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

MEMO

TO: John Trammell
FROM: Applicant
RE: Claim by Blanchard Engineering, Inc. against City of Corson

You have asked me to prepare an objective memorandum answering three questions: 1) Whether the City is immune from Blanchard's claim for quantum meruit; 2) Whether Blanchard can prove its claim for quantum meruit; and 3) What damages might Blanchard be entitled to if the court finds in their favor.

It is our understanding the Blanchard alleges that the City owes it over $200,000 for services rendered pursuant to discussion that never resulted in a formal contract with the City. The contract did not receive a formal vote from the city council. It is the City's position that the contract is not valid and the city should not pay for the services rendered by Blanchard.

The strongest argument is that the city was acting in its governmental capacity when it entered into the contract with Blanchard. Corson is not acting in its propiertary capacity by operating a wastewater treatment facility. Instead, Corson is acting in it's governmental function because they are attempting to upgrade the facility for the general public health of their population. Since the city was operating in its governmental capacity and not propiertary, quantum meruit does not apply. However, if the court finds that quantum meruit does apply. The damages should be less than the invoice price because of services rendered.

Whether the City is immune from Blanchard's claim for *quantum meruit*

Before getting into the issue of quantum meruit, it is important to note a Court of Appeals decision that determined that rendering a contract *ultra vires*, prevents the court from even looking to the argument of quantum meruit. Hiram Grant Partnership v. City of Vanderbilt, Columbia court of Appeals (2005) (Hiram). It is noted that this is a Court of Appeals decision and the issue of *ultra vires* in relation to *quantum meruit* has not been brought before the Columbia Supreme Court as of yet. According to the court of appeals case, the issue of contract validity should be the first issue addressed when determining whether a city is immune from a claim for quantum meruit. A contract is considered *ultra vires* if the local government entered into the contract without the authority to do so. A municipality has no inherent power and may only exercise power granted to it by the state. Hiram.

The Hiram case discussed the policy implications of allowing a local government to enter into contracts that do not comply with the city charter. Allowing to do so would be "a short step to governmental extravagance." "Where a city charter specifically provides how the city must make and execute a municipal contract, the city may only do so in the method prescribed." This method of contracting is absolute and exclusive. At issue in this case was a an alleged contract entered into in violation of the city charter. The city charter at issue in Hiram prescribed that the city attorney must draft or review the contract before it can be authorized by council and that a quorum of council must approve it. In this case, the ciy attorney neither drafted or reviewed the contract and a quorum did not approve it. Thus, the city did not have authority to enter into the contract and it was rendered *ultra vires*, null and void. Further, substantial performance did not equate to ratification and cannot be said to have determinately relied on the contract.

The Hiram court did not find similarities between this instance and one where the Columbia Court of Appeals determined that an oral contract to store vehicles seized by police was a contract implied in law. See Wreck-It Co. v. City of

Lossoth (Col. Ct. App. 2001). The Wreck-it court did not address the *ultra vires* argument. Furthermore, the storage of vehicles seized by police is generally considered an ordinary need of the city. Id.

Conversely, the dissent in Hiram - found that the Supreme Court on two occasions found that a claim for quantum meruit may be sustained without full compliance of the city charter under a theory of unjust enrichment and *quantum meruit.*

Here, the Corson City Charter Section 17-4 states: "No contract with the city shall be binding on the city unless the contract is in writing, is signed after review by the city attorney, and is approved by the city council subsequent to its signature by the city attorney, with such council approval entered on the council journal." The transcript from the August 8, 2016 council meeting demonstrates that the proposal never received a formal vote and did not appear in the council journal. Further, there was no signed contract concerning the design plans. Mayor Reyes and Blanchard looked over a draft contract from the city attorney but they did not sign the contract nor did the contract gain approval from the city council. The council members "voiced support for the June proposal" but they did not actually vote on the proposal, in other words they did not approve the contract pursuant to the Corson City Charter. The meeting minutes indicate that Council woman Baldwin stated "I'm sold!" But that is not indicative of a valid contract.

Under the reasoning of the Hiram court, the oral contract between Reyes and Blanchard is null and void because the city of Corson could not enter into a contract for which they did not have the authorization from the state to do so. Mayor Reyes did not have the authority to commit the city to paying Blanchard for a contract the city never entered into. Under this reasoning, the city of Corson should be immune to a claim from Blanchard for *quantum meruit* because the underlying contract is *ultra vires*, null and void. However, If the judge were to

disregard the Court of Appeals decision and read the Supreme Court cases broadly, there is a chance that the City of Corson is not immune to *quantum meruit.* Regardless, the City of Corson should be immune from quantum meruit because it was acting in it's government capacity when it entered the alleged contract.

This issue of quantum meruit turns on whether the City acted in its *proprietary capacity or governmental capacity.* The Columbia Supreme Court has determined that when a local government acts under its proprietary capacity, it can be held liable for quantum meruit. See Lyman v Town of Barnet, Col Sup Ct (1958) (Lyman); Galax Consultants, Inc. v. Town of Avalon Beach, Col Sup Ct (1994) (Galax). (holding that Galax had conferred a benefit on the Town of Avalon Beach when it performed repairs and renovations to a ballpark it was hoping to be sold by the city). When a benefit is conferred to a municipality, a plaintiff should not be barred from recovering the retained benefit *solely* because the defendant is a municipality. Lyman. Instead it depends on the capacity in which the municipality is operating.

A municipality can wear two hats, one hat is the governmental and the other is proprietary. When a government function relates to the general health, welfare, and safety of the citizens, it is acting in its governmental capacity.Lyman. When a government function provides a service that other commercial business also provide, and that benefits the municipal financially, it is acting in its proprietary capacity. Essentially a government acts in its proprietary capacity when it conducts business for its own financial benefit. id. The Lyman court found that when a city operates a water plant, it operates in its proprietary capacity.

The Lyman case is somewhat similar to the Blanchard situation, but can be distinguished. Mrs. Lyman was initially told her property was not in the city boundary so they would not build pipelines for her. She instead built her own pipeline and the City charged her rent for the water. Subsequently Mrs. Lyman

sold individual lots of her parcel and the city used her existing pipes to get water to these people while charging for water. Like the Blanchard situation, the town contended that it had no contract with Mrs. Lyman and could not be bound to pay for facilities it uses in governmental capacity. However, the court found that when a municipality operates a water plant, it operates in its proprietary capacity, like a regular business. The court held that "where a town takes over and controls a water line built by others and uses it for the benefit of the town and consumers generally, and through it delivers water for profit, it is obligated to pay those who constructed the line on a quantum meruit claim." Because the City was financially benefiting from the conduct, the court remanded the case to let Mrs. Lyman prove the elements of quantum meruit.

The Lyman case is distinguishable from our case because the city is not financially benefiting from the wastewater treatment facility. Corson is experiencing a population boom and the current wastewater treatment facility can not keep up with the demand posed by the growing population. Memo from Bryant regarding conversation with Former Mayor Reyes. If the town charged a fee to residents in order to treat their wastewater, then Corson might arguably be acting in a proprietary context. However, the argument for governmental capacity is much stronger.

Operating in it's governmental capacity, the town of Corson operates a wastewater treatment facility to protect the public from the dangers of untreated waste. Blanchard rendered services in connection with the City's efforts to upgrade its wastewater treatment facility. Left untreated, waste could end up spreading many diseases that are completely preventable through wastewater treatment. The existing wastewater facility is currently up to standards, but the former Mayor was in conversation with various representatives of state and federal regulatory agencies concerning the facility. Although the facility was currently in compliance, the representatives made it clear that it would fall out of compliance in the next several years. Thus, even if the court finds that the

contract was valid in spite of the City Charter, Mayor Reyes entered while acting in it's government capacity.Therefore, the City is immune to a *quantum meruit* claim.

Whether Blanchard can prove its claim for *quantum meruit*

There are four elements of quantum meruit. Each of these elements must be established by the plaintiff. Lyman. Each of these elements will be discussed in turn.

1) Valuable services and/or materials were furnished

Here, the new Mayor finds that because the City did not get the grant that Blanchard prepared the designs in anticipation of receiving, then the City did not get any value from Blanchard's work. Blanchard is claiming that it should be reimbursed for the work rendered on the proposal for the redesign of th wastewater treatment under the June agreement. A substantial amount of the work was completed prior to receiving notification that the City of Corson's application for infrastructure was denied. Because of the denial of the funds, the designs cannot be utilized at this point in time because the city does not have the money to pay for the upgrades.

However, there still may be some value to the designs if they can be used in the future. The work included assessment of the facilities existing capacity, analysis of the relevant EPA and Columbia EPA regulatory requirements, preparation of specific engineering and building designs, negotiations with contractors and suppliers, and applications for relevant permits and permissions. If any of this work is considered valuable to the court, this element of *quantum meruit* will be met.

2) to the party sought to be charged

Here, Blanchard is charging the City of Corson for the services rendered. The City will not be able to deny that he did this work for the city. Thus, this element is met.

3) Which were accepted by the party sought to be charged

The issue of acceptance seems to relate back to contract formation. If the City of Corson is contending that there is no contract between the two, then it does not seem logical that the charges were accepted by the City. However, in Galax, the court found a contract orally agreed upon to perform renovations to a ballpark was valid although the Town contended it was not. Again, the issue of a ballpark and wastewater treatment facility are vastly different. A city financially benefits from a ballpark, not a wastewater treatment facility. Blanchard will have some difficulty meeting this element because the City did not accept the charge. Conversely, if the court renders the agreement valid, then Blanchard will have met this element.

4) Under such circumstances as reasonably notified the the recipient that the plaintiff, in performing, expected to be paid by the recipient.

Blanchard did notify Mayor Reyes and the city council during the August meeting of the contract price and further explained why it would cost so much money to develop the design. Thus, Blanchard will meet this element.

If the court finds that the contract is valid and turns to quantum meruit, it will likely find that Blanchard is entitled to relief.

How a court might go about evaluating damages if Blanchard were to recover under quantum meruit

The measure of damages for quantum meruit is the value of the benefit actually received and retained by the defendant. A plaintiff may prove this value by the value of the physical improvements, value of work, labor, services, and materials furnished (including overhead expenses). Additionally, the court may look at other points of proof including: the increase in the sale price of the property resulting from the plaintiff's work, the value of the risks avoided as a result of the plaintiff's work (through design and installation of safety measures), and similarites. Galax.

Blanchard will have the burden of proving the value of the service rendered. Here, there are no actual physical improvements. Blanchard did not actually upgrade the wastewater facility, instead they provided a design plan in order to be "shovel ready" when the contract was approved. This essentially means that Blanchard prepared the designs for the updated facility and completed the permit process in compliance with local and federal environmental laws. Meaning there is no value to the physical improvements because they do not exist. Thus, Blanchard will not be able to recover damages for physical improvements.

In terms of labor, according to the invoice from Bill Blanchard, the majority of the fees are from time and labor (approximentally $190,000). During the council meeting Councilmen Manton expressed concern over the cost of the design. Blanchard said that since this was a shorter time period, Blanchard had to have "multiple teams working simultaneously." He also assured Manton that the "amount of $210,000 represents good value for a project of this size." Corson City Council Meeting Transcript (8/8/16).

Arguably Blanchard offered a service to the City because they may be able to use the plans again.However, the amount of damages requested is substantially high and the court could find this amount unreasonable especially since the city cannot use the plans currently. Further the invoice is not detailed enough.

The amount requested for materials is $13,409. If Blanchard proves that the value is correct, the court may award the amount requested for materials.

Conclusion

The strongest argument is that the city was acting in its governmental capacity when it entered into the contract with Blanchard. Since the city was operating in its governmental capacity and not propiertary, quantum meruit does not apply. However, if the court finds that quantum meruit does apply. The damages should be less than the invoice price because of services rendered.

Question #1 Final Word Count = 2590

END OF EXAM