



Access to and Use of the Courthouse During a Public Health Emergency

The purpose of this guidance is to provide information to help address situations where disputes occur between the commissioners and other elected officials about the use of the courthouse during the public health emergency. There are several laws that create tension and confusion about the issues of control over and physical access to the courthouse. This guidance provides some information about things that commissioners should consider when these issues arise.

County Property Generally. Commissioners have original and exclusive jurisdiction over the directing and controlling of all property of the county.¹ Commissioners are to exercise this jurisdiction in their discretion according to law.²

Public grounds and property are required to be protected by the sheriff, subject to the order of the commissioners.³ Additionally, the sheriff, with assistance from the superior court and commissioners, is responsible for the development and implementation of a comprehensive plan for security of the courthouse and annex.⁴

The Courthouse. Commissioners are required to keep the courthouse open during normal working hours, other than declared holidays, so that the public may conduct its business.⁵

Commissioners are also generally required to provide office space, usually in the courthouse, to several county and state officials. Some examples include:

- The office of the sheriff must be kept at the courthouse and county seat.⁶ Also, the sheriff is required to execute and return processes and order of the courts and to attend all sessions of the superior court and all sessions of the probate court, when required by the judge.⁷
- The clerk of court's office must be kept at the courthouse and county seat.⁸
- Superior courts must hold at least two sessions per year in the courthouse.⁹
- The district attorney must be provided offices by the county.¹⁰
- The solicitor must be provided offices by the county.¹¹

¹ O.C.G.A. §§ 36-5-22.1(a)(1) and 36-9-2.

² O.C.G.A. § 36-5-22.1(a)(1).

³ O.C.G.A. § 36-9-8.

⁴ O.C.G.A. §§ 15-16-10(a)(10) and 36-81-11.

⁵ O.C.G.A. § 36-1-12; see also O.C.G.A. §§ 15-6-93 and 15-9-83.

⁶ O.C.G.A. § 15-16-9; See also O.C.G.A. §§ 15-6-17 and 36-9-7.

⁷ O.C.G.A. §§ 15-16-10(a) and 42-4-1(a); See also, O.C.G.A. § 36-9-7.

⁸ O.C.G.A. §§ 15-6-61(a), 15-6-86; See also, O.C.G.A. § 36-9-7.

⁹ O.C.G.A. § 15-6-17; See also, O.C.G.A. §§ 15-6-24 and 36-9-7.

¹⁰ O.C.G.A. § 15-18-23; See also, O.C.G.A. § 36-9-7.

¹¹ O.C.G.A. § 15-18-73; See also, O.C.G.A. § 36-9-7.



- The probate judge's office must be kept at the county seat and at the courthouse unless doing so is impracticable.¹²
- The magistrate must be provided offices and courtrooms.¹³
- The public defender must be provided office space, utilities, materials and supplies by the county.¹⁴
- State court offices are typically required to be at the county seat, although not necessarily in the courthouse.¹⁵
- Tax commissioner
- Board of Tax Assessors/Boards of Tax Equalization¹⁶

Georgia Constitution Separation of Powers at the County Level. As noted above, the superior courts, state courts, probate courts, magistrate courts, court clerks, prosecuting attorneys, public defenders, sheriffs, and tax commissioners have responsibilities to provide services to the public – many of which must be provided in the courthouse in the county seat.

Again, as noted above, pursuant to law, commissioners have general control over county property. However, the Georgia Constitution **specifically prohibits** commissioners from taking any actions affecting the office of any:

- 1) Superior court clerk;
- 2) Probate judge;
- 3) Sheriff;
- 4) Tax commissioner; or
- 5) ANY local court (including superior, state, probate, magistrate, and juvenile).¹⁷

Consequently, the commissioners **do not have** the unilateral authority to close the offices of any constitutional officers or any court.

Statewide Judicial Emergency. The court system is required to continue functioning during this public health emergency.

In addition to the obligations imposed by general law, the Georgia Supreme Court issued an [Order Declaring Statewide Judicial Emergency](#) pursuant to O.C.G.A. § 38-3-60 *et seq.*, that applies to **all** courts and clerks of court in the state.

¹² O.C.G.A. § 15-9-80 and 15-9-81; See also, § O.C.G.A. 36-9-7.

¹³ O.C.G.A. § 15-10-5; See also, O.C.G.A. § 36-9-7.

¹⁴ O.C.G.A. § 17-12-34; See also, O.C.G.A. § 36-9-7.

¹⁵ See local legislation enacted pursuant to O.C.G.A. § 15-7-2; See also, O.C.G.A. § 15-7-5(b)(3)(B).

¹⁶ O.C.G.A. § 48-5-311(d)(4)(B) and (C) (Commissioners are required to provide “resources” to the appeal administrator for taxpayer appeals before a hearing officer; counties are required to provide ‘facilities’ to the appeal administrator for appeals before a hearing officer).

¹⁷ Ga. Const. Art. IX, § II, Para. I(c)(1) and (7).



Through at least April 13, 2020, the courts are ordered to remain open to the extent feasible to provide essential functions, particularly those necessary to protect health, safety, and liberty of individuals, including issues involving immediate liberty or safety concerns, criminal search warrants, arrest warrants, initial appearances, bond reviews, domestic abuse protective orders, juvenile delinquency, emergency removal matters, and mental health commitment hearings.¹⁸

Additionally, any criminal trials already started in which a jury has been impaneled are required to continue until finished unless the judge determines that good cause exists to suspend the trial or declare a mistrial.¹⁹ The courts are required to hold proceedings in a manner limiting the risk of exposure to COVID-19, including videoconferencing, if it is available.²⁰

It is imperative to understand that decisions about the operation of the courts and the actions of the judges, clerks, prosecuting attorneys, and sheriffs **cannot** be made by the board of commissioners.²¹

Governor's Executive Order Regarding County Offices. The Governor issued an Executive Order Reducing Regulations to Assist the State's Response to the Spread of COVID-19 on March 20, 2020. To assist in stopping the spread of COVID-19, the Governor urges counties, superior court clerks, tax commissioners, and other officials to keep recording offices open and available to receive applications and filings "to the extent possible while maintaining adherence to the guidelines issued by the Centers for Disease Control and Prevention."²²

"Recording offices" is not defined, so it is unclear whether the Governor intended just the filing of deeds, surveys, and liens (i.e., the superior court clerk's office) or whether he intended that the county's development offices (i.e., planning and zoning, building department, engineering department, GIS, etc.) also remain open and available to accept applications, plats, etc. The Executive Order also allows developers to immediately use a private professional provider (i.e., professional engineers and architects)²³ to review building plans and inspect construction rather than starting with the county's process.²⁴ Consequently, it is important that any decisions made by county commissioners, managers, or administrators regarding these matters **ONLY** be made following consultation with the county attorney.

Closure of Public Facilities. While the Georgia Department of Public Health has the specific authority to completely close a public facility, such as a courthouse,²⁵ commissioners only have

¹⁸ Order Declaring Statewide Judicial Emergency as amended, Supreme Court of Georgia (March 14, 2020).

¹⁹ Order Declaring Statewide Judicial Emergency as amended, Supreme Court of Georgia (March 14, 2020).

²⁰ Order Declaring Statewide Judicial Emergency as amended, Supreme Court of Georgia (March 14, 2020).

²¹ See, Ga. Const. Art. IX, § II, Para. I(c)(1) and (7).

²² Executive Order No. 03.20.20.02 Reducing Regulations to Assist the State's Response to the Spread of COVID-19 (March 20, 2020).

²³ O.C.G.A. § 8-2-26(g)(2).

²⁴ Executive Order No. 03.20.20.02 Reducing Regulations to Assist the State's Response to the Spread of COVID-19 (March 20, 2020).

²⁵ Ga. Rules and Regs. 511-9-1-.02(13), 511-9-1-.03(1) and (2)(g), and 511-9-1-.04(1)(d).



general authority to make orders, rules, and regulations as necessary for emergency management purposes during a state of emergency.²⁶

ACCG Recommendations:

- 1) **DO NOT LOCK THE COURTHOUSE ENTRANCE AND CLOSE ALL OFFICES TO PUBLIC BUSINESS.** Find a way to maintain continuance of public business through whatever methods best suit the county's particular circumstances (see Item 3 below). Although the commissioners are responsible for the courthouse, they are not authorized to control the constitutional officers and courts contained in the courthouse. Post notices outside the courthouse and on the county's website and let the public know how the county's business will be operating in the emergency.
- 2) **DO NOT MAKE DECISIONS IN A VACUUM.** Public health officials, the local emergency management director, the district health director (if possible), and the commissioners (or county manager or administrator) should be working with the constitutional officers and courts on the business continuity portion of the county's emergency management plan. If this has not occurred, then these individuals should immediately begin working together to ensure that county services are provided in a manner least likely to risk exposure.
- 3) If commissioners have chosen, or are contemplating choosing, to use their general state of emergency authority to close offices subject to the control of the commissioners, or to restrict in-person public access to the courthouse (i.e., notices, screening members of the public, drive thru access, virtual access, drop boxes, etc.), **it is imperative** that commissioners consider the rights and responsibilities of state and county elected officials whose offices or services are provided at the courthouse. At the very least, those serving in the court system must be allowed access to their offices in the courthouse.
- 4) If the commissioners still want to try to close the courthouse, then they will need to make suitable arrangements for an alternative place to house the courts and other independent officials for which the county is required by law to provide offices, supplies, and equipment (see above). The logistics of such an undertaking could be overwhelming and must be considered carefully.
- 5) No matter what decision is reached, it is imperative that it be reached in consultation with the county attorney. The county attorney is one of your most valuable resources at this critical time.
- 6) ACCG is compiling and will make available a list of actions by various counties and cities to help limit exposure to COVID-19. While ACCG does not take a position on the legality of some of the actions, consulting this list may be helpful in exploring ways to provide essential services in your county.

²⁶ O.C.G.A. § 38-3-28(a).