1) Please type the answer to PT-B below. *(Essay)*

======== Start of Answer #1 (2115 words) ========

TO: John Trammal

FROM:

DATE: February 23, 1982

RE: Immunity, Clams, and Potential Damages for Blanchard, Inc. in Claim Against City

1) Whether City is Immune From Liability

Before determining if Blanchard (B) can recover damages in quantum meruit (QM), the issue of whether the City is immune from liability must be addressed.

Applicable Statute

§17-4 of the Corson City Charter clearly states that no contract with the city shall be binding on the city unless the contract (i) is in writing, (ii) is signed after review by the city attorney, and (iii) is approved by the city council (iv) subsequent to its signature by the city attorney, and (v) such council approval is entered on the council journal.

Inherent Authority & Contract Execution

In *Hiram*, the court notes that municipal authority (to contract) comes only from the State, and that authority is strictly limited in how it is delegated and how a municipality obtains authority to act. Where a city charter provides how the city must make and execute a contract, the city may do so only in the method prescribed, and this method, once prescribed by law or charter, is absolute and exclusive. *Id*. Moreover, if a local government enters into a contract beyond the scope of its authority or in abrogation of those delegated powers, then the contract is deemed ultra vires and void.

The *Hiram* court further stated that the exact status of a defective contract depends on whether the type of limitation. Specifically, it notes that imperfect or irregularly executed contracts are not necessarily completely ineffective, as long as municipality has the power to make them. However, if the imperfect or irregularly places the contract completely outside the authority or competence of the local government, the contract is ultra vires, and thus void.

In Hiram, the City Charter provided that the Mayor must sign the contract when authorized by the Council, with a quorum of the City Council, and the City Attorney was required to draft or review authorization before the Council Acted. In that case, the City Attorney did not draft or review the contract before the Mayor and Council signed it, and no quorum was present in the Council. In this case, the prescribed method for Corson entering into contracts is explicity laid out in the City Charter in §17-4, and the formal requirements were similarly not met as B's proposal was not (formally) approved by the City Council, nor was it's approval entered on the council journal. In contrast, the first contract with B for the infrastructure permitting did meet all formal requirements, and that is not disputed.

Accordingly, the City's inherent authority to execute contracts per is clearly spelled out in §17-4, and those formalities were not met here. Therefore, under a strict interpretation of *Hiram*, the contract would be considered ultra vires and void.

Contract Execution (Majority View)

Hiram's majority stated that when a city acts with total absence of authority, it is *NOT* estopped from denying the resulting agreement's validity, and that despite any whole or partial performance, this will not be treated as a ratification, even if the opposing party partially performs and has detrimental reliance.

Moreover, Hiram note that the underlying public policy reasoning behind its

ruling protects taxpayers by placing limitations on a municipality's ability to contract, thus preventing improper action and disastrous consequences. Furthermore, it notes that allowing ultra vires agreements, even quasi-contractually (in QM), would allow local government to expand its own powers without state legislation, promoting an indirect route to exceed it's authority, thus allowing unreasonable risks and liabilities on taxpayers. A strict rules prevents these possibilities.

In Hiram, the majority found that the city did not meet the applicable procedure vis-a-vis the mayor, city council and city attorney. Thus, it was not a case of the city exercising authority irregular or unusual authority, but rather the city acted with a total absence of power and in direct contradiction to its authority in statute.

However, the facts in Hiram are distinguishable from the facts here, in that in Hiram there was a noticeable lack of legislative quorum. It is true that the strict test yields the same result in both cases. However, in Hiram there was a substantive break more than one element of the prescribed method for entering contracts. Namely, the Mayor and two council members (where three are needed) attempted to bind the city to a contract without authority. Moreover, the City attorney neither reviewed or drafted the contract at hand, and thus there was a significant break from procedure exceeding the City's authority.

In this case, the mistake appears to be simply a matter of procedural oversight. The facts indicate that all council members were in favor of B's proposal, they simply were too busy to vote and formally approve the contract. Nonetheless, the record indicates that all the other elements of §17-4 are met, including being reviewed and signed by the city attorney for legal sufficiency. Had the Council had time to vote on it, it is likely this vote would have been recorded in the minutes. Arguably, the council journal already reflects the council's approval by way of the minutes indicating a verbal acceptance of the contract without a formal vote. In fact, every Council indicated the had no objection to the contract,

despite some questions about process, amount, timing, permits, etc. So, while a formal vote never occurred, the Council's approval was arguably already given.

Moreover, the facts in this case appear more in line with the facts in the Wreck It case cited.

Wreck It Rule / *Hiram* Minority View

Plaintiff sued for cost of storage in quantum meruit for seized vehicles where entered into oral agreement with members of the police department and city charter provided contract "other than for the ordinary needs of city" must be in writing. Court of appeals held that if municipal contract within the scope of "corporate powers," a municipality may be held liable on a contract implied in law to prevent unjust enrichment by accepting and retaining benefits without just compensation.

In that case, the court did not address ultra vires arguments, and the city charter provision was different. Storage of vehicles probably fell within "ordinary needs" exception to contracting.

In the *Hiram* dissent, it states that the Supreme Court makes clear that QM claims may be sustained where City has not fully complied with formal requirements (citing Lyman and Galax), and cities should not be unjustly enriched at the expense of plaintiffs simply because of failing to comply with "purely formal requirements" in the city charter. Again, in this case we have formal requirements presumably being the only bar, as expense of plaintiffs was likely establishable as we will set out below.

Thus, the City likely did have authority to enter into a valid contract and would be estopped from not honoring the contract, and it would not be immune from the plaintiff's action.

2) Establishing Blanchard's Claim in Quantum Meruit

If the City is not immune from liability on the contract, then the issue of whether Blanchard has a valid QM claim must be addressed.

Establishing Quantum Meruit

Lyman sets out the rule for establishing a quantum meruit claim in municipal contract. First, a plaintiff must establish that the function the government was performing is a "government function," directly related to general health, welfare and safety of citizens. If the function is proprietary in nature (i.e., provides a service that other private commercial businesses also provide), the municipality must comply with the same rules that apply to private entities. A municipality becomes obligated under QM when to pay the reasonable value of befits it has accepted, provided it has the power to contract, and it can be held liable where the knowledge and consent of it's members of the council caused it to receive benefit procured by its agents, even without a contract or where an express contract is invalid because of "mere irregularizes."

In this case, the purpose of this contract is may not be proprietary, but it clearly meets the test of becoming obligated under quantum meruit. As established above, the city had authority to contract.

Standards for QM

Lyman also sets out an articulable standard for quantum meruit (QM): a plaintiff must establish (i) valuable services and/or materials were furnished; (ii) to the party sought to be charged; (iii) which were accepted by the party sought to be charged; and (iv) under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient.

In this case, valueable services were clearly rendered to the City. While the

grants were not obtained (and that value may be disputed), the value of the other services and labor are indisputable. The party sought to be charted is the City, and the services were clearly accepted unequivocally by that mayor, and Blanchard and the Mayor reasonable notified the City Council that Blanchard expected to be paid. No one on the City Council objected. Thus, the City reasonably accepted the benefits of the contract through it's agent, Mayor Reyes. B sought assurances from the Mayor that if B invested time, the City Council would support and MAyor would bring K to city council for review and approval. Mayor Reyes committed to B to bring the new proposal to City Council for review and approval. The Council members clearly manifested their consent despite the absence of a totally valid contract set forth in the prescribed procedures, and B substantially completed all the work on the contract. Mayor Reyes gave those assurances to green light the project, but did not get to City Council until August. Nonetheless, the facts state the Council did not vote because it was busy, not for lack of assent. Finally, despite the fact that the new Mayor has not manifested assent to the contract, that was already done by the previous Mayor and City Council. The lack of formal approval would likely constitutes a "mere irregularity." Thus, Blanchard likely has a valid claim for QM.

Moreover, in *Galax*, the court stated that if a contractor confers a benefit in circumstances where it would be unfair for government to retain that benefit were it not a municipality, a plaintiff should not be barred from recovering the retained benefit *solely* because the defendant is a municipality. This would clearly satisy the facts in Blachard's case, and not honoring his claim would likely only occur because of the lack of formalized procedures. Moreover, it is clear the city recieved a benefit, as the facility badly needed upgrade and could not afford improvements, without which a failure to upgrade would result in millions in fines per state and federal officials.

Accordingly, Blanchard has likely set forth a sufficient basis to obtain quantium meruit.

3) Establishing Potential Damages for Blanchard in Quantum Meruit

Assuming Blanchard's claim for QM is established, next the issue of damages must be established per the applicable jurisprudence.

Damages Standards in QM

Galax sets out the measure of damages for QM as the value of the benefit actually received and retained by the defendant. A plaintiff may prove this value by proving not only physical improvements, but also the value of the work, labor, services, and materials furnished. Other points of proof may include: increase in sales price vis-a-vis plaintiff's work, value of the risks avoided as a result of P's work (i.e., through safety measures), etc.

In this case, there were phyisical improvements established by Blanchard's invoice in the form materials (roughly $13K) as well as the accompanying designs ($75k). Also, B has experience with grants they needed so she entered into a contract with them to obtain state funding: B performed and became clear city would need to prepare design specs to be "shovel ready": (i) assess existing capacity (ii) assessing regulatory requirements, (iii) preparing specific designs, (iv) negotiating with contractors, and (v) applying for relevant permits and permissions. Accordingly, his work, labor, and services are likely adeuately shown by the review and analysis of the existing facility ($15k), the EPA and Colombia assessments ($25k), and the applications and reports prepared for same (approximately $50k), as these create value by avoiding and mitigating risks to the project through plaintiff's efforts. The overheard negotiations costs are perhaps the most questionable, but arguable those create an overall increase in value by pushing down the costs of construction. Moreover, while Blanchard was unsuccessful with the grant process, he still likely conferred a benefit on the City, as they may learn from the process of the application and

make improvements to subsequent applications.

Therefore, B will likely be able to get damages accordingly in QM.

Question #1 Final Word Count = 2115

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END OF EXAM