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PROBATE COURT OF ELBERT COUNTY

STATE OF GEORGIA

IN RE:	)	
	)	
PETITION FOR A SPECIAL ELECTION TO AMEND THE CODE OF ORDINANCES OF ELBERT COUNTY	)	**PETITION FOR SPECIAL ELECTION**
	)	
	)	**FILED ON FEBRUARY 8, 2010**
	)	

ORDER DECLARING THE ELECTORS' PETITION FOR SPECIAL ELECTION INVALID

Before the Court is a petition, filed February 8, 2010, that requests a special election to amend Section 62-51 of the Code of Ordinances of Elbert County, Georgia pursuant to Paragraph I of Section II of Article IX of the Constitution of the State of Georgia. The petition contains a sufficient number of valid signatures, and the Court would be required to certify the petition if it were authorized by the Constitution of the State of Georgia as a proper procedure by which to amend local county ordinances.

However, this Court, after having reviewed Article IX, Section II, Paragraph I of the Constitution of the State of Georgia, the Georgia Code Annotated, as well as relevant case law, hereby rules that the petition is not legally valid and is not a proper procedure by which to amend local county ordinances.

The Constitution of the State of Georgia, Article IX, Section II, Paragraph I(b), entitled "Home Rule for Counties," provides,

> Except as provided in subparagraph (c), a county may, as an incident of its home rule power, amend or repeal the *local acts* applicable to its governing authority by following either of the procedures hereinafter set forth: . . . (2) Amendments to or repeals of such local acts or ordinances, resolutions, or regulations adopted pursuant to subparagraph (a) hereof may be initiated by a petition filed with the judge of the probate court of the county . . . (emphasis added).

A "local act" is legislation passed by the General Assembly "that applies to a specific city, county, or special district named in the act." EDWIN L. JACKSON, MARY E. STAKES & PAUL T. HARDY, HANDBOOK FOR GEORGIA LEGISLATORS 140 (Carl Vinson Inst. of Gov't, The Univ. of Ga., 13th ed.

2007). Case law also dictates that a county ordinance is not a local act. Mullis Tree Serv. v. Bibb Co., 828 F. Supp. 53, 54 (M.D. Ga. 1993) (stating "the ordinance is not a 'local act' as contemplated in Article IX") (citing Wood v. Gwinnett Co., 243 Ga. 833, 257 S.E.2d 258 (1979)). The Supreme Court of Georgia has held that one may use the procedures delineated in Article IX, Section II, Paragraph I of the Constitution of the State of Georgia only to amend or repeal local acts and only those local acts that are "[a]pplicable to [the county's] governing authority." Wood, 243 Ga. 833, 834, 257 S.E.2d 258, 259. Therefore, according to the qualifying statement that provides that "a county may . . . amend or repeal local acts applicable to its governing authority by following either of the procedures hereinafter set forth," this Constitutional provision does not provide a procedure by which electors may amend or repeal local county ordinances. Therefore, this Constitutional provision cannot be used to support the procedures utilized by the electors in this instance.

In Millis Tree Service v. Bibb County, the United States District Court for the Middle District of Georgia cited the Supreme Court of Georgia and held that a county ordinance governing waste disposal and the importation of waste disposal was not a "local act" within the meaning of Article IX of the Constitution of the State of Georgia, and, thus, "the procedures delineated in Art. IX, Sec. II, Para. 1(b)(1) of the Georgia Constitution" did not apply to the county ordinance at issue there. Mullis Tree Serv. v. Bibb Co., 828 F. Supp. 53, 54 (M.D. Ga. 1993) (citing Wood v. Gwinnett Co., 243 Ga. 833, 257 S.E.2d 258 (1979)). It follows that the procedures delineated in Paragraph I(b)(2) of the same section also do not apply to local county ordinances and, instead, apply only to amendments to and repeals of "local acts."

A ruling by the United States District Court for the Northern District of Georgia, though not binding on this Court, echoed the holding of the Middle District of Georgia and held that "the provisions of the County Home Rule Statute, incorporated in the Constitution of the State of Georgia in 1976, . . . apply only when a county attempts to 'amend or repeal the local acts applicable to its governing authority,' . . . and, consequently, do not apply" to a resolution enacted by the county commission that addressed the use of labor unions by police because the resolution was not an attempt by the county to "amend or repeal

the local acts applicable to its governing authority." Local 189 Int'l Union of Police Assns. v. Barrett, 524 F. Supp. 760, 765 (N.D. Ga. 1981).

The Home Rule for Counties and the Home Rule for Municipalities contain virtually identical language. Thus, the Court's interpretation of the Home Rule for Municipalities is instructive concerning how one should interpret the Home Rule for Counties. Each rule contains language regarding amendments to or repeals of local acts (or charters in the case of municipalities) and "ordinances, resolutions, or regulations adopted pursuant to subparagraph [or subsection in the case of the Home Rule for Municipalities] (a)." G.A. CONST. art. IX, §II, ¶I; O.C.G.A. § 36-35-3. This language is preceded in both instances by a statement qualifying when the procedure to amend and repeal applies.[1] Id. Under the Home Rule for Municipalities, the procedures apply to amend the municipality's charter, and under the Home Rule for Counties, the procedures apply to amend local acts applicable to the county's governing authority. The Supreme Court of Georgia has interpreted the Home Rule for Municipalities and ruled that the procedures described therein apply "only to amendments to municipal charters" and, in that case, did not apply to a resolution by the Mayor and City Council to close two railroad crossings. Kemp v. City of Claxton, 269 Ga. 173, 176, 496 S.E.2d 712, 716 (1998). The Court added, "The legislative intent will be effectuated even if some language must be eliminated." Kemp, 269 Ga. 173, 176, 496 S.E. 2d 712, 715 (citing Maples v. City of Varnell, 244 Ga. 163, 164, 259 S.E.2d 94, 95 (1979)). The Supreme Court of Georgia found that the fact that language in the Home Rule for Municipalities "is prefaced by a statement that what follows are the methods by which a municipal corporation may 'amend its charter' . . . shows

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[1] The Home Rule for Municipalities provides,

> Except as provided in Code Section 36-35-6, a municipal corporation may, as an incident of its home rule power, amend its charter by following either of the following procedures: . . . (2)(A) Amendments to charters or amendments to or repeals of ordinances, resolutions, or regulations adopted pursuant to subsection (a) of this Code section may be initiated by a petition, filed with the governing authority of the municipal corporation . . ..

that the petition and referendum provision is intended to be available only when the proposed amendment is intended to affect a city charter." Kemp, 269 Ga. 173, 176, 496 S.E.2d 712, 715. Thus, virtually identical language in the Home Rule for Counties, prefaced by a statement that what follows are the methods by which a county may "amend or repeal the local acts applicable to [the county's] governing authority," is available only when the proposed amendment is intended to affect a local act.

The Home Rule for Counties and the Home Rule for Municipalities are delegations of the General Assembly's legislative power. G.A. CONST. art. IX, §II, ¶I; Kemp, 269 Ga. 173, 176, 496 S.E.2d 712, 715-716. Both delegations of power are specifically authorized by the Constitution of the State of Georgia,[2] and case law indicates that the power granted is broad in scope. See Bd. of Comm'rs of Atkinson Co. v. Guthrie, 273 Ga. 1, 537 S.E.2d 329 (2000) (holding that an ordinance requiring owners of rental property to pay a garbage collection fee was proper); see Jackson v. Gasses, 230 Ga. 712, 713, 198 S.E.2d 657, 659 (1973) (stating that the Home Rule for Counties "is broad enough to give the Board of Commissioners discretion to locate administrative facilities and services . . . "); City of Tunnel Hill v. Ridley, 183 Ga. App. 486, 359 S.E.2d 184 (1987) (stating that the Home Rule for Municipalities "is, indeed, a broad delegation of legislative power," though it has limits). In both the Home Rule for Counties and the Home Rule for Municipalities, subparagraph (called a subsection in the Home Rule for Municipalities) (a) provides a method by which the governing authority may

> 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 is not inconsistent with the Constitution or any local law [or charter provision in the case of municipalities] applicable thereto.

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[2] G.A. CONST. art. IX, §II, ¶II; "The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly." G.A. CONST. art. IX, §II, ¶II.

G.A. CONST. art. IX, §II, ¶I(a); O.C.G.A. § 36-35-3(a). Each rule then proceeds in subparagraph [or subsection] (b) to provide a method by which the governing authority may, "as an incident of its home rule power, amend or repeal the local acts applicable to its governing authority [or its charter in the case of municipalities] by following either of the procedures hereafter set forth" [or "either of the following procedures"]. The General Assembly has granted broad legislative power to the governing authorities of both counties and municipalities, and that power should be construed in a similar fashion. Thus, previous interpretations of the Home Rule for Municipalities are instructive in interpreting the Home Rule for Counties.

The Constitution of the State of Georgia, Article IX, Section II, Paragraph I, specifies that its delegation of legislative power is to "[t]he governing authority of each county," which is the county commission. Wood v. Gwinnett Co., 243 Ga. 833, 834, 257 S.E.2d 258, 259 ("The governing authority, of course, is the county commission."). In Kemp, the Supreme Court of Georgia interpreted the Home Rule for Municipalities and found that to "allow the electorate to petition for a referendum on all ordinances and resolutions," would allow the electorate to exercise legislative power and concluded, "we must strictly construe the grant of legislative power to the governing authority, [and] we must reject [the] argument that the electorate can directly exercise such legislative power." Kemp, 269 Ga. 173, 176, 496 S.E.2d 712, 716 (1998). The same analysis is applicable in this instance where the same language is used to address petitions on a county level. Thus, the Court must reject this attempt by the electorate to exercise direct legislative power as well.

Accordingly, IT IS HEREBY ORDERED, pursuant to the Constitution of the State of Georgia and case law, that the petition for a special election is not legally valid and is hereby rejected.

SO ORDERED this 23rd day of March, 2010.

Judge Susan R. Sexton

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Probate Court of Elbert County