

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

LL M IN LOCAL GOVERNMENT LAW

MODULE: LOCAL GOVERNMENT LAW

EXAMINATION PAPER: 17 July 2009 (RE-EVALUATION)

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.
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1. Community participation

Local government is often described as the sphere of government which is closest to the people, or most accessible to communities. The White Paper on Local Government outlines the developmental mandate of municipalities and the mechanisms by which this mandate should be achieved. A fundamental tenet of the White Paper is the need for municipalities to work hand in hand with communities to “find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.”

The Constitution, similarly, entrenches the duty of municipalities to involve communities in municipal affairs. It is possible to identify a golden thread of entrenched participatory democracy which is found not only in the Constitution and

White Paper, but is reflected in all legislation that pertains to local government. In view of this, please discuss:

- (a) The system and mechanisms for public participation which have been established in local government legislation;
- (b) How case law has informed the duty to facilitate public participation; and
- (c) The duties of municipalities to communities in where socio-economic violations have taken place.

2. Executive committee

In his budget speech for 09/10 budget, the new MEC for local government has lamented the frequent changes of governing majorities in municipalities in the Western Cape. He has hinted that he may introduce the collective executive system in the Western Cape in order to “stabilise municipalities and avoid frequent mid-term changes”. Explain –

- (a) the role of the MEC vis-à-vis national and local government with regard to types of municipalities – who decides what?
- (b) the key differences between the collective executive and the mayoral executive system;
- (c) how the introduction of the collective executive system for municipalities may assist to avoid frequent changes in majorities.

3. Subdivision

In terms of section 3 of the Agricultural Subdivision Act 70 of 1970, the Minister for agriculture approves the subdivision of agricultural land. Assume that “agricultural land” is defined as “land used, primarily for agriculture”.

Poortown municipality regularly receives applications for the subdivision of agricultural land. As this Act predates the 1996 Constitution, the Municipal Manager is not certain whether the requirement that the Minister approves each subdivision of agricultural land, still applies or whether it is unconstitutional. As a legal advisor to the municipality you are requested to write an opinion on the constitutionality of section 3 of the Agricultural Subdivision Act. Write the opinion with reference to:

- (a) overlap between Schedule 4A and Schedule 4B competencies; and
- (b) supervisory authority of national government over Schedule 4B competencies.

4. Municipal finance

- (a) List at least four main sources of income for municipalities and point towards their constitutional basis, if any.
- (b) The City of Cape Town intends to adopt a by-law that charges a ‘Dog Tax’ for every dog held by a resident of the City. The ‘Dog Tax’ is a general tax on each and every dog; it is not related to any specific service offered by the City. The City nevertheless argues that it is authorised by the Constitution to levy this tax

because it has the authority to make rules regarding “Licensing of dogs”. Advise the City on the permissibility of this income generating measure.

- (c) The national government is proposing regulations that stipulate that municipal property rates on commercial land may not be more than 400% of the property rates on residential property. Explain where national government derives the constitutional authority from to do this and make a case in favour of this provision.

5. Districts

In his budget speech, the MEC for local government in the Western Cape also hinted that he is in favour of abolishing district municipalities.

- (a) Broadly explain the division of authority between district municipalities and local municipalities with reference to the Constitution and the Municipal Structures Act.
- (b) Elaborate on the discussion pertaining to the role of district municipalities and why the argument that they should be abolished could surface.
- (c) Assume that, indeed, all district municipalities will be abolished and local government will comprise of metropolitan and local municipalities only.
 - a. What are the most important changes that need to be made, legislative and otherwise?
 - b. Which institutions will be involved?