



Office of Legislative Counsel
General Assembly of Georgia

October 3, 2022

Representative Ed Setzler
District 35
By E-mail to ed.setzler@house.ga.gov

RE: Cobb County Board of Commissioners' redistricting powers

Dear Representative Setzler,

You have requested an opinion from this office as to the ability of the Cobb County Board of Commissioners to use either its constitutional home rule powers or statutory authority to approve a new district plan for the board. As explained below, it appears that county governing authorities do not have constitutional or statutory home rule redistricting powers.

The home rule powers of Georgia counties arise from the state Constitution. Article 9, Section 2, Paragraph 1 of the Constitution of Georgia authorizes counties to amend their local acts by resolution or ordinance, but subparagraph (c) sets forth limitations on this authority. While none of those limitations expressly reference apportionment, districts, reapportionment, or redistricting, subparagraphs (c)(1) and (c)(2) have some bearing on your question by prohibiting a county's use of the home rule power to effect either "[a]ction affecting any elective county office" or "[a]ction affecting the composition, form, **procedure for election** or appointment...of the county governing authority." (Emphases added).

It is practically indisputable that a county home rule resolution or ordinance changing the boundaries of the districts from which county commissioners are elected would be an action

affecting the procedure for election of the county's governing authority¹. So it would appear there is no constitutional authority for counties to use their home rule powers to enact redistricting legislation. Additionally, while the governing authorities of Georgia municipalities have a limited statutory home rule authority to undertake their own reapportionment or redistricting, O.C.G.A. § 36-35-4.1, no such statutory authority exists for Georgia counties.

Far from being broad or expansive, the powers of county boards of commissioners is fairly limited.

Neither the counties of this state nor their officers can do any act, make any contract, nor incur any liability not authorized by some legislative act applicable thereto. If there is reasonable doubt of the existence of a particular power, the doubt is to be resolved in the negative. Powers of county commissioners are strictly limited by law, and they can do nothing except under authority of law.

Mobley v. Polk County, 242 Ga. 798, 801-802 (1979) (internal citations omitted). As such, any authority for a county board of commissioners to undertake its own redistricting must be derived from an explicit constitutional or statutory grant of authority. In the event there is any doubt as to whether or not such authority has been granted, Georgia law requires a finding that no such authority has been given. Furthermore, five of the current Justices on the Georgia Supreme Court recently reminded government entities that are dependent on statutory authority that "the absence of statutory authority is the absence of legal authority to act." *Camp v. Williams*, ___ Ga. ___, (2022), Case No. S23A0073 at 26, J. Bethel concurring.

While my research has revealed no helpful Georgia cases directly relating to redistricting powers of counties, the United States District Court for the Northern District of Georgia has held Georgia counties lack any constitutional or statutory authority to enact redistricting legislation. *Bodker v. Taylor*, 2002 U.S. Dist. LEXIS 27447 (N.D. Ga., 2002) at 11-13. The district court went on to find that "the General Assembly is the only legislative body with the power to enact redistricting legislation" for Georgia counties. *Id* at 12. And directly on point

¹The Cobb County Board of Commissioners is the governing authority of Cobb County pursuant to O.C.G.A. § 36-5-20 and an Act creating the Board of Commissioners of Cobb County, approved June 19, 1964 (Ga. L. 1964, Ex. Sess., p. 2075), as amended.

regarding redistricting in Cobb County, another federal district court judge in the Northern District referenced *Bodker* in her ruling regarding redistricting the county's board of commissioners following the 2000 United States Census, and directed the General Assembly, **not** the board of commissioners, to undertake its "duty" to adopt a new district plan for the board. *Smith v. Cobb County Bd. of Elections & Registrations*, 314 F. Supp. 2d 1274, 1314 (N.D. Ga., 2022).

Based on the fact that the Georgia Constitution explicitly prohibits counties from using home rule powers on matters affecting the procedures for election of county commissioners, the lack of any statutory redistricting powers, and the findings of the United States District Court for the Northern District of Georgia (including the holding in a case directly related to redistricting in Cobb County), it appears that the Cobb County Board of Commissioners lacks any authority to adopt or enact any resolutions or ordinances that change the boundaries of one or more of the election districts provided for in an Act creating the Board of Commissioners of Cobb County, approved June 19, 1964 (Ga. L. 1964, Ex. Sess., p. 2075), as amended, in particular the current commission district boundaries provided for in HB 1154 (Ga. L. 2022, p. 5295).

I hope this information is useful. Please do not hesitate to contact me if you have got any questions or if I can be of further assistance.

Sincerely,

/s/ D. Stuart Morelli
D. Stuart Morelli
Deputy Legislative Counsel

Approved for release: /s/RR