

LOCAL GOVERNMENT LAW
PROFESSOR SHIRLEY MAYS

FALL, 1991

FINAL EXAMINATION

December 10, 1991
6:00 - 9:00 p.m.
ROOM 259

This is an open book examination. The exam consists of four essay questions. All questions will be weighted equally. You will have a total of three hours to complete the examination.

Put your examination number on this sheet and on the front of each bluebook you turn in. This exam is to be turned in with your bluebook.

Please write legibly. Write only on one side of the paper. You may use more than one bluebook if you need to do so. If your writing is not neat, skip lines.

Take time to organize coherent answers. Your answer should be concise and to the point. You should, however, discuss all relevant issues even though resolving one issue might dispose of the case. Merely stating legal principles is insufficient. Analysis is important.

You should not assume facts not specified in each problem. If you do make assumptions in answering a question, state what those assumptions are and their significance.

Good luck and have a joyous holiday season.

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1. Carol and Kwami Chambers were driving through the town of Woodinville at approximately 5:50 p.m. on April 22, 1991. Their car was stopped in traffic behind a pickup truck occupied by three men. Two of the men exited the car and approached the Chambers' car. Mr. Chambers left his car to see what the two men wanted. Without warning, both men struck Mr. Chambers, knocked him down, and continued to beat him. Ms. Chambers was also struck and manhandled by one of the men. The third man, who had remained in the truck, drove off. The two assailants left the immediate area on foot, but remained in a nearby open field. A number of people kept the assailants under surveillance in the field.

Several observers notified the King County Police Department of the incident. The King County police operators received a total of 11 calls for assistance. The calls were received by a series of separate police emergency operators at different operation positions rather than by one

operator-dispatcher.

One observer called the emergency number and said, "These guys keep coming after these people and these people are out here now and they need the police." A police operator replied, "Okay. We have the officers on their way out there right now." When asked if the officers would arrive within a few minutes, the police operator replied, "Yeah." Another observer called the emergency number a few minutes later and reported that all the people involved in the fight had jumped into their cars and taken off. Upon receipt of this call, the police car that had been dispatched was informed no one was at the scene. Consequently, the officers did not continue to Woodinville.

At about 6:30, Carol Chambers called the police emergency number for the first time and said, "Two drunk, mean individuals" had just beaten her husband, Kwami, at the main intersection in Woodinville. She also said, "This is the fifth call. No one has responded. It's been a half-hour. A police operator replied: "We've gotten calls from there, ma'am, saying that the fight was ended, that everybody parted." Carol then said, "That is not the truth They are dangerous and they are threatening other people in the area."

By this time, Carol's husband and several other witnesses had chased the assailants under a railroad trestle. Carol was very upset because she, too, had been assaulted, although not as severely as her husband. The police operator told her, "You'd better calm down or I won't send anybody." After Carol gave a more specific description of her location, the police operator said, "All right, we'll get somebody up there." Subsequent review of police reports indicate no one was dispatched at that time.

At 6:40 p.m., Carol called a second time and said the witnesses were surrounding the assailants. She added, "We need some police here." The police operator initially stated other people had called and canceled the request for assistance, but after Carol said "No, don't", the operator asked a fellow operator about the status of the incident. When the operator came back on the line, Carol was told, "We have the officer; he is on the way." Subsequent review of police reports indicate that an officer had not, in fact, been dispatched.

At 6:56 p.m, Carol called a third time to ask whether anybody had been dispatched to the Woodinville intersection. She was told, "Yes, they're on their way ... they'll be there momentarily." Carol then told the police operator that the assailants were "surrounded by a lot of people who stopped to help out, but we really need some assistance." The police operator replied, "They'll be there anytime now. They're on the way." The police reports indicate that officers were dispatched at the time this call was received.

Two police officers arrived on the scene at approximately 7:12 p.m. Carol asked the officers to look for her husband and the suspects on foot. The officers did not conduct a search at that time, however, because the search area was so large and because Carol was upset and unable to give a description of the suspects. At 7:30, Kwami returned from the field into which the assailants had fled. He was extremely angry at the police for having taken so long to arrive. After Kwami calmed down, the officers obtained a description of the suspects and began searching the

area.

The Chambers' are not seeking damages for the injuries suffered from the beating as all parties agree that the police could not have prevented the incident. However, they allege that King County and the King county police department are liable for damages suffered due to the failure of the police to respond in a timely manner. The damages alleged include emotional distress and the loss of a cause of action against the assailants since they escaped and were never located.

The Chambers' come to you asking for advice. What do you tell them?

2. Americars, a foreign manufacturer of automobiles has acquired 200 acres of land on which it proposes to build an assembly plant. The plot is about one-half mile from Holstein, an incorporated non-home rule city with a population of 1,500.

Holstein consists of a main street with a few stores, surrounded by residential dwellings. About one-quarter mile outside of Holstein a developer has built a large subdivision of 200 single-family homes. All of the surrounding area is agricultural, but some of the agricultural land near the settlement is held by developers who plan to build residential subdivisions.

Residents of Holstein propose to annex the automobile assembly plant land, the nearby subdivision, and the agricultural land extending about one-half mile out from the perimeter of Holstein. A majority of the residents of the subdivision are opposed to annexation to Holstein on the grounds that they do not want to be associated with a "cow town".

a. What factors should the county board consider in allowing or disapproving the annexation and why?

b. Eight months after the county board approves Holstein's annexation petition, several of the homeowners in the subdivision are dissatisfied with the level of services they receive from Holstein. The homeowners hire a lawyer who reviews the state annexation statute section and discovers that the legislature had repealed (albeit inadvertently) the entire annexation statute thirty days prior to the filing of Holstein's annexation petition. What alternatives are available to the disgruntled homeowners and their likelihood of success?

3. On Monday, November 25, 1991 in the City of Bricksenbats, a home rule city, fighting broke out between black and white students at Bricksenbats High School. The fighting spilled out into the streets of the City and police reinforcements were called in to quell the looting and vandalism that occurred.

That evening, City Council met in special session and passed an emergency curfew ordinance which gave the Mayor the power to "proclaim a state of emergency, in the City of Bricksenbats whenever he is advised by the Chief of Police that a civil disturbance, riot or civil commotion is in progress." Shortly thereafter, the Mayor issued a proclamation prohibiting possession of firearms or other dangerous weapons within the City by any citizen except law

officers; prohibited "unlawful traffic" within the City; created a 6 p.m. to 5 a.m. curfew when no person could be on the city streets except those proceeding to and from work or answering emergency calls or who had special permission; closed all liquor stores and prohibited the sale of alcoholic beverages; prohibited all assemblies of more than five persons "unless permission has been granted"; closed gas stations in the City except between the hours of 12 noon and 5:00 p.m.; and prohibited the sale of more than five gallons of gas to individuals with private automobiles. Violation of any provision in the proclamation was made a misdemeanor.

The next day, attorney I. M. Great filed a declaratory judgment action seeking to annul Bricksenbats' curfew ordinance and the Mayor's proclamation. Attorney Great contends that only the Governor has the power to declare a state of emergency; that home rule cities have neither express nor implied power under the home rule act to give their mayors the power to declare a state of emergency or to assume powers comparable to the powers delegated to the Governor; and that the curfew ordinance and proclamation are unconstitutional. Brickenbats maintains that the inherent police powers of a city permit the enactment of a curfew ordinance which may be invoked upon a showing of an existing imminent threat to the community's public welfare and safety.

Write the court's opinion in this case.

4. In March 1990, the voters of Closed, Pennsylvania, a home rule city passed a charter amendment to require that all employees of closed hired after January 1, 1991 become City residents as a condition of their employment. The Governor of Pennsylvania signed a bill on February 2, 1991 which, by its terms, preempted the residency rule enacted by Closed. That bill reads as follows:

"Residency requirements prohibited for public employment - legislative declaration. (1.) The general assembly hereby finds, determines, and declares that the imposition of residency requirements by public employers works to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds, determines and declares that the right of the individual to work in and/or for any local government is a matter of statewide concern and accordingly the provisions of this section preempt any provisions of any such local government to the contrary. The general assembly declares that the problem and hardships to the citizens of this state occasioned by the imposition of employee residency requirements far outweigh any gain devolving to the public employer from the imposition of said requirements. On or after February 2, 1991, no residency requirement may be imposed on any employee by any local government. To the extent that any local government ordinance, charter, resolution or statute conflicts with this provision, it is hereby preempted by this provision."

Closed filed a complaint seeking a preliminary injunction to enjoin the State from enforcing its bill. The district court granted the City's motion, finding that the bill was unconstitutional as applied to Closed since it conflicted with its authority to adopt a residency requirement under Article XX of the state constitution which reads in relevant part: "Home rule for cities and towns. The people of each city or town of this state are hereby vested with, and they shall always have,

power to make, amend, add to, or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.”

- a. The Governor is a client of your firm and asks you for a memo on the issue. What do you tell her?
- b. What would you advise the Governor if Closed was not a home rule city.