

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

LL M IN LOCAL GOVERNMENT LAW

MODULE: LOCAL GOVERNMENT LAW

EXAMINATION PAPER: 17 APRIL 2009

DURATION: 4 HOURS (9h00-13h00)

PLEASE NOTE:

1. Answer only THREE questions.
 2. Each question carries equal weight.
 3. You may bring into the examination room the Constitution, legislation and relevant cases only. You may NOT bring in any journal articles, books or class notes.
 4. Answer your questions with reference to relevant legal provisions and caselaw.
-

1. Hope

The town of Hope is situated in a rural district in one of the former homelands of South Africa. Due to the topography of the land, it is extremely costly for the government to install the necessary water pipes and infrastructure that would give each household access to potable water and sanitation.

The municipality has therefore opted to invest in a rainwater harvesting system. Rainwater is harvested in big tanks that are situated within 200 meters of every household in Hope. The tanks are well-maintained by the municipality. In addition, regular testing is conducted on the water to guard against water contamination and to ensure that the quality of the water meets national standards. Provision has been made for portable sanitation devices that are shared between every second

household. The system has worked well so far. However, there are members of the community who believe that the current system does not fulfill their constitutional right of access to water. Furthermore, they feel that they have been discriminated against. They argue that if government can provide water and sanitation to every household in other, more affluent municipalities, it should be forced to do so in Hope.

In 2009 the municipality of Hope wants to embark on an ambitious project to build a town hall. The town hall will serve a number of purposes which the municipality considers to be of fundamental importance. There is currently no place where community meetings, workshops and even elections, can be conducted. The town hall will also serve as a child care facility as there are no facilities which cater for young children in Hope.

The community is however divided in its support of the town hall. There are segments of the community who believe that too much of the municipal budget will be devoted to the town hall. They argue that the town hall only caters for children and young parents whereas the older members of the community would prefer investment into water and sanitation infrastructure for each household of Hope.

1. Municipalities often contend with competing interests within communities. These interests engender different duties and obligations for local government. With reference to the broad developmental mandate for local government as well as the constitutional and legal framework which underpin these interests, is there a hierarchy of duties that municipalities must fulfill?
2. From the facts of the case, identify and categorise the competing interests at stake in the community of Hope and the duties and obligations which these interests engender for the Hope municipality.
3. In dealing with these issues and engaging with the community, the Systems Act sets out a legal framework for participation. What are the minimal legal obligations which the municipality must fulfill in facilitating public participation around the budgeting process?
4. The community of Hope is clearly divided in respect of the issues at stake. With reference to the case law on public participation, advise the municipality on what would constitute 'reasonable action' in ensuring that all public views are taken into account.

2. Monkey business

Recent newspaper reports have once again highlighted the problems that are caused by the chacma baboon in some parts of the City of Cape Town. The baboons reside in Table Mountain National Park. However, as a result of living in a national park enclosed within an urban environment, the baboons' food supplies are limited, and their continued existence is under threat. They are exposed to injury and illness through being fed inappropriate foods by humans, exposure to motor vehicles etc. Partly due to the stresses under which they exist, they have become a threat to human society in that they raid homes and garbage facilities and may harm humans in attempts to find food.

Table Mountain National Park is a National Park established as a national park in terms of the National Parks Act 57 of 1976. The Park is managed by the South African National Parks Board. Section 4 of the National Parks Act provides that the object of a park is “the establishment, preservation and study therein of wild animal, marine and plant life and objects of geological, archaeological, historical, ethnological, oceanographic, educational and other scientific interest and objects relating to the said life of the first-mentioned objects or to events in or the history of the park, in such a manner that the area which constitutes the park shall, as far as may be and for the benefit and enjoyment of visitors, be retained in its natural state”.

Both SANPARKS and the City of Cape Town are committed to deal with the problem. They meet to come up with a plan. All stakeholders agree that the deployment of so-called ‘Baboon Monitors’ would go a long way to solve the problem. These Baboon Monitors, which comprise skilled wildlife specialists would do the following:

- follow the baboons’ movements around the South Peninsula;
- chase them away from urban areas, if necessary;
- warn residents if there is a baboon troop in the area; and
- collect data on baboon behaviour for further study.

An NGO, called Kommetjie Action Group (KAG) has been identified as a possible partner. The KAG is able to provide three teams of baboon monitors and has a long track record of active involvement with the management and study of baboons. KAG is a community based organisation that works exclusively with volunteers.

At the meeting, a proposal is made for the two organs of state to jointly fund KAG to enable them (in terms of logistics) to monitor the baboons. The Municipal Manager of the City of Cape Town however, requests time to investigate whether the City is permitted to do this. He is concerned that the funding and deployment of baboon monitors falls outside of the City’s mandate, particularly as there is no existing legislation, no assignment or agreement that makes the City responsible for managing baboons.

In addition, the Municipal Manager is not certain whether there are specific rules applicable to the City entering into a partnership with KAG. The Municipal Manager is worried about section 78 of the Municipal Systems Act and whether or not he should invite more organisations to bid for this work.

1. Provide the Municipal Manager with advice as to whether the funding and deployment of baboon monitors falls within the City’s constitutional mandate.
2. Provide the Municipal Manager with advice as to the applicability of the rules regarding external service delivery mechanisms.

3. Problems Downtown

The Council of Downtown municipality comprises of 25 councillors. Six councillors represent the Rugby Party (RP) and nineteen councillors represent the Socialist Party (SP). The Municipality is of the collective executive type and has an executive committee of six councillors. The Council has adopted a policy for the distribution of

seats on the executive committee that results in the SP being entitled to five, and the RP being entitled to one seat on the executive committee. According to the policy, parties that are entitled to seats on the executive committee must nominate their candidates one by one for endorsement by the council. At its first council meeting after the general election, the SP nominates five SP councillors for the executive committee. All five nominations are endorsed by the council. The RP also nominates its candidate. However, the council refuses to endorse the RP candidate. The SP argues that the RP nominee is of 'insufficient caliber' and that the RP must nominate another councillor from its ranks. The RP refuses and maintains that it can nominate a candidate of its choice. The policy adopted by the council does not provide an answer to this dilemma; it merely deals with the allocation of seats, not with the filling of seats.

The result is a stalemate; both parties refuse to budge and the council is without an executive committee.

1. The provincial Department of Local Government is worried about this development. Before it does anything, it seeks your advice on the validity of the claims of both parties to the conflict. Provide the advice.
2. The council of Downtown municipality is in agreement over one thing; they do not want this to happen again and they want their municipality to have an executive mayor. They seek your advice on whether and if so how, they may amend their system from an executive committee to an executive mayor system.

4. Poortown's decision making

The Council of Poortown municipalities comprises of 31 councillors. The Soccer Party (SP) holds seven seats. The Rugby Party (RP) holds fifteen seats. The People's Party (PP) holds nine seats. The SP and the RP are in a coalition and jointly govern the council.

Poortown Municipality's Executive Mayor (RP) has been given delegated authority by the Council to decide on all land-use planning applications. He is faced with a particularly difficult and important decision to make, namely whether to grant approval to a developer to commence with the building of a mall. He tables the issue at a Mayoral Committee meeting and proposes to grant the approval. The meeting unanimously agrees to support the Executive Mayor's decision and he thus goes ahead and grants the approval.

At a council meeting six months later the issue comes back to haunt the executive mayor. Three councillors are absent but the meeting goes ahead. During the meeting, the Soccer Party submits a motion that the Executive Mayor's decision to grant the land use approval be reviewed by the Council. The motion is supported by seven councillors.

1. Elaborate on the legal framework around this particular procedure and indicate what the consequences are for the Executive Mayor's decision.

To add to the Executive Mayor's worries, it appears that neighbouring residents have lodged an application with the High Court. They have applied, on the basis of the Promotion of Administrative Justice Act (PAJA) to the High Court and have asked it to

set aside the decision to approve the land-use application and to order the municipality to demolish the structures that have been built thusfar. They argue that the mall will deprive them of their view of the Poortown Valley and that they have not been consulted on the decision.

2. The Executive Mayor is perturbed that these residents did not use their right to appeal in terms of section 62 of the Municipal Systems Act and asks you whether this can be held against them in their application in terms of PAJA.

5. National Development and Improvement Act

In terms of the section 33 of the National Development and Improvement Act, the (provincial) Improvement Tribunal considers and approves or refuses land development applications. The Tribunal may in approving the application impose conditions on municipalities. Those conditions can deal with, amongst other things:

- the provision of engineering services, which are water, electricity, stormwater, sewage and road system.
- the provision of streets, parks and other open spaces;
- the question whether the building standards laid down in any zoning scheme, regulation or bylaw of a local authority ... are to apply in respect of the development; and
- any amendment to a zoning scheme for the purpose of the development. Any such condition has effect despite any provision to the contrary in any zoning scheme.

You are requested to provide legal advice on the validity of the above provisions of this Act. Provide the advice with reference to legal provisions and relevant caselaw.