

INSTRUCTIONS

This is a take-home examination, NOT a research paper. The time allowed for all purposes is limited to four (4) hours and begins to run when you start reading the first question. The allotted time need not run consecutively.

Unless other results are specifically asked for, consider issues of fact or law raised, the arguments for the parties, the resolution of issues of facts or law and necessarily the reasons for the decisions you make. Answers without reasons are worthless. If there are alternative resolutions to issues, give reasons for all alternatives.

Use your examination number on this examination and on your research paper. The same number on both, of course.

The Constitution of the State of Franklin is identical with that of Ohio, as of 1979 but the Franklin Constitution has never been construed. Consequently, you may refer to the Constitution of Ohio, if needed but not to the annotations, as they don't exist in Franklin. You may also refer to any other materials, including your casebooks, EXCEPT CLASS NOTES OR OUTLINES EMBODYING THEM.

Examinations and research paper are to be submitted to my office (Room 118) on May 10, between 4 and 6 p.m.

DO NOT LIFT THIS PAGE UNTIL YOU ARE READY FOR YOUR TIME TO BEGIN RUNNING.

I .

Franklin City has adopted in due form an ordinance which reads in part as follows: "It shall be a misdemeanor for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of race, color, religion, or national origin (1) to refuse to engage in a real estate transaction with a person or otherwise to deny or withhold real estate from a person, (2) to discriminate against a person in the terms, conditions or privileges of a real estate transaction, (3) to represent to a person that real property is not available for sale, rental, or lease, when in fact it is so available. The ordinance provides for a fine of \$500 for each offense.

Ed Owner who has been transferred by his company to another city, has put his \$50,000.00 Georgian Colonial Rambler up for sale listing it with realtor Bill Blockbuster. The only offer received is from Emir Khan, an Afghan, who offers \$56,000.00. On Owner's instructions, Blockbuster tells Khan that the house has been sold to another and that his offer is therefore

rejected. Owner and Blockbuster are charged with violation of the ordinance and offer as their only defense that the City had no power to pass the ordinance.

The State of Franklin has legislated on this subject, in essentially the same terms, providing for a fine of \$50 for each offense.

You are clerk to the Chief Judge of the City Court and are assigned to draft a memorandum on the validity of the defense. Write the memorandum.

II.

The State of Franklin has adopted a statute which requires, in pertinent part, that "all contractors for public construction shall pay their employees and sub-contractors shall pay their employees, the wages prevailing for construction contracts for private construction of similar structures, such prevailing wages to be determined by averaging those for private construction in the county in which public construction is undertaken and the counties immediately adjacent to the county in which such public construction is undertaken."

Franklin City, a charter corporation, has in due compliance with the charter, authorized the Mayor to solicit bids for (1) construction of a police station to be financed by general obligation bonds, which have been approved by referendum and (2) construction of a municipal swimming pool, to be financed by revenue bonds, with revenues coming from admission fees, concession profits and/or a management lease.

The low bidder on both contracts is the ABC Corp., whose bid is lowest because it is not in compliance with the prevailing wage statute. It is, however, a "responsible" bidder, in that it has the resources to perform the contract. The second lowest bidder, whose bids are \$15,000 above ABC, is the XYZ Corp. XYZ's bid is based upon full compliance with the prevailing wage statute. XYZ is also a "responsible" bidder.

The Franklin City Charter provides that competitive bid awards shall be made to "the lowest responsible bidder." When the bids are opened, the Mayor determines that ABC is responsible and the lowest bidder and recommends to Council that the ABC bids on both projects be accepted. Council agrees unanimously.

Before the Mayor can sign the contracts, XYZ secures a temporary restraining order, on the grounds that the award to ABC is in conflict with the prevailing wage statute.

You have been hired as a special counsel to the City. Write a memorandum of law as to each of the contracts, with arguments for the City and for XYZ Corp. What outcome is, in your opinion, indicated as to each of the contracts, should the City defend the XYZ motion for a permanent injunction against award of either contract to ABC? Give full reasons for your opinion. (NOTE: The underscoring in this paragraph is essential.)

III.

The City of Grzypan, Franklin, was named in honor of Count Casimir Grzypan, a Revolutionary Hero who volunteered to serve as lieutenant in the Continental Army. He led the famous charge up Queen's Mountain, after which defeat the State of Franklin remained securely at peace under British rule until it became a part of the United States by the Treaty of Paris. A lineal descent of Count Casimir, Floyd G. , is mayor of the City and was elected on a platform of broadening the City's tax base.

In furtherance of his campaign promises, Floyd determined that a four block length of Queen's Mountain Road, lying between an exit from Interstate 1070 and Main Street, old U.S. Route 170X, could be the location of profitable commercial development, although planned and zoned as single family residential. The lots along this strip were at least 200 feet deep.

At Floyd's urging, the Council of G., a charter city, determined by emergency ordinance that the public health of the City of G. required installation of a major sewer line along the aforesaid position of Queen's Mountain Road, connecting to the City's main sewer at Main Street. Under the Rules of Council, an emergency ordinance takes effect on its signature by the Mayor, which Floyd promptly did. Such an ordinance is not subject to referendum.

Among the provisions of the ordinance were: (1) authorization of a full faith and credit bond issue to defray \$100,000 of the costs of the sewer, and (2) assessment of the other \$100,000 of the costs of the sewer to owners abutting Queen's Mountain Road of \$75,000, on a front foot basis; and the remaining \$25,000 to owners behind the abutting property, on an "as-if" front foot basis.

Marlene is a 76-year old widow living on Q.M. Road. Her share of the assessment is double the value of her property, which suits Floyd fine. Glenn owns a corner which extends 100 feet along G.M. Road and 250 feet back, thereby being assessed both as an abutter and a secondary owner.

(A)On the above facts, who can do what to who conformably with the Franklin Constitution and general case law? Why?

(B)Assume that there is a cost overrun on the sewer construction. Does the ordinance cover an additional assessment for a portion of the overrun-- Why or why not?