

June 6, 1978

Oconee County Board of Commissioners  
Courthouse  
Watkinsville, GA 30677

RE: Duties, powers and authority of Board of Commissioners as compared to the powers, duties and authority of the Chairman of the Oconee County Board of Commissioners, pursuant to written request from four members of Oconee County Board of Commissioners dated May 1, 1978.

Dear Commissioners:

Pursuant to the letter of May 1, 1978, I have proceeded to review local acts creating the Oconee County Board of Commissioners and also general statutes and cases relative to the subject.

**Generally, the Board of Commissioners of a county are the governing authority of the county comparable to the Mayor and Council of a municipality exercising authority over matters of roads, revenues, ordinances and jurisdiction over county property.** Turner v. Johnston, 183 Ga. 176; Terry v. Wade, 149 Ga. 580; Moore v. Baldwin County 209 Ga. 541; Newman v. Smith 217 Ga. 465; and GA Code Section 23-701.

The Legislature has authority to provide for differences in makeup and authority and procedure for Boards of Commissioners in the various counties of Georgia. Wilson v. Harris, 170 Ga. 800; Services of Georgia, Inc. v. Fulton County, 238 Ga. 154 (1977)

The Oconee County Board of Commissioners was created by Legislative Act in 1917 (GA Laws 1917, page 384). The 1917 Act provided for a three-member Board, one of whom would be chairman, and provided for the election and qualification of said Commissioners. The membership of the Board, election, determination of chairman and other provisions have been changed by subsequent legislation.

Section 3 of the 1917 Act provided that all county authorities "now in charge of the matters turned over to and devolving upon said Commissioners of Roads and Revenues to deliver to them all of the books, records, and property of the county at said time and thereafter said Board of Commissioners of Roads and Revenue of Oconee County shall hold and exercise all the authority vested in them by this Act."

Section 7 of the Act provided at follows: "That said Board shall have exclusive jurisdiction, when sitting for county purposes, over all matters concerning county property, county taxes, general and special, in establishing and changing Militia Districts and election precincts, in examining and auditing and settling accounts of all officers having the care, management, correction, keeping and distribution of monies belonging to the county or appropriated to its use and benefit; in making rules and regulations for the support of the poor of the county; in establishing, altering, and abolishing roads, bridges and ferries, in carrying out any and all of its details and enforcement of the road law; and are vested with the jurisdiction that the old inferior courts had, which have not been vested in the Court of Ordinary, when sitting for county purposes." GA Laws 1917, Page 387.

It is noted that the establishment of election precincts is not a function of the Board of Commissioners of any county anymore in view of the Georgia election code which has uniform rules for said precincts and for establishing and changing election districts.

The general grant of authority to the Board of Commissioners in Section 7 of the 1917 Act over matters of county property, county taxes, and enforcement of road law and the old powers of the inferior courts would indicate that the Oconee County Board of Commissioners do have the general governing authority over such matters in Oconee County.

Section 9 of the 1917 Act provides for the Chairman's duties and powers. Ga. Laws 1917, page 387. Said Act provides "that the Chairman of said Board of Commissioners of Roads and Revenues shall be ex-officio superintendent of the public roads of Oconee County and shall superintend and direct the workings of the public roads..."

"He shall be required to devote his whole time and attention to the duties of his said office. He shall be the

chief manager of the affairs of said county that are within the jurisdiction of said Board of Commissioners acting as its executive officer; he shall make all contracts and do all the buying for said board; he shall superintend and direct all the work being done by the county chain-gang, or hired labor upon the public roads or holdings of Oconee County. He shall discharge all the duties of the Board of Commissioners during the interim between the dates of the Board's meetings, it being understood that his conduct is not to be arbitrary, but that his duties will be performed with judgment and discretion. That said chairman shall be ex-officio clerk of said Board of Commissioners and be required to keep all of its books and records. In the event that said chairman uses a horse in pursuance of his duties as ex-officio superintendent of roads and revenues of Oconee County, the feed of said horse shall be paid for by the county. In the event said chairman should use an automobile in pursuance of his duties as ex-officio superintendent of roads and revenues, then the gasoline and oil shall be paid for by Oconee County. The Chairman of said Board of Commissioners of Roads and Revenues of Oconee County shall give bond, payable to and approved by the Ordinary of Oconee County, in the sum of \$2,000.00 for the faithful discharge of the duties of his office..."

The only change in the above powers found was the provision in Section 4 of the 1975 local Act providing that the Board would at its first meeting of each year thereafter designate a Clerk to record the minutes of the meetings and "perform secretarial duties for the Board and any other duties designated by the Board or its Chairman." Ga. Laws 1975, pages 3106-7.

The enumeration of duties and powers of the Chairman provided in Section 9 of the 1917 Act provides that the Chairman is a member of the Board and also its presiding officer with all of the parliamentary powers inherent in such an office. He is also a full-time county official occupying the position of the county administrator or county manager position that is employed in other counties. His duties and powers are very similar to those provided for a county manager under the county manager form of county government prescribed in GA Code Section 23-915. The County Manager Act provides for the manager being the chief executive officer of the Board of Commissioners with the Majority constituting a quorum for the transaction of all business and a majority of the Board concurring to pass an order, or let any contract, or grant or allow any claim against the County, in their acts on all such matters being duly entered on the minutes of the Board. GA Code Section 23-903. The county manager under said Code Section is also ex-officio clerk and is appointed by the Board of Commissioners and subject to their general guidance and policy decisions.

"The 1917 Act concerning the Chairman's powers in Oconee County would indicate that all of said powers are generally ministerial or administrative in nature. The provision relative to making contracts and doing all of the buying for the Board would indicate an executive or administrative function. Some counties provide for a majority signature on checks and contracts for them to be binding on the Board. See GA Code Section 102-102, Subdivision 5 and 99F. (2d)565. This opinion would be consistent with the County Manager form of government and also executive powers of presidents and chairmen of corporate boards in regular Georgia business corporations. It is noted that the Chairman will do these things "for said Board."

A significant part of Section 9 of the Act of 1917 authorizes the Chairman to discharge all of the duties of the Board of Commissioners during the interim between the dates of the Board's meeting with the provision that said conduct not be arbitrary. This provision seems to be unique to the Oconee County Charter and apparently arises out of the context of the times in which it was written. This would authorize action of the Chairman in order that county business could be conducted without delay because of transportation and communication problems of the times. It is noted that in the provision for transportation for the Chairman in conducting his duties, the provision for the hay for the horse comes first. The term "arbitrary" has been defined by the Courts as "fixed or done capriciously or at pleasure; without adequate determining principles not founded in the nature of things; non-rational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic." 131 Ga. 166.

Exercise of the Board's powers in matters that could await a regular meeting or a special call meeting and actions that tend to be against the will of the majority of the Board or contradictory of Board action taken prior to or immediately thereafter before said action is executed, would probably be interpreted as arbitrary. It is clear that any action taken by the Chairman or by the Board would have to comply with the general Georgia law that contracts and actions by County Commissioners must be in writing and must be entered in the minutes of the Board in order to be enforceable. Code Section 23-1701. *Wilson v. Strange*,

The local Acts providing for Chairman's duties and powers does not authorize a veto action. In Stepp v. Lance (131 GA Appeals 193, 1974) the Georgia Court of Appeals held that, "The Chairman of County Board of Commissioners, who is the only full-time member of the Board and who acts as chief administrative officer of the county, is not vested with sole authority to approve or disapprove expenditures or to hire or fire office personnel, as his duties are to carry out duties and responsibilities within framework of resolutions concurred in by a majority of three Commissioners. GA Code Section 102-102, Subd. 5. The Court further held that, "The Chairman of County Board of Commissioners, as administrative officer, has no power of veto not given him by statutes. GA Laws 1969, pages 2641, Subsection 6-8.

Outside of administrative duties, it would appear that amendments to the Act creating the Oconee County Board of Commissioners providing that said Board be increased from three to five members and making the Ordinary an ex-officio member would indicate that all five members of the Board are equal as far as legislative authority. Section 1 of Ga. Laws 1919, pages 710-711 provides, "Provided that the Ordinary of said county shall be ex-officio a member of said Board of Commissioners and shall have equal authority with the other four members in all matters pertaining to said Board as hereinafter provided for..."

The provision in Section 9 of the Act of 1917 [providing that the Chairman would superintend and direct all of the work being done by the county chain-gang or hired labor upon the public roads or holdings of Oconee County would also be an administrative function. The Georgia Courts have defined Superintendent to mean "denote such degree of discretion and necessity for exercise of mental functions as to distinguish persons so designated from manual laborer."](#) 5 Ga. Appeals 297.

Section 4 of the 1917 Act provides for the regular meetings on the first Tuesday in each month for the Board and that a majority of same shall be a quorum. Many cases have held that the Board acts through a majority vote of its members. Harrison v. Arogeti, 228 GA 55 (1971) and Stepp v. Lance, 131 GA Appeals 193.

Powers of the Board of Commissioners as a whole over county property have been discussed at length in recent Clarke County cases. See Wolfe v. Huff, 232 Ga. 44, and 233 Ga. 162 (1974). Generally said cases provided that the County Board of Commissioners has the right to deny the use of county property to any county officer if the same is used by the latter in a wasteful, negligent, or ineffective manner. However, the power and control of county property does not authorize interference with the control of such equipment, particularly when assigned to an elected official such as the sheriff. Wolfe v. Huff, 233 Ga. 162.

In Guhl v. Williams (237 Ga. 586, 1976) the Georgia Supreme Court determined a dispute between the Chairman of the Board of Commissioners of DeKalb County and a majority of the members of that Board on the other concerning ordinances passed by the Board increasing the power of a majority of the Board of Commissioners with respect to employment and discharge of non-merit system employees of the county even though some of the changes affected provisions spelled out in a 1956 local act for DeKalb County. The DeKalb County Commission had acted under Georgia Code Section 2-8402 which is the constitutional provision for home rule ordinances. Even though the constitutional home rule provision restricts the power of local authorities to change constitutional or other elective offices, the Court held that "Employees of the county are personnel subject to the jurisdiction of the county governing authority," an action affecting them in the form of a "home rule ordinance" is constitutionally permissible. This case would authorize local ordinances under home rule provisions concerning personnel subject to the jurisdiction of the county governing authority even though same tends to restrict the power of the chairman, an elected officer. See Mercer Law Review, Vol. 29, Fall 1977, No. 1, page 201.

[It is noted that no significant changes occurred in the powers of the Chairman or the Board of Commissioners of Oconee County in later amendments to the local Acts pertaining to the Oconee County Board of Commissioners.](#) Home rule amendments to the Constitution, zoning legislation by the State Legislature and many other provisions do spell out additional and specific powers of the Board of Commissioners. Also, the Board of Commissioners has powers granted under the laws dealing with public roads and particularly county roads in Georgia. See Ga. Laws 1973, page 959.

[Other than salary changes, time of election, and terms of office, the only significant change in the](#)

composition of the Board after the above-referenced acts, is the 1975 legislation authorizing a vice chairman "who shall exercise the duties of chairman in the event of vacancy, illness, incapacity or absence of ' the chairman." Said Act also removed the Ordinary as an ex-officio member of the Board and provided for a fourth part-time member. Said Act also provided for a clerk for the Board as discussed above. Ga. Laws 1975, page 3105.

**In summary, the general powers of the Oconee County Board of Commissioners is vested in the entire Board subject to a vote of the majority. This would include matters of control of county property, county budgeting, tax levying, hiring and firing of personnel under the jurisdiction of the County Board of Commissioners, county contracts, county road policy and county legislative matters.**

The Chairman is a member and presiding officer of the Board of Commissioners and has inherent power as such member of the Board to participate and even preside over meetings of said Board. In addition, the Chairman has the administrative and executive duties of the Board. In this position, it is his responsibility to carry out the policies, resolutions, and other acts and also to administer the functions of said Board on a day-to-day basis.

Other than the Chairman, individual members of the Board do not have authority to take any act of a ministerial nature, including instructions to employees and control of county property. *Capes v. Morgan*, 235 Ga. 1. This would not preclude the Board from authorizing a member to act as a committee or part of a committee for investigatory matters to be acted on in a legislative capacity by the Board. The majority of the Board would also have the remedies of Court action including the Writ of Mandamus to have its acts and doings carried out by its executive officer.

Sincerely,

*(Signed Wendell T. Dawson)*  
Wendell T. Dawson, County Attorney

#### APPENDIX REFERENCES

Under Constitution, Article II, Section I, Paragraph 1, declaring counties bodies corporate with such powers and limitations as may be prescribed by law, a county or its offices can do no act and incur no liability not authorized by some applicable legislative act. *Bowers v. Hanks*, 152 GA 659 (1922) .

Counties cannot do any act not authorized by some legislative act applicable thereto. *J. G. McCrory Company of Georgia v. Board of Commissioners of Roads and Revenues of Fulton County*, 177 GA 242 (1933).

The authority delegated to counties represents a part of state sovereignty. *Purser v. Dodge County*, 60 Ga. App. 316 (1939).

In administration of county affairs, county commissioners are vested by law with a broad discretion, and reviewing power of a Judge of the Superior Court should be exercised with caution, and no interference had, unless it is clear and manifest that commissioners are abusing such discretion. *Moore v. Baldwin County*, 209 Ga. 541 (1953).

The words, "Commissioners of Roads and Revenues" are descriptive terms derived from the principal functions of those officers, and are not words limiting their powers. *Conley v. Poole*, 67 Ga. 254 (1881).

Where Board of Commissioners has been created to take place of Ordinary in management of certain county affairs, contracts entered into by the Board in behalf of county must be entered on minutes of Board. 178 Ga. 229 (1934).

Under Constitutional provision that the General Assembly may provide for Boards of Commissioners of counties and define their duties, there is no requirement as to uniformity, and General Assembly may grant powers to Board of Commissioners of one county that are different from and contrary to general statutory grant of powers to county governing authorities. Constitution Articles I,

Section IV, Paragraph 1; Article XI, Subsection 17, Paragraph 1; Services of Georgia, Inc. v. Fulton County, 238 GA 154 (1977).

Statute which creates office of County Commissioner of Roads and Revenues and which provides for Board of Commissioners composed of a chairman and two other members and which does not state requirements for a quorum must be construed to mean that a majority of the three persons voting shall be sufficient to pass or defeat a proposed resolution. Code Section 102-102: Subd. 5; GA Laws 1969, Pages 2641 et seq. Stepp v. Lance, 131 Ga. Appeals 193 (1974).

Chairman of County Board of Commissioners, who is the only full-time member of the Board and who acts as chief administrative officer of the county, is not vested with sole authority to approve or disapprove expenditures or to hire or fire office personnel, as his duties are to carry out duties and responsibilities within framework of resolutions conferred in by a majority of three Commissioners. Code Section 102-102, Subd. 5; 131 GA Appeals 193 (1974).

Chairman of County Board of Commissioners, as administrative officer, has no power of veto not given him by statutes. Laws 1969, Page 2641, Subsection 6, 8; Stepp v. Lance 131 GA Appeals 193 (1974).

County Board of Commissioners, being the fiscal authority for the county, is responsible for the levying of taxes for the purpose of purchasing equipment for the county to be used for county purposes, and the Commissioners are therefore responsible for the manner in which all equipment is used and they have the authority to control its use. Wolfe v. Huff, 232 GA 44, 233 GA 162 (1974).

County Board of Commissioners has the right to deny the use of county property to any county officer if the same is used by the latter in a wasteful, negligent or ineffective manner. Wolfe v. Huff, 232 GA 44, 233 GA 162 (1974).

County Commissioners' failure to provide funds to Sheriff for law enforcement purposes was improper to do indirectly that which they could not do directly, and commissioners were properly ordered to adopt a budget providing for funding and equipment in accordance with prior approved budget and restrained from interfering with control of equipment. Wolfe v. Huff, 233 GA 162 (1974).

Contract with County Commissioners must be in writing and must be entered in minutes of the proper authority in order to be enforceable. Code Section 23-1701, Wilson v. Strange, 235 GA 156 (1975).

