

COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between January 23, 2016, and January 29, 2016.

We welcome your suggestions and opinions regarding Counties & the Law. Please contact Jim Grubiak at jgrubiak@accg.org or Joe Scheuer at jscheuer@accg.org with your comments.

RETROACTIVE APPLICATION OF LAWS

Mosley v. Lowe

Supreme Court of Georgia
January 26, 2016; S15A1722

This case involves the retroactive application of amendments to a criminal statute. In 1996, Lowe was charged with simple assault but the State moved to nolle pros for want of prosecution since the victim failed to appear for trial. In 2012, amendments to O.C.G.A. 35-3-37 (criminal history information) became effective which were intended by the General Assembly to apply to prior arrests. In 2014, Lowe sought to have her arrest record restricted under subsection (h) of the amended statute. The county solicitor and sheriff refused. The trial court held that the statute did not violate Art. I, Sec. I, Para. X of the Constitution which prohibits retroactive laws and that Lowe was eligible for record restriction. The Supreme Court affirmed. The amended statute expressly provides for a process that applied to record restriction of arrest occurring prior to July 1, 2013. Citing its decision in the *Deal* case, the Court noted that the constitutional prohibition forbids retroactivity that injurious affects the vested rights of citizens. In *Deal*, the Court held that only rights which are private in nature are capable of implicating that prohibition. Legislative schemes under which citizens are afforded access to public information general create public rather than private rights and thus may be modified without triggering the retroactivity clause.