box." Peacock, 247 Ga. at 743. Thus, if the taxpayers of the unincorporated area desire a reduction or enhancement of County police services, then they may vote their conscious. Similarly, if the taxpayers in each City desire a change in the policing of their City, they too may vote for that change.

Final Determinations on Police Services

Based on the foregoing findings of general and specific facts and law, the Court

[7] Gwinnett County Police department has only such authority as that bestowed upon it by the General Assembly. The General Assembly authorizes County Police to exercise only those powers and responsibility as that of the County Sheriff. O.C.G.A. § 36-8-5; O.C.G.A. § 15-16-10.

makes the following determinations:

(1) Gwinnett County provides all Police Services including recorders court and its clerk primarily for the benefit of the unincorporated area.

(2) Under the Supplementary Powers Clause and General Law, the County is not authorized to provide Police Services to the any Cities absent a written agreement.

Final Order on Police Services

Based upon the final determinations, the Court ORDERS the following:

(1) Except as provided in Paragraph (2) below, the County is not authorized to provide Police Services or levy or impose a tax, assessment or fee for Police Services within any City or seek any remuneration from any City absent a written agreement for the provision of Police Services. This provision is not intended to restrict the jurisdiction of the GCPD to exercise its discretionary police power as provided under general law.

(2) The County shall form a special service district consisting of the unincorporated area of the County and the Non-Police Cities in which the County shall provide and the Non-Police Cities shall jointly-fund and receive County-provided Police Services and recorder's court and clerk services. This special service district shall be funded in accordance with O.C.G.A. 36-70-24(3)(B) and this Court's October 28, 2010 Order -- the County shall, after the application of any revenues derived from the provision of the services, assess and apply property taxes, insurance premium taxes, assessments or user fees within the special service district.

(3) The County is not authorized to levy or impose any tax, assessment or fee for Police Services within the Police Cities.

(4) When after the term of any jointly funded County provided Police Services and after reasonable notice thereof a Non-Police City decides to no longer jointly fund the County-provided Police Services, then said City shall be removed from the special service district.

(5) When after reasonable notice a Police City decides to jointly-fund county-provided Police Services and the County by Intergovernment Agreement agrees to provide same, then said City shall be included within the special service district.

D. Fire and Emergency Medical Services ("EMS")

Findings of Fact Regarding Fire and EMS: Agreements on Fire Protection Services

1. Each of the Respondent Cities is empowered under their Charters to provide fire protection powers for the benefit of their citizens. See Exhibit "PT3R-98".[8]
2. Beginning in the early 1970's, 13 of the 15 cities entered into fire protection agreements and resolutions with the County. Said agreements required the formation of a fire district and were subsequently incorporated by reference into the 1999 SDS Agreement. See Exhibit "PT3R-114".
3. The 1999 SDS expressly stated that Loganville had its own fire department and would be excluded from the fire/emergency management special service and tax district. See Trial Exhibit "P-1".
4. Following the 1999 SDS, the County levied a special fire district tax for the entire County except for Loganville to operate and maintain the department of fire and emergency services. See Geer Testimony.
5. In 2004 the County levied a fire tax of 1.87 mils for operation of the fire district, which excluded the City of Loganville. See Geer Testimony.
6. In 2005 the County levied an ad valorem tax on property in the City of Loganville without giving notice to the City of Loganville or its taxpayers or holding the required public hearings on the property tax increase. Id.
7. In 2005 the County levied an ad valorem tax to in part pay for fire and EMS services on property in the City of Loganville without an amendment to the SDS Agreement of 1999. Id.
8. In 2005 the fire district tax was rolled into the general fund tax levy and thus levied on all property taxpayers of Gwinnett County including Loganville without proper notice or holding the required number of public hearings. Id.
9. In 2005 the County expended most of the fire fund for fire and emergency services, but rolled the fund balance into the general fund in 2005 or 2006. Id.
10. In 2005 and 2006, the County did not give the required notice or hold three (3) public hearings prior to increasing the millage rate for each of said years. Id.
11. By the end of 2010, there are projected to be thirty County fire stations, and approximately two thirds of the stations are located within the unincorporated area. See Meyers Testimony.
12. Approximately 34,236 (28.58%) calls for fire and emergency services were reported in the incorporated area for 2009 and 85,562 (71.42%) in the

[8] City of Auburn Charter Sections 1.12, 1.13(i) and 1.13(x); City of Berkeley Lake Charter Sections 1.12(a), 1.12(b)(9) and 1.12(b)(24); Town of Braselton Charter Sections 1.12(a) and 1.12(b); City of Buford Charter Sections 1.12(a), 1.12(b)(9) and 1.12(b)(24); City of Dacula Charter Sections 1.12 and 1.13; City of Duluth Charter Sections 1.12 and 1.13; City of Grayson Charter Sections 12 and 13; City of Lawrenceville Charter Sections 1.12, 1.13(9) and 1.13(24); City of Lilburn Charter Sections 1.12 and 1.13; City of Loganville Charter Sections .1.12, 1.13(16), 1.13(20) and 1.13(36); City of Norcross Charter Sections 1.13, 1.14(9) and 1.14(25); City of Snellville Charter Sections 1.12, 1.13(10) and 1.13(26); City of Sugar Hill Charter Sections 1.12, 1.13(10) and 1.13(25); and City of Suwanee Charter Sections 1.12 and 1.13.

unincorporated area of the County. See Kerlin and Geer Testimony.

13. The geographic boundary of the County comprises the emergency medical district designated as Region 3-4 by the state, specifically the Georgia Department of Community Health. See Meyers Testimony.
14. Gwinnett County is the only authorized provider of EMS services in the Region 3-4. Id.

Findings of Fact Regarding Fire and EMS: City of Loganville Fire Protection Services

15. Approximately two-thirds (67%) of the incorporated area of Loganville is located within Walton County, as opposed to one-third (33%) in Gwinnett County. See Roberts Testimony.
16. The City of Loganville has provided fire protection-related services since 1946. See Jones and Roberts Testimony.
17. The City operates and maintains its 3 fire stations which are all located within the City limits of Loganville; one of which is located within the Gwinnett County portion of the City of Loganville. Id.
18. The County does not operate or maintain any fire stations inside of Loganville's City Limits. Id.
19. Less than one percent of the 2009 County responses to fire/EMS calls were within the Loganville city limits. See Roberts Testimony.
20. Loganville has a mutual aid/automatic aid agreement with Walton County for fire protection services. See Jones and Roberts Testimony.
21. Gwinnett County has no mutual aid agreement for fire protection with the City of Loganville. See Meyers Testimony.
22. In 2009, Gwinnett County's fire department reported a county-wide response time of approximately 6 minutes and achieved this mark only 49% of the time in 2009. See Meyers Testimony.
23. In 2009, the County's response time within the City of Loganville located in the County was approximately 8 minutes. See Meyers Testimony.
24. The County contends that it reported to approximately six fires within the City limits of Loganville in 2009; Loganville fire also responded to each of these alarms. See Meyers and Roberts Testimony.
25. In 2009, Loganville's fire department responded to fires and medical emergencies within the City limits in approximately 4 to 5 minutes, 80% of the time. See Roberts Testimony.
26. Loganville is a state-certified fire department (so is the count). Id.
27. Efficient response times are critical to saving lives and property. Id.
28. A fire can double in size every sixty seconds. Id.
29. Human lungs burn at 117 degrees. Id.
30. In addition to burns, a common danger with fires is smoke inhalation. Id.
31. The City of Loganville is fully capable of providing fire protection and emergency management services within its City boundaries and has no need for fire protection or emergency management services from the County. See Jones and Roberts Testimony.

32. During the parties' multi-year dispute regarding SDS, the County responded a number of times in an apparent attempt to build a record of fire service calls. See Roberts Testimony.
33. The County has responded to calls within the city limits of Loganville without Loganville's knowledge and without first forwarding the emergency call to Loganville. See Roberts Testimony.
34. The County has suggested that the Chief of the Loganville fire department authorized the County Fire Department to provide fire protection services in the City of Loganville. See Meyers Testimony.
35. Gwinnett County Fire and Emergency Services Department ("Gwinnett Fire Department") has a policy to send a fire truck whether the call is in response to a fire or medical emergency. See Meyers and Roberts Testimony.
36. The Gwinnett Fire Department has continued to respond to calls within the City of Loganville even when the Loganville Fire Department has cancelled the request for response. See Meyers and Roberts Testimony.
37. By sending a fire truck even when Loganville has requested the County Fire Department not respond, the County is creating a duplication of services. See Roberts Testimony. Thus increasing costs and reducing effective and efficient delivery of services.
38. Emergency management services are handled by both the County Fire and Police Departments. See Meyers Testimony.
39. In the 2010 budget the costs for fire protection and EMS are reflected in their accounting system as one cost item. See Meyers Testimony. See also Trial Exhibit "PT3R-153".
40. The County has not historically reported fire and EMS in its budget documents.
41. It is possible to segregate such services within the County's budget and account for them separately. See Tillman Testimony.
42. The County budget defines a "fund" as "an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources together with all related liabilities, obligations, reserves and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives". See Trial Exhibits "P-36" and "P-37".
43. The expenses and revenues for fire protection, and EMS, can be isolated and funded from separate sources. See Geer and Bovos Testimony.

Analysis of Fire and EMS: Agreements on Fire Protection Services

The Fire Service Resolutions entered into between the County and the respective Cities are binding contracts on the parties and cannot be amended unless agreed to by both parties. See City of Fayetteville v. Fayette County, 171 Ga. App. 13 (1984). These Resolutions created a Fire District consisting of the unincorporated area and many of the

Cities. Under the Resolutions, the County was to equitably provide fire services within the District and fund such services through the levy of an ad valorem property tax within the District.

The County's contention that the resolutions were terminated by agreement or course of conduct lacks any factual or legal support. This assertion is contrary to Georgia law and patently inconsistent with the parties' agreements for the funding and provision of fire services as well as the express language of the 1999 SDS. There is no evidence that any of the participating Cities have taken any action which could reasonably be construed as express assent or implied acquiescence to the termination of the Fire Service Resolutions.

In 1999, the County and fourteen of the Cities entered into a SDS under which the County would continue the Fire District, providing fire protection and emergency management services to the unincorporated area and all Cities except Loganville. The 1999 SDS expressly incorporated by referenced the Fire Service Resolution. As a result, from 2000-2004 the County levied ad valorem taxes with the Fire District and deposited the revenues into the special fire fund which was separate from the County's general fund. The County used the fire fund to pay for fire and emergency management services within the Fire District.

In 2005, the County unilaterally dissolved the Fire District and eliminated the fire fund and began levying a higher general fund property tax on property owners in the Gwinnett County portion of the City of Loganville to fund the County Fire Department. The property tax increase in Loganville was done without proper notice or the holding of the required number of public hearings as required by the Taxpayers Bill of Rights,

O.C.G.A. §§ 36-81-5 and 48-5-32. These actions constitute a breach the aforementioned agreements. Moreover, such actions create an unnecessary duplication of services and funding inequity in violation of the Act and the principles stated in Cobb County v. Allen, 236 Ga. 910, 911 (1976).

In short, the County has an ongoing contractual obligation to provide fire services (exclusive of emergency medical services) to the Cities except Loganville in accordance with the terms of the Fire Service Resolutions and the 1999 SDS. Unless the County and Cities agree to a different funding mechanism, or upon proper Order, Gwinnett County must fund fire services (exclusive of ambulance service) with all revenues derived from providing said service supplemented by ad valorem property taxes, insurance premium taxes, assessments, or user fees derived from a single special service district consisting of the unincorporated areas of Gwinnett County to receive said service and all Cities which agree to accept said service. See Court's Order entered on October 28, 2009; O.C.G.A. § 36-70-24. Any tax, assessment, or user fees levied within the single special service district must be uniform and the service provided equitably. Id. The Court Orders creation of such special service district.

Analysis of Fire and EMS: City of Loganville Fire Protection Services

The Georgia Supreme Court has ruled that governments are authorized by the Supplementary Powers Clause of the Georgia Constitution to take whatever reasonable steps are necessary to provide fire protection for their jurisdiction. Georgia Association of American Institute of Architects v. Gwinnett County, 238 Ga. 277, 280 (1977). The "operation and maintenance of a fire department by a municipal corporation is a governmental function." Banks v. City of Albany, 83 Ga. App. 640, 642 (1951). This

includes entering into service agreements with private vendors or other local governments. Smith v. Board of Commissioners, 244 Ga. 133 (1979).

Pursuant to the Supplementary Powers Clause of the Georgia Constitution unless otherwise provided by law, the County may not exercise any power of fire protection or provide fire protection services within any City of the County without intergovernmental agreements with each City. Ga. Const., Article IX, Section II, Paragraph III. Fire protection is a power reserved to each local government, the exercise of which may not be usurped or displaced by a competing government absent an agreement or general law. See City of Decatur v. DeKalb County, 256 Ga. App. 46, 48 (2002) (municipalities have statutory authority to regulate building activities of counties within city limits) and Walker v. Warner Robins, 262 Ga. 551 (1992) (city authorized by Supplementary Powers Clause and charter to exercise powers related to construction and maintenance of flood control storm sewage system). Any fire department of a county, city, political subdivision or chartered fire department is authorized to, *inter alia*, protect life and property against fire, enforce the laws, ordinances and regulations with regard to fire prevention, and conduct emergency medical services and rescue assistance within their respective jurisdiction. O.C.G.A. § 25-3-1.

Consistent with the Supplementary Powers Clause, O.C.G.A. § 25-3-5 provides that no county fire department shall operate within a city "except by written or oral contract with the municipality". O.C.G.A. § 25-3-5. Additionally, local governments may provide emergency assistance pursuant to O.C.G.A. § 25-5-3 or enter into formal mutual aid pacts pursuant to O.C.G.A. § 25-6-1. However, O.C.G.A. § 25-5-3 addresses *ad hoc* emergency support and says nothing about a power to levy a tax or impose a fee.

The City of Loganville has demonstrated that it is fully capable of providing fire protection services within its incorporated area and has no need for fire protection from the County. See Trial Exhibit "PT3R-135". Both the Act (O.C.G.A. 36-70-20) and the general law disfavor the unnecessary duplication of services.

> The law does not favor the duplication of municipal services by a county within a municipality. See [the 1972 Supplementary Powers Clause] which requires that a county have a contract to provide services within the municipality. Common reason abhors the unnecessary of duplication of governmental services. The law, as well as the public, seeks to avoid taxation for the unnecessary duplication of governmental services. A tax law will not be construed to tax the same property twice, unless such a conclusion is constrained by any express provisions of the law or by necessary implication.

Cobb County v. Allen, 236 Ga. 910, 911 (1976)(internal citations omitted).

The evidence shows that Gwinnett County provides back up to the Loganville fire department. Furthermore, it appears that during the parties' three-year dispute regarding SDS, the County has attempted to build a record of fire service calls. However, the records show that the County has responded to calls within the city limits of Loganville without Loganville's knowledge and without first forwarding the emergency call to Loganville. Furthermore, Loganville has demonstrated that for the miniscule number of fires to which the County responded in 2009, Loganville also responded. The County cannot justify taxing Loganville citizens for fire services the city is legally authorized and provides and funds on its own. Absent evidence of an express agreement entered into by a person or entity to bind the City of Loganville, the County's argument that it is entitled to provide services and tax Loganville accordingly must fail as a matter of law. Griffin Bros. v. Town of Alto, 280 Ga. App. 176 (2006).

Applying the Allen decision to the facts at bar, Loganville, like all of the

Respondent Cities, is empowered to operate its own fire department pursuant to the Supplementary Powers Clause and O.C.G.A. § 25-3-1 should the City choose. To the extent the County attempts to provide fire protection services to the City of Loganville without an agreement on service delivery, said conduct constitutes a duplication of services contrary to the intent of the Service Delivery Act. Moreover, to the extent the County continues to levy a tax in Loganville for County fire protection services, such levy creates a funding and tax inequity which is also contrary to the Act and the law. See Cobb County v. Allen, *supra*.

The County has suggested that the Loganville fire department authorized the County to service incorporated areas of Loganville. The County has failed to produce any agreement, pact, contract, resolution or other document binding the City of Loganville to accept fire protections services. Nor did it produce evidence to prove such binding agreement. Any discussion between fire departments does not rise to the level of an intergovernmental agreement and provides absolutely no authority for the County to levy a tax or impose a fee within any City (such as Loganville) which has not agreed through its governing body to receive fire services.[9]

The County also contends that the costs for fire protection and emergency management are reflected in its accounting system as one cost item. However, the record

[9] Georgia law makes clear that a city shall not be estopped by *ultra vires* acts by one who is not authorized to bind the city. See Cole v. Atlanta, 195 Ga. App. 67 (1990) (insufficient evidence of valid contract between city and golf professionals). Third parties act at their peril if they do not first determine the scope of authority of any person or entity associated with a local government. Warner Robins v. Rushing, 259 Ga. 348 (1989) (mayor had no authority to lower water and sewer rates); Atlanta v. Bull, 161 Ga. App. 648 (1982) (contract for court reporting services not properly renewed by city). As a local government, the County is on notice that contracts must be agreed to, or at least ratified by the responsible governing body. Malcom v. Webb, 211 Ga. 449 (1955) (as fiduciaries over fiscal affairs of the county, commissioners required to enter written contracts into official minutes); Wiley v. Columbus, 109 Ga. 295 (1899) (no evidence that contract was valid under charter powers and therefore could not bind city). Accord Griffin Bros. v. Town of Alto, 280 Ga. App. 176 (2006) ("because the Mayor lacked authority to unilaterally bind the Town to a contract with Griffin, any contract asserted by Griffin was unauthorized.").

demonstrates that the County has not historically reported fire and emergency management together in its budget documents. County staff acknowledged an expense like fire or emergency services could be isolated and applied as a separate levy. The County's expert, Harrison Tillman, also testified it was possible to segregate services within the County's budget and track each separately. The County's budget documents reveal that the County understands how to segregate revenues into separate and distinct funds. The County budget defines a "fund" as "an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources together with all related liabilities, obligations, reserves and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives". Furthermore, Tillman acknowledged that other jurisdictions already segregate fire from emergency medical services. Thus, it is clear that the County has blended fire and emergency services for its own convenience and despite its resistance, there is no evidence the County could not alter its current budget and accounting systems if ordered to do so. Therefore, the Court finds no legal requirement or logistical necessity for the County to continue to levy a tax or impose a fee for fire protection services within the City of Loganville.

As matter of law that there is no applicable general or local law which authorizes the County to provide fire protection services within any of the Respective Cities absent an agreement or pursuant to a request for emergency assistance. Because the County has no agreement with Loganville, and because Loganville retains the right under the Supplementary Powers Clause and general law to provide fire protection services and does in fact provide such services, the County is not authorized to provide fire protection

services and may not collect any tax or fees for same.

Final Determinations Regarding Fire and EMS

Based on the foregoing findings of general and specific facts and law, the Court makes the following determinations regarding fire protection services:

(1) Under the Supplementary Powers Clause, the County is not authorized to provide fire protection services to the any Cities absent a written agreement.

(2) No law authorizes the County to unilaterally provide fire protection services within any of the Cities.

(3) Each Fire Service Resolution is a binding intergovernmental agreement which remains in full force and effect.

(4) The 1999 SDS exempts the City of Loganville from County-provided fire/emergency management services.

(5) The City of Loganville and the County have no intergovernmental agreement authorizing the County to provide fire/emergency management services within Loganville.

(6) The County is not authorized to levy or impose a tax, assessment or fee within the City of Loganville or seek any remuneration from the City of Loganville absent a written agreement for the provision of specific services.

(7) Emergency medical services will be provided throughout the County including within that area of the City of Loganville located within Gwinnett County until such time as the appropriate state body removes that area of Loganville from the Gwinnett County EMS zone.

Order Regarding Fire and EMS

Based on the forgoing determinations, the Court hereby ORDERS the following:

(1) In accordance with the Fire Service Resolutions, 1999 SDS and the Act, the County shall recreate the special fire service district ("Fire Service District") consisting of the unincorporated area of Gwinnett County and all incorporated areas of Gwinnett County except for the City of Loganville, and provide fire protection services within the Fire Service District.

(2) Said services provided within the Fire Service District shall be funded in accordance with O.C.G.A. 36-70-24(3)(B) and this Court's October 28, 2010 Order -- the County shall, after the application of any revenues derived from the provision of fire and emergency management services, may assess and apply property taxes, insurance premium taxes, assessments or user fees within the special service district.

(3) As long as all of Gwinnett County remains in one EMS zone as established by the State of Georgia, EMS shall be provided by Gwinnett County and funded through a special service district consisting of all unincorporated and incorporated areas of the County, including that area of City of Loganville located in Gwinnett County. Said service shall be funded in accordance with O.C.G.A. 36-70-24(3)(B) and this Court's October 28, 2010 Order -- the County shall, after the application of any revenues derived from the provision of fire and emergency management services, assess and apply property taxes, insurance premium taxes, assessments or user fees within the special service district.

E. Transportation Services

Findings of Fact Regarding Transportation Services

1. The Georgia Department of Transportation ("GDOT") classifies three systems of roads: state roads, county roads and municipal streets. See Testimony of B. Allen, Kerlin and Geer.
2. GDOT further breaks down said road systems as follows: Urbanized Interstate, Urbanized Freeway, Urbanized Principal Arterial, Urbanized Minor Arterial, Urbanized Collector, and Urbanized Local. See Trial Exhibits "PT3R-101-102".
3. GDOT publishes a report (445) each year which provides unbiased information concerning said Road Systems. See Trial Exhibit "PT3R-101-102".
4. In 2009, approximately 1,000 (15.54%) lane miles [0 Urbanized Interstate, 0 Urbanized Freeway, 0 Urbanized Principal Arterial, 11 Urbanized Minor Arterial, 6 Urbanized Collector, 983 Urbanized Local] were located in the municipal street system. See Kerlin and Geer Testimony. See also Trial Exhibits "PT3R-101-102".
5. In 2009, approximately 5,433 lane miles (84.46%) [0 Urbanized Interstate, 28 Urbanized Freeway, 149 Urbanized Principal Arterial, 286 Urbanized Minor Arterial, 464 Urbanized Collector, 4,506 Urbanized Local] were located in the County road system. Id.
6. In 2009, approximately 495 road miles (16.31%) [0.00 Urbanized Interstate, 0.00 Urbanized Freeway, 0.00 Urbanized Principal Arterial, 5.23 Urbanized Minor Arterial, 2.95 Urbanized Collector, 487.15 Urbanized Local] were located in the municipal street system. Id.

7. In 2009, approximately 2,541 road miles (83.69%) [0.00 Urbanized Interstate, 7.08 Urbanized Freeway, 34.80 Urbanized Principal Arterial, 96.38 Urbanized Minor Arterial, 185.83 Urbanized Collector, 2,217.36 Urbanized Local] were located in the incorporated area.
8. There are approximately 824,000 road vehicle miles traveled (8.42%) in the incorporated area as compared to 8,964,000 road vehicle miles traveled (91.58%) in the unincorporated area. See Kerlin and Geer Testimony.
9. There are approximately 332 traffic signals (33.13%) in the incorporated area compared to 670 (66.87%) in the unincorporated area. Id.
10. Local roads as defined by GDOT are primarily residential subdivision roads. See Kerlin and Geer Testimony. See also Trial Exhibit "PT3R-101-102" and Trial Exhibits "P-5" and "P-7".
11. The estimated employment density in the 2030 Transportation Plan anticipates a higher employment density in the incorporated area. See Kerlin Testimony.
12. The 3 Park and Ride locations are all located in the unincorporated area. See Kerlin and Geer Testimony.
13. The bus transit system within Gwinnett County is available to all residents. See Kerlin and Geer Testimony.
14. The bus transit system serves the unincorporated area of the County and only four Cities: Duluth, Lawrenceville, Lilburn. and Norcross. See Trial Exhibit "P-7" and "P-8".
15. The operation and maintenance of the County road system and bus transit system is paid from the County's general fund. See B. Allen, Tillman and Geer Testimony. See also Trial Exhibit "PT3R-153".
16. The operation and maintenance of the City's road system is paid from each City's general fund. See Geer Testimony.
17. County taxpayers do not contribute to the maintenance and operation of municipal streets. Id.
18. City taxpayers contribute to the maintenance and operation of County road system and bus transit system. See B. Allen, Kerlin and Geer Testimony.

Analysis of Transportation Services

State law places public roads into one of the following three systems:

> For purposes of jurisdiction and administration, the public roads of Georgia shall be divided and classified in accordance with the three types of classifications provided in this Code section:
>
> (1) *State highway system.* The state highway system shall consist of those public roads which on July 1, 1973, are shown by the records of the department to be "state-aid roads," those public roads thereafter designated by the department as part of the state highway system, and all of The Dwight D. Eisenhower System of

> Interstate and Defense Highways within the state [("State Highway System")];
> (2) *County road systems.* Each county road system shall consist of those public roads within that county, including county roads extending into any municipality within the county, which are shown to be part of that county road system by the department records on July 1, 1973, and any subsequent additions to such county road system made by the county [("County Road System")];
> (3) *Municipal street systems.* Each municipal street system shall consist of those public roads within the limits of that municipality which are not in any other classification under this Code section [("Municipal Street System")].

O.C.G.A. § 32-4-1. All parties agree that the State Highway System is not at issue in this case.

One of the primary purposes of the Service Delivery Strategy Act, O.C.G.A. § 36-70-20 *et seq.* is to "*ensure funding equity*" between the citizens within each local jurisdiction. It is obvious that the road and bus transit systems of Gwinnett County are available for use by all the residents and businesses located in both the incorporated and unincorporated areas of the County. They are simply available to the public. O.C.G.A. § 32-4-1 establishes the "jurisdiction" and "administration" of the roads defined therein. Said code section does not establish, create, or determine how the "funding equity" for the cost of the operation and maintained of the transportation system as required by O.C.G.A. § 36-70-20.

However, the number of miles of road, the number of cars on those roads, the number of Park and Ride locations, the placement of such and the like, do not bring the issue of funding equity to a proper focus. The municipalities are not islands within the county and the county is not a mass surrounding the municipalities. The roads, while distinct within DOT definitions, which provide partially for funding, form an organic

whole. The operations form what must be considered for the benefit of all parties as a whole.

Final Determination on Transportation Services

Based on the foregoing findings of fact, the Court determines:

(1) The County Road System is not primarily for the benefit of the unincorporated area, but is a part of a system which truly cannot be divided. It is an organic whole. The County is to create a special services district to provide for such roads.

(2) However, bus transit shall be jointly-funded between the unincorporated area which receives the service and the Cities of Duluth, Lawrenceville, Lilburn. and Norcross.

Final Order on Transportation Services

Based on the forgoing determinations, the Court hereby ORDERS the following:

(1) The County shall separate out the net cost (costs less revenues) of the bus transit system from the total net cost (costs less revenues) of the County's Transportation Department thereby leaving the total net costs of the Department's annual budget for construction, maintenance, and operation the County Road System ("Department's Road Costs").

(2) The County shall fund the cost of bus transit services through the formation of a special service district consisting of the unincorporated area of Gwinnett County receiving transit services and the Cities of Norcross, Duluth, Lawrenceville and Lilburn. This transit district shall be funded in accordance with O.C.G.A. 36-70-24(3)(B) and this Court's October 28, 2010 Order -- the County shall, after the application of any revenues derived from the provision of the service, assess and apply property taxes, insurance premium taxes, assessments or user fees within the special service district supplemented by additional revenues as required.

(3) The County shall fund the Department's Road costs from a special service district and should such be inadequate from funds of the general revenues of Gwinnett County, to include all means of county wide revenues.

E. Planning, Development, Licensing, Permitting, Zoning and Code Enforcement

Findings of Fact Regarding Planning, Development, Licensing, Permitting, Zoning and Code Enforcement Services

1. The Charters of each City authorize the Cities to provide planning, development, licensing, permitting, zoning and code enforcement services within the incorporated areas and all cities provide development and licensing services within the incorporated areas of the City. See Trial Exhibit "PT3R-98" and Testimony of Marty Allen.
2. The County and each City are authorized to adopt ordinances and regulations governing said services within their respective jurisdictions. See Allen Testimony.
3. Each of the Respondent Cities has adopted ordinances pursuant to their charters addressing planning, development, permitting, licensing, zoning and code enforcement services. Id.
4. Thirteen of the fifteen Cities expressly stated their desire to preclude the County from providing and taxing for planning, development, licensing, permitting, zoning and code enforcement services within their respective jurisdictions. See Trial Exhibit "PT3R-135"
5. The County's planning, development, licensing, permitting and zoning ordinances, as identified below, do not authorize the County to provide such services or regulate such activities within the incorporated areas of Gwinnett County, to wit:
    a. 1985 Zoning Resolution and Amendments
    b. Development Regulations and Amendments
    c. Buffer, Landscape and Tree Ordinance
    d. Property Maintenance Ordinance
    e. Floodplain Management Ordinance
    f. Illicit Discharge and Illegal Connection Ordinance and Amendment
    g. Soil Erosion and Sedimentation Control Ordinance
    h. Occupational Tax and Business Ordinance and Amendment

    See Testimony of Marty Allen.
6. The Gwinnett County Code of Ordinances, Part II: General Provisions Section 1.12, expressly provides that all code provisions, unless otherwise clearly specified, shall apply only to the unincorporated areas of the County. See Trial Exhibit "PT3R-145".
7. The County's Code of Ordinances is replete with examples where planning, development, permitting, licensing, zoning and code enforcement functions are limited to the unincorporated area.[10] See Trial Exhibits "PT3R-116-122

[10] Gwinnett County Buffer, Landscape and Tree Ordinance Section 1.1.1; Gwinnett County Development Regulations Sections 1.3 and 4.1.2; Gwinnett County Floodplain Management Ordinance Section 1.2.1(a)(1); Gwinnett County Code of Ordinances, Part II: Chapter 14: Section 14-328; Gwinnett County Code of Ordinances, Part II: Chapter 86 – Signs: Section 86-114; Gwinnett County Soil Erosion and Sedimentation Control Ordinance Section 5.2; Gwinnett County 1985 Zoning Resolution, p. 7; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-1; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-2; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-81; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-102; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-132; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-134; Gwinnett County Code of Ordinances, Part II: Chapter 18: Article VI; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-187; Gwinnett County Code of Ordinances, Part II:

and 142-145".

8. The County has also enacted ordinances addressing licensing. For example, Part I, Article III of the Gwinnett County Code of Ordinances (Related Laws) regarding business licensing and franchise expressly authorizes Gwinnett County to license and regulate businesses, levy license taxes, and grant franchises in the unincorporated areas of Gwinnett County. See Gwinnett County Code of Ordinances, Part I: Related Laws, Article III: Business Licensing, Section 1. See also Trial Exhibits "PT3R-116-122 and 142-145.
9. The above referenced County ordinances are administered through the Gwinnett County Planning and Development Department. See Testimony of Kathy Holland and Marty Allen.
10. The County's authority to regulate (a) buffer, landscape and trees; (b) vacant buildings; (c) floodplains; (d) occupational tax, franchises and business licensing; (e) illicit discharge and illegal connections; (f) signage; (h) vehicles for hire; (i) soil erosion and sedimentation; (j) zoning; and (k) development does not extend beyond the unincorporated area. See Trial Exhibits "PT3R-116-122 and 142-145 and Holland Testimony.
11. With regard to stormwater, floodplain management, and the Metropolitan River Protection Act, codified at O.C.G.A. § 12-5-440, Cities and the County regulate stream corridors and ensure land disturbing activity are in compliance with comprehensive State and local laws. The County provides this service within the unincorporated area and the Cities provide this service within the incorporated areas. See Holland and Allen Testimony.
12. The Cities work with the County for street name review; said function assists County emergency response, but the County is not authorized to name City streets or reject a proposed name. See Holland and Allen Testimony.
13. The County does not control the names of roads in the incorporated areas and cannot prevent a nomenclature duplication. Id.
14. Fire plan review is a function that assists the Gwinnett County Fire and Emergency Services Department and a fee is charged to property owners or developers for said service. Id.
15. The County does not review water/sewer projects which do not involve the County's infrastructure. Id.
16. The Planning Department reviews curb cuts applications as part of the operation of the County road system. See Allen Testimony.
17. The County Planning and Development Department administers and collects fees for the issuance of permits, licenses, and occupation tax certificates, and collects other fees and taxes including but not limited to franchise fees, financial institution fees, development impact fees, alcohol licensing fees, alcohol excise taxes, zoning fees. Id.
18. The County operates its Planning and Development Department with a combination of general fund revenues as well as revenue generated from the

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Chapter 18: Article VIII; Gwinnett County Code of Ordinances, Part II: Chapter 18: Section 18-234; Gwinnett County Code of Ordinances, Part II: Chapter 18: Sections 18-293 and 18-295; Gwinnett County Code of Ordinances, Part II: Chapter 100: Section 100-21(e).

above permitting and licensing fees and property taxes. See Allen Testimony and Trial Exhibits "PT3R-32" and "PT3R-153".

19. Taxpayers in the incorporated areas pay a property tax to subsidize the deficit for the County's operation of its Planning and Development Department. See Allen and Geer Testimony.
20. Taxpayers in the unincorporated area of Gwinnett County do not subsidize the provision of the same services within the incorporated areas of Gwinnett County. Id.
21. Much of the costs for services performed by the Planning and Development Department can be assigned to the applicant or user. Id.
22. The County concedes that it has no authority to either legally or by contract to perform zoning services within the incorporated areas in Gwinnett County. Id.
23. Zoning is provided primarily for the benefit of the unincorporated area of the County. See Allen, Holland and Geer Testimony.
24. The Cities codes are enforced in the respective City municipal courts. See Allen Testimony.
25. The County codes are enforced in the Recorder's Court of Gwinnett County. See Allen Testimony.

Analysis of Planning, Development, Licensing, Permitting, Zoning and Code Enforcement Services

The Constitution of Georgia permits the General Assembly to delegate its power to the municipalities of the State, "so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly." 1983 Ga. Const. Art. IX, Sec. II. Para. II. The General Assembly conferred home rule powers by enactment of O.C.G.A. § 36-35-3(a), which provides that "the governing authority of each municipal corporation shall have legislative power 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 the Constitution or any charter provision applicable thereto." Likewise, Paragraph III of Article IX sets out the "supplementary powers" of each county and municipality and prohibits a county from exercising its supplementary powers within the boundaries of any municipality, except by intergovernmental agreement or other general

law. 1983 Ga. Const. Art. IX, Sec. II. Para. III(b). Thus, municipalities have both Constitutional and legislative authority to create their own ordinances and provide their own services.

As a corollary to aforementioned municipal powers, counties are limited by law as to their ability to exercise powers within incorporated areas. The Georgia Constitution expressly provides that counties may by local law to levy and collect business and occupational license taxes and license fees only in the unincorporated areas of the counties. 1983 Ga. Const. Art. IX, § IV, Para. I, subsection (b)(1). The General Assembly has further provided in O.C.G.A. § 36-1-20 as follows: "[t]he governing authority of each county, for the purpose of protecting and preserving the public health, safety, and welfare, is authorized to adopt ordinances for the governing and policing of the unincorporated areas of the county."

Likewise, the Supreme Court of Georgia has held that "a county's authority to require development approval through a building permit...is restricted to development in unincorporated portions of the county." Cherokee County v. Greater Atlanta Homebuilders Assoc., Inc., 255 Ga. App. 764 (2002). The Court relied on O.C.G.A. § 36-13-1 in reaching this holding, which provides that

> the county governing authority in this state is authorized to make, adopt, amend, and repeal building, housing, electrical, plumbing, gas, and other similar codes relating to the construction, livability, sanitation, erection, equipment, alteration, repair, occupancy, or removal of buildings and structures located **outside of the corporate limits of any municipality in the county**

O.C.G.A. § 36-13-1 (emphasis added). Thus, a county may only adopt development ordinances governing the unincorporated areas of the county, and may not require persons or businesses inside the corporate limits of a municipality to comply with its

development codes.

Zoning means the "power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts." O.C.G.A. § 36-66-3(3). Thus, the zoning power is limited in accordance with the municipal home rule powers and the Supplementary Powers Clause.

Nothing in state law or Gwinnett County ordinances affords the County any jurisdiction to unilaterally provide development, permitting, licensing, planning and zoning services in the incorporated areas. Likewise, neither state law nor the County's code authorizes the County to levy a tax or impose a fee on incorporated residents, individuals or property owners. The plain language of the County's own Code of Ordinances demonstrate that the development, permitting, licensing, planning and zoning services only apply to the unincorporated areas of the County.

Although the County concedes that its zoning services are provided primarily for the benefit of the unincorporated area, the County holds fast to its argument about planning, development, permitting, licensing and code enforcement services. In support of its contentions, the County seems to suggest that the Cities enjoy a spill over effect from the County's benevolence. The County's logic is unpersuasive. To the extent the Cities (which have approximately twenty percent of the total county population compared to eighty percent in the unincorporated area) gain a secondary benefit from the County's services, the County has not offered any legal authority to bind the Cities to either receiving or paying for said services. If the County were allowed to tax the Cities for an indirect, secondary benefit, then as a matter of equity, the Cities should be able to make

the same claim for contributions to pay for municipal planning and zoning, development, permitting, licensing and code enforcement services. The evidence is clear that the substantial demand for County services related to planning, development, licensing, permitting, zoning and code enforcement services are from the unincorporated area. Furthermore, because the Cities are authorized under their Charters and state law to provide planning, development, permitting, licensing, zoning and code enforcement services in the incorporated areas, the County's argument would result in a duplication of services contrary to the intent of the Act. O.C.G.A. § 36-70-20.

The Court notes during the pendency of this lawsuit, the County redrew its budget documents and moved several revenue line items to the Planning and Development Department. Specifically, the County moved Licensing & Revenues, in the 2010 budget from the Financial Services Department to the Planning and Development Department. Licensing and Revenues include occupational taxes, alcohol taxes, and franchise fees, which are all Non-Enumerated Revenues addressed in this Court's October 28, 2009 Order. Absent an agreement between the parties, Non-Enumerated Revenues may not be used to fund those SDS Services which are provided by the County primarily for the benefit of unincorporated residents, individuals and property owners. The County cannot be permitted to arbitrarily move funding sources in order to defeat the purposes of the SDS Act and this Court's orders. The County is statutorily limited to property taxes, insurance premium taxes, assessments or user fees generated from a special service district consisting of the unincorporated area served, unless the County and affected municipalities can agree to an alternative funding mechanism. O.C.G.A. §§ 36-70-24(3)(A) and (B).

Final Determinations Regarding Planning, Development, Licensing, Permitting, Zoning and Code Enforcement Services

Based on the foregoing findings of general and specific facts and law, the Court makes the following determinations with regard to planning development, licensing permitting, zoning and code enforcement services:

(1) That the County planning, development, licensing, permitting, zoning, and code enforcement services are provided primarily for the benefit of the unincorporated area of the County.

Final Order on Planning, Development, Licensing, Permitting, Zoning and Code Enforcement Services

Based on the foregoing determinations, the Court hereby ORDERS the following:

(1) The residents, individuals and property owners of the unincorporated area of the County are required to bear the cost incurred to provide planning, development, permitting, licensing, zoning and code enforcement services by the County.

(2) The County shall fund the cost of planning, development, permitting, licensing, zoning and code enforcement services through the formation of a special service district consisting of the unincorporated area of Gwinnett County. Said district shall be funded in accordance with O.C.G.A. 36-70-24(3)(B) and this Court's October 28, 2010 Order -- the County shall, after the application of any revenues derived from the provision of the service, assess and apply property taxes, insurance premium taxes, assessments or user fees within the special service district.

E. Solid Waste

Thirteen of the fifteen Cities expressly stated their desire to preclude the County from providing and taxing for solid waste services within their respective jurisdictions. See Trial Exhibit "PT3R-135". Petitioner stipulates and the Court finds that solid waste is a service provided primarily for the benefit of the unincorporated area and which is being funded through a special service district consisting of only the unincorporated area of Gwinnett County.

F. County Administration

The Court ORDERS that cost for county administrative services be funded in accordance with O.C.G.A. 36-70-24(3)(B) and this Court's October 28, 2010 Order -- the County shall, after the application of any revenues derived from the provision of the service, assess and apply property taxes, insurance premium taxes, assessments or user fees within a county-wide special service district. This provision shall include the requirement that Recorder's Court is not provided primarily for the benefit of the unincorporated area. The jurisdiction extends throughout the geographic limits of the County. Ga. Law, 1972, p. 3125, § 2.

G. Water and Sewer Services

Although the Service Delivery Act, O.C.G.A. § 36-70-20 et seq. requires local governments to engage in a process to reach service delivery strategy agreements, it does not affect the threshold question of whether, and by what method, the city may extend a water line owned by the county in an annex area. See Cobb County v. City of Smyrna, 270 Ga. App. 471, 474 (2004). Thus, other than the regulating the fees for the provision of water and sewer services in accordance with O.C.G.A. 36-70-24(2) & (4), the Court finds that the Act does not apply to county or municipal water and sewer services. Moreover, all of the Cities reserve the right to provide water services and sewer services within their respective jurisdictional boundaries. See Trial Exhibit "PT3R-135". The Cities reserve the right to serve or begin to serve customers outside of the Cities' geographic area as authorized by law. Id. Therefore, the Cities and Gwinnett County have concurrent power conferred by the Georgia Constitution (Art. IX, § II, Para. III(a)(7)

(1983)) and the General Assembly to provide water and sewer service throughout all of Gwinnett County.

H. Other Utilities and Enterprise Funds

The County contends that if the Court orders special district be formed, then the Court should also interpret the Act to authorize the formation of special district for electric and natural gas utility services provided by municipalities where such municipalities profit from the provision of such commodities to unincorporated area inhabitants. Notwithstanding the County's argument, the Act does not apply to municipal electric and natural gas utilities because the plain language of the statute does not reference its applicability to natural gas and electricity. Ellis v. Johnson, 263 Ga. 514, 515 (1993). Those utilities are governed by other regulatory schemes for gas and electric utilities. See O.C.G.A. § 46-2-20 *et seq.*; Ga. Rule 515-3-1-.08; O.C.G.A. § 46-3-1, *et seq.* (Georgia Territorial Electric Service Act).

Enterprise funds are generated from user fees associated with municipalities providing utility services such as electricity and natural gas. See O.C.G.A. § 36-81-2(7). Municipalities have broad discretion in determining how to use enterprise funds. See Georgia Regulation 110-4-3-.02(o). Enterprise funds are not assessed as a result of the formation of a special service district and therefore are not to be scheduled with the enumerated revenues under O.C.G.A. § 36-70-24(3)(B).

Based on the foregoing the Court finds as that the Act does not apply to natural gas and electrical utilities provided by governmental entities.

III. Additional Orders: Effective Date and Term

It is further ordered as follows:

a. That on or before November 1, 2011 the Board of Commissioners of Gwinnett County shall form each service and tax district set forth in this Order and provide a written explanation thereof to the Respondents.

b. That on or before November 1, 2011 the Board of Commissioners shall establish accounting procedures for the accounting of revenues and expenses for each of the respective services set forth in this Order and provide a written explanation thereof to each Respondent City.

c. On or before November 21, 2011 Respondent Cities shall file with the County Commissioners any objections that they may have to the documents required by paragraphs (a) and (b) above.

d. The parties shall meet on or before December 7, 2011, and resolve any differences they may have.

e. The Board of Commissioners of Gwinnett County shall formulate a proposed budget for the year 2012 and each year thereafter which budget shall comply fully with the terms and conditions of this Order.

f. The Board of Commissioners of Gwinnett County shall pay for the services provided herein from the source of funds as set forth herein.

g. This Order shall remain in full force and effect until revised pursuant to O.C.G.A. § 36-70-28 or unless amended as required by law. See O.C.G.A § 36-70-25.1(f).

SIGNATURES CONTINUED ON NEXT PAGE

It is so ordered, this 23 day of September, 2011.

David E. Barrett
Judge, Superior Court
Sitting by Designation

cc: Walter G. Elliott, Attorney for Petitioner
Karen G. Thomas, Attorney for Petitioner
A. J. Welch, Jr., Attorney for Respondent
Richard A. Carothers, Attorney for Respondent