

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.

IMPACT FEES

Fairgreen Capital, LLC v. City of Canton

Georgia Court of Appeals
January 26, 2016; A15A2184

{Somehow this case fell through the cracks, but it was brought to my attention by our colleague, Mike O'Quinn, so a collective tip of the hat, plus our thanks, to Mike!}

This case involves a breach of contract action against a city seeking payment of funds that a developer advanced to the city under a written agreement governing construction of public roads on city property benefiting the developer's property. The city moved for summary judgement claiming that: 1) the funds advanced by the developer to the city, which the city had not reimbursed, constituted 'new debt' within the meaning of Art. IX, Sec. V, Para. I(a) and hence required voter approval; 2) that such voter approval had never been obtained; and 3) the contract creating the 'new debt' without voter approval was void as a matter of law. The developer contended that the debt was not 'new debt' because the agreement was a private impact fee agreement enforceable under the Georgia Development Impact Fee Act, O.C.G.A. 36-71-1 et seq. The trial court granted summary judgment to the city. The Court of Appeals affirmed in part and reversed in part. The Court held that regardless of whether the agreement was authorized under the statute, it clearly arranged a loan from the developer to the city for funds to construct a road and it created debt which the city was obligated to pay regardless of whether the city had sufficient impact fees to reimburse the developer. The Court cited the *Green County School District* and *City of Villa Rica* cases for the proposition that unpaid debt was a 'new debt' obligation which extended beyond a single fiscal year and hence required voter approval under Para. I (a). As a result, the trial court's granting of summary judgement to the city on this issue was correct. However, the developer also alleged negligent misrepresentation in its complaint and the city failed to move for summary judgement on that claim. The trial court thus erred by granting summary judgement on an issue not raised in the motion for summary judgment and without giving the developer proper notice that the issue would be considered.