

2024 CODE OF GEORGIA

Title 9 - CIVIL PRACTICE (§§ 9-1-1 — 9-17-14)

Chapter 6 - EXTRAORDINARY WRITS (§§ 9-6-1 — 9-6-66)

Article 2 - MANDAMUS (§§ 9-6-20 — 9-6-28)

Section 9-6-24 - What interest required to enforce public right

Universal Citation:

GA Code § 9-6-24 (2024)

Where the question is one of public right and the object is to procure the enforcement of a public duty, no legal or special interest need be shown, but it shall be sufficient that a plaintiff is interested in having the laws executed and the duty in question enforced.

2024 CODE OF GEORGIA

Title 36 - LOCAL GOVERNMENT (§§ 36-1-1 — 36-93-1)

PROVISIONS APPLICABLE TO MUNICIPAL CORPORATIONS ONLY (§§ 36-30-1 — 36-45-20)

Chapter 35 - HOME RULE POWERS (§§ 36-35-1 — 36-35-8)

Section 36-35-4 - Compensation and benefits for employees and members of governing authority; conditions and requirements governing increases for elective members of governing authority

- **(a)** The governing authority of each municipal corporation is authorized to fix the salary, compensation, and expenses of its municipal employees and the members of its municipal governing authority and to provide insurance, retirement, and pension benefits, coverage under federal old-age, survivors and disability programs, hospitalization benefits, and workers' compensation benefits for its employees, their dependents, and their survivors and for members of the municipal governing authority, their dependents, and their survivors, when such benefits are provided to municipal employees. Any previous actions to extend insurance, federal old-age, survivors and disability programs, retirement, hospitalization, and workers' compensation benefits to members of the municipal governing authority are validated. With the exception of the provision of insurance, federal old-age, survivors and disability programs, retirement, hospitalization, and workers' compensation benefits, any action to increase the salary or compensation of the elective members of the municipal governing authority shall be subject to the following conditions and requirements:
 - **(1)** Any such increase shall not be effective until after the taking of office of those elected at the next regular municipal election which is held immediately following the date on which the action to increase the compensation was taken;

- **(2)** Such action shall not be taken during the period of time beginning with the date that candidates for election to membership on the municipal governing authority may first qualify as such candidates and ending with the date members of the municipal governing authority take office following their election; and
 - **(3)** Such action shall not be taken until notice of intent to take the action has been published in a newspaper of general circulation designated as the legal organ in the county and in the municipal corporation at least once a week for three consecutive weeks immediately preceding the week during which the action is taken.
- **(b)** As used in subsection (a) of this Code section, the phrase "elective members of the municipal governing authority" means, notwithstanding any terminology or designation of a municipal governing authority or governing body contained in any municipal charter, any elective municipal official who exercises any executive or legislative or executive and legislative powers of the municipal corporation, specifically including a mayor, vice-mayor, president or chairman of a municipal council, member of a municipal council, member of a board of aldermen, or member of a board of commissioners. Such phrase shall also include any person who is appointed to fill a vacancy in any such elective office.
- **(c)** As used in subsection (a) of this Code section, the words "salary or compensation," as applied to the elective members of a municipal governing authority, shall include any expense allowance or any form of payment or reimbursement of expenses, except reimbursement for expenses actually and necessarily incurred by members of a municipal governing authority in carrying out their official duties. The governing authority of each municipal corporation shall be authorized to provide by ordinance for the reimbursement of such actual and necessary expenses.
- **(d)** As used in subsection (a) of this Code section, the words "retirement" and "pension" shall mean termination from municipal service with the right to receive a benefit based upon all or part of such municipal service in accordance with the terms of the ordinance or contract pursuant to which the municipality provides for payment of such benefits. The General Assembly declares and affirms that the Act approved April 17, 1981 (Ga. L. 1981, p. 1741) was intended to assure that prior advertisement of actions to provide insurance, federal old-age, survivors and disability programs, retirement, pension, hospitalization, and workers' compensation benefits to elected members of the municipal governing authority, their dependents, and their survivors is not required.

2020 Georgia Code
Title 9 - Civil Practice
Chapter 6 - Extraordinary Writs
Article 2 - Mandamus
§ 9-6-20. When Mandamus May Issue

Universal Citation:
GA Code § 9-6-20 (2020)

All official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights; provided, however, that no writ of mandamus to compel the removal of a judge shall issue where no motion to recuse has been filed, if such motion is available, or where a motion to recuse has been denied after assignment to a separate judge for hearing.

(Orig. Code 1863, § 3130; Code 1868, § 3142; Code 1873, § 3198; Code 1882, § 3198; Civil Code 1895, § 4867; Civil Code 1910, § 5440; Code 1933, § 64-101; Ga. L. 2009, p. 643, § 1/HB 221.)

The 2009 amendment, effective July 1, 2009, substituted a comma for a semicolon near the beginning, deleted a comma following "performance" in the middle, and added the proviso at the end.

Cross references.

- Petitioning for mandamus to compel auditor in superior court to certify exceptions to report of auditor, § 9-7-15.

Applications for mandamus, Rules of the Court of Appeals of the State of Georgia, Rule 31.

Law reviews.

- For article discussing the inefficiency of mandamus and impeachment as remedies for judicial inaction, see 5 Ga. St. B.J. 467 (1969). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For article, "A Taxing Exception: Southern LNG, Inc. v. MacGinnitie's Narrow Interpretation of the Mandamus Exception," see 66 Mercer L. Rev. 855 (2015).

JUDICIAL DECISIONS

ANALYSIS

- General Consideration
- Applicability to Specific Cases

General Consideration

Mandamus is extraordinary legal remedy. *Clear Vision CATV Servs., Inc. v. Mayor of Jesup*, 225 Ga. 757, 171 S.E.2d 505 (1969).

Mandamus is an extraordinary common law writ, with which equity has nothing to do. *Gay v. Gilmore*, 76 Ga. 725 (1886); *Bowen v. Whiddon*, 143 Ga. 351, 85 S.E. 122 (1915); *Richmond County v. Steed*, 150 Ga. 229, 103 S.E. 253 (1920); *Board of Educ. v. Fowler*, 192 Ga. 35, 14 S.E.2d 478 (1941).

Under this section, as a general rule, scope of mandamus is very broad, and, though it is much restricted in special instances in other Code sections, these are only exceptions to the general rule. *Wofford Oil Co. v. City of Calhoun*, 183 Ga. 511, 189 S.E. 5 (1936) (see O.C.G.A. § 9-6-20).

This section gives judge of superior court power to issue writs of mandamus, and makes it the judge's duty to do so from any cause whereby a defect of legal justice would ensue if a mandamus be not issued, and if there be no other specific legal remedy. *Wofford Oil Co. v. City of Calhoun*, 183 Ga. 511, 189 S.E. 5 (1936) (see O.C.G.A. § 9-6-20).

Provisions of this section apply to public officers only. *Bregman v. Orkin Exterminating Co.*, 213 Ga. 561, 100 S.E.2d 267 (1957) (see O.C.G.A. § 9-6-20).

Mandamus is a remedy for official inaction. *City of Atlanta v. Wright*, 119 Ga. 207, 45 S.E. 994 (1903); *Touchton v. Echols County*, 211 Ga. 85, 84 S.E.2d 81 (1954); *Coastal Serv., Inc. v. Jackson*, 223 Ga. 238, 154 S.E.2d 365 (1967).

Right to mandamus does not arise until officer defaults on duty.

- The right to invoke the aid of a court to compel by mandamus the performance of an official duty cannot, as a general rule, arise until the officer is in actual default. *Pearce v. Bembry*, 174 Ga. 86, 162 S.E. 125 (1932).

Whether mandamus will lie will depend upon nature of official acts: if the acts are purely ministerial or purely legislative, then mandamus will be the proper procedure to determine the petitioner's rights if the petitioner has no other specific remedy; however, if the acts complained of are of a judicial nature, then the writ of

No legal remedy for enforcement of rights.

- Mandamus lies at the instance of a citizen who has a clear specific legal right and no legal remedy for its enforcement. *Napier v. Poe*, 12 Ga. 170 (1852).

Mandamus against public officers is available to individual where there is no other specific legal remedy and a legal injustice will result from failure to perform a clear official duty. *Evans v. White*, 178 Ga. 262, 172 S.E. 913 (1934); *Ex parte Ross*, 197 Ga. 257, 28 S.E.2d 925 (1944).

The right to extraordinary aid of mandamus exists only where the applicant has a clear legal right to the relief sought and there is no other adequate remedy. *Wright v. Forrester*, 192 Ga. 864, 16 S.E.2d 873 (1941); *State Hwy. Dep't v. Reed*, 211 Ga. 197, 84 S.E.2d 561 (1954); *Westberry v. Taylor*, 215 Ga. 464, 111 S.E.2d 77 (1959); *O'Callahan v. Aikens*, 218 Ga. 46, 126 S.E.2d 212 (1962); *Bedingfield v. Adams*, 221 Ga. 69, 142 S.E.2d 915 (1965); *Henderson v. Carter*, 229 Ga. 876, 195 S.E.2d 4 (1972), overruled on other grounds, *City of Atlanta v. Barnes*, 276 Ga. 449 (2003); *Nesbitt v. Lewis*, 235 Ga. 477, 220 S.E.2d 7 (1975); *Hernandez v. Board of Comm'rs*, 242 Ga. 76, 247 S.E.2d 870 (1978).

Civil rights action.

- Federal district court did not err in concluding that university professor's procedural due process claim was actionable under 42 U.S.C. § 1983 because the district court reached the plausible conclusion that the state courts may have summarily dismissed the professor's mandamus request without considering the merits thereof; while a writ of certiorari was not available to the professor upon the state court's determination that the termination proceedings were purely administrative, the professor was still entitled to seek a writ of mandamus. *Laskar v. Peterson*, 771 F.3d 1291 (11th Cir. 2014).

Right must be complete and not inchoate.

- To warrant relief by mandamus, right whose enforcement is sought must be a complete and not merely an inchoate right. *Mattox v. Board of Educ.*, 148 Ga. 577, 97 S.E. 532, 5 A.L.R. 568 (1918).

Superior court judge has duty to issue mandamus in any cause where there is no other specific legal remedy and legal justice would be impaired if mandamus were not issued. *Gay v. City of Lyons*, 209 Ga. 599, 74 S.E.2d 839 (1953).

Mandamus is not available where another remedy exists. *Carroll v. American Agric. Chem. Co.*, 175 Ga. 855, 167 S.E. 597 (1932); *McGarvey v. Board of Zoning Appeals*, 243 Ga. 714, 256 S.E.2d 781 (1979).

Mandamus will not lie when there is adequate and specific remedy at law; it is available only when it is exclusive. *Adams v. Town of Weston*, 181 Ga. 503, 183 S.E. 69 (1935); *Patten v. Miller*, 190 Ga. 123, 8 S.E.2d 757 (1940); *Ungar v. Mayor of Savannah*, 224 Ga. 613, 163 S.E.2d 814 (1968).

Mandamus is never an available remedy when there is a plain specific legal remedy. *Wofford v. Porte*, 212 Ga. 533, 93 S.E.2d 690 (1956); *Wofford v. City of Gainesville*, 212 Ga. 818, 96 S.E.2d 490 (1957); *Harper v. Burgess*, 225 Ga. 420, 169 S.E.2d 297 (1969).

Other legal remedy must be complete.

- The rule that mandamus will not be granted where there is specific legal remedy is restricted to cases where the legal remedy is equally convenient, complete, and beneficial. *Adams v. Town of Weston*, 181 Ga. 503, 183 S.E. 69 (1935).

Where another remedy is not well adapted to case, it will not prevent resort to mandamus. *Adams v. Town of Weston*, 181 Ga. 503, 183 S.E. 69 (1935).

Mandamus not proper where plaintiff has cause of action arising from contract.

- Where the plaintiff has a right of action against the defendants to recover the amount due the plaintiff under contract, and can maintain an action at law for that purpose, the plaintiff has an adequate remedy at law, and the writ of mandamus will not lie. *Burke v. Board of Educ.*, 182 Ga. 458, 185 S.E. 813 (1936).

One must exhaust available administrative remedies before applying for mandamus. *O'Callahan v. Aikens*, 218 Ga. 46, 126 S.E.2d 212 (1962).

If there is specific remedy by certiorari, remedy of mandamus does not exist. *Hayes v. Brown*, 205 Ga. 234, 52 S.E.2d 862 (1949); *City of Dalton v. Smith*, 158 Ga. App. 356, 280 S.E.2d 138 (1981).

When certiorari is available, it will generally provide easier and speedier remedy than mandamus, and it is always available to review decisions of inferior judicatories. *Wofford Oil Co. v. City of Calhoun*, 183 Ga. 511, 189 S.E. 5 (1936).

certiorari will lie for the correction of any errors. *Anderson v. McMurry*, 217 Ga. 145, 121 S.E.2d 22 (1961).

Rule as to immunity of state does not forbid suits against officers in their official capacity to direct their official action by mandamus, where such suits are authorized by law, and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest. *Stanley v. Sims*, 185 Ga. 518, 195 S.E. 439 (1937).

Except in case of clear legal right, writ of mandamus is discretionary remedy. *Van Valkenburg v. Stone*, 172 Ga. 642, 158 S.E. 419 (1931).

In order to entitle one to mandamus, it must appear that one has a clear legal right to have the particular act performed, the doing of which one seeks to have enforced. *State ex rel. Waring v. Georgia Medical Soc'y*, 38 Ga. 608, 95 Am. Dec. 408 (1869); *Jackson v. Cochran*, 134 Ga. 396, 67 S.E. 825, 20 Ann. Cas. 219 (1910); *Adkins v. Bennett*, 138 Ga. 118, 74 S.E. 838 (1912); *Cureton v. Wheeler*, 172 Ga. 879, 159 S.E. 283 (1931); *Bowles v. Etheridge*, 176 Ga. 660, 168 S.E. 769 (1933); *West v. Lewis*, 188 Ga. 437, 4 S.E.2d 171 (1939); *Phillips v. Head*, 188 Ga. 511, 4 S.E.2d 240 (1939); *Wade v. Combined Mut. Cas. Co.*, 201 Ga. 318, 39 S.E.2d 681 (1946); *Poole v. Duncan*, 202 Ga. 255, 42 S.E.2d 731 (1947); *Richardson v. Awtry & Lowndes Co.*, 204 Ga. 77, 49 S.E.2d 24 (1948); *Trussell v. Martin*, 207 Ga. 553, 63 S.E.2d 361 (1951); *Pierce v. Rhodes*, 208 Ga. 554, 67 S.E.2d 771 (1951); *Veal v. Washington County Bd. of Educ.*, 211 Ga. 204, 84 S.E.2d 565 (1954); *City of Decatur v. Fountain*, 214 Ga. 225, 104 S.E.2d 117 (1958); *Bradford v. Bolton*, 215 Ga. 188, 109 S.E.2d 751 (1959); *Garrett v. Board of Comm'rs*, 215 Ga. 351, 110 S.E.2d 626 (1959); *Weathers v. Stith*, 217 Ga. 39, 120 S.E.2d 616 (1961); *City of College Park v. Hamilton*, 220 Ga. 629, 140 S.E.2d 878 (1965); *Howard Simpson Realty Co. v. City of Marietta*, 220 Ga. 727, 141 S.E.2d 460 (1965); *Clairmont Dev. Co. v. Morgan*, 222 Ga. 255, 149 S.E.2d 489 (1966); *Hyman v. Pruitt*, 226 Ga. 625, 176 S.E.2d 707 (1970); *Allen v. Carter*, 226 Ga. 727, 177 S.E.2d 245 (1970); *Bailey v. Dobbs*, 227 Ga. 838, 183 S.E.2d 461 (1971); *McClure v. Hightower*, 237 Ga. 157, 227 S.E.2d 47 (1976).

Trial court did not err in denying an employee's request for mandamus relief, as a grievance decision entered by the employer's Bureau of Labor Relations did not create a legal requirement that the employee be reinstated to a previous position, along with the back pay sought, but instead, stated that the Bureau had no objection to any accommodation made to rectify the employee's situation; moreover, the employee's federal conspiracy conviction rendered the request for mandamus relief moot. *Williams v. City of Atlanta*, 281 Ga. 478, 640 S.E.2d 35 (2007).

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Title 36 - LOCAL GOVERNMENT (§§ 36-1-1 — 36-93-1)

PROVISIONS APPLICABLE TO MUNICIPAL CORPORATIONS ONLY (§§ 36-30-1 — 36-45-20)

Chapter 35 - HOME RULE POWERS (§§ 36-35-1 — 36-35-8)

Section 36-35-5 - Filing of charter amendments or revisions, notices, and affidavits; publication and distribution of amendments and revisions by Secretary of State

Universal Citation:

GA Code § 36-35-5 (2024)

No amendment or revision of any charter made pursuant to this chapter shall become effective until a copy of the amendment or revision, a copy of the required notice of publication, and an affidavit of a duly authorized representative of the newspaper in which the notice was published, to the effect that the notice has been published as provided in this chapter, has been filed with the Secretary of State and in the office of the clerk of the superior court of the county of the legal situs of the municipal corporation. The Secretary of State shall provide for the publication and distribution of all such amendments and revisions at least annually.

2024 CODE OF GEORGIA

Title 36 - LOCAL GOVERNMENT (§§ 36-1-1 — 36-93-1)

PROVISIONS APPLICABLE TO MUNICIPAL CORPORATIONS ONLY (§§ 36-30-1 — 36-45-20)

Chapter 35 - HOME RULE POWERS (§§ 36-35-1 — 36-35-8)

Section 36-35-6 - Limitations on home rule powers

Universal Citation:

GA Code § 36-35-6 (2024)

- **(a)** The power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to the following matters or to any other matters which the General Assembly by general law has preempted or may hereafter preempt; but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution:
 - **(1)** Action affecting the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members, except as authorized in Chapter 2 of Title 21 or as provided in Code Section 36-35-4.1;
 - **(2)**
 - **(A)** Action defining any offense, which so defined, is also an offense under the criminal laws of Georgia;
 - **(B)** Action providing for confinement in excess of six months; and
 - **(C)** Action providing for fines and bond forfeitures in excess of \$1,000.00;
 - **(3)** Action adopting any form of taxation beyond that authorized by law or by the Constitution;
 - **(4)** Action affecting the exercise of the power of eminent domain;
 - **(5)** Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution;
 - **(6)** Action affecting the jurisdiction of any court; and
 - **(7)** Action changing charter provisions relating to the establishment and operations of an independent school system.
- **(b)** The power granted in subsections (a) and (b) of Code Section 36-35-3 shall not include the power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.