

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

**MEMORANDUM**

**TO:** John Trammell  
**FROM:** Applicant  
**DATE:** February 23, 2017  
**RE:** Claim by Blanchard Engineering, Inc. against City of Corson

As requested, please see below for the objective memorandum addressing your questions.

**1) Is the City immune from Blanchard's claim for *quantum meruit*?**

The Court in Hiram Grant Partnership v. City of Vanderbilt (2005), states that "[w]here 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. A municipality's method of contracting, once prescribed by law or charter, is absolute and exclusive."

The Corson City Charter §17-4 states that, "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." In our case, the undisputed facts indicate that the City Attorney prepared a contract, reviewed and signed it, and that Bill Blanchard also signed it on behalf of Blanchard Engineering. Transcript, Corson City Council Meeting (August 8, 2016). In fact, the City Attorney stated back then in the transcript that "the only thing left [...] is for the Council to vote, and then to enter it into the council journal." Id. It is also undisputed that the contract never received a formal vote from the City Council.

The situation in our case is similar to the one in Hiram, where the Mayor did not follow the City's charter when they entered into a contract. The Mayor failed to seek a quorum of the council, and they did not have the city attorney draft or review the contract before the Mayor signed it. The court there stated that, "if a local government enters a contract in abrogation of its delegated power or in excess of its authority to enter contracts, then the contract is deemed *ultra vires* and void." Hiram. In addition, our situation is distinguishable from the situation in Wreck-It Co. v. City of Lossoth (2001), where the Lossoth City Charter wrote out that "all contracts other for the ordinary needs of the city [need to] be in writing." Here, Corson City has no such provision in their charter that allows for ordinary contracting.

Therefore, if we just go by the formalities set out in the Corson City Charter, then the contract that Mayor Reyes entered into with Blanchard is *ultra vires* and void due to their failure to have the contract receive a formal vote from the City Council.

However, the Court in Hiram goes on to say that "[a]n imperfect or irregularly executed contract may not be necessarily be completely ineffective, as long as it falls within the type of contract that the municipality has the power to make." Along the same lines, the Court of Appeals in Wreck-It Co. v. City of Lossoth (2001), ruled that "provided a contract is within the scope of its corporate powers, a municipality may be held liable on a contract implied in law, to prevent the municipality from enriching itself by accepting and retaining benefits without paying just compensation."

In order to determine whether or not a municipality may be held liable, one has to determine whether or not the function contracted for was proprietary in nature or governmental in nature. If the function was governmental in nature, then Corson City will likely not be bound to pay. However, when a function is proprietary in nature, the municipality must comply with the same rules that apply to private

corporations or individuals engaged in the same business. Lyman v. Town of Barnet (1958)

A function is governmental in nature if it is directly related to the general health, safety, and welfare of the citizens; and a function is proprietary in nature if the municipal corporation provides a service that the other private commercial businesses also provide, and that benefits the municipal corporation financially. Id. Here, the City contracted for advice regarding improving the City's wastewater treatment facility. While it is unclear from the case file whether or not a wastewater treatment facility would be considered governmental or proprietary function, in the August 8, 2016 meeting, Mayor Reyes mentioned that this was something that the City had to do and that they can't rely on a private utility to take it off their hands. Transcript, Corson City Council Meeting.

In conclusion, if a wastewater treatment facility would be considered a governmental function, the City will have immunity and not be bound to pay. However, if it is viewed as a proprietary function, then Blanchard may have a stronger case for his *quantum meruit* claim.

## **2) Can Blanchard prove its claim for *quantum meruit*?**

As mentioned above, if the court finds that a wastewater treatment facility is a proprietary function, then Blanchard may have a stronger case for his *quantum meruit* claim since a municipality must comply with the same rules that apply to private corporations or individuals engaged in the same business.

In Lyman, the court found that a municipality operates in its proprietary capacity in operating a water plant by exercising business functions that other private commercial business also provide. Another situation where the court found a municipality to operate something in a proprietary capacity was in Galax Consultants, Inc v. Town of Avalon Beach (1994), where the Town owned and operated a ballpark in the exercise of its proprietary function. In Galax, the court

ruled that if the plaintiff has conferred a benefit on the Town in circumstances where it would be unfair for the Town to retain that benefit were it not a municipality, a plaintiff should not be barred from recovering the retained benefit *solely* because the defendant is a municipality.

Additionally in Lyman, the court states that "[a] municipality may become obliged under *quantum meruit* to pay the reasonable value of benefits it has accepted or appropriated, provided it has the power to contract on that subject matter. In such a case, the municipality can be held liable where, with the knowledge and consent of the members of the council, it has received benefits procured by its agents, either without a contract or where an express contract is invalid because of mere irregularities."

Here, Corson City has received benefits procured by Blanchard, including (but not limited to): the design of an upgraded wastewater treatment facility, applications for permits and variations, and preparations of reports to the EPA and CEPA. Blanchard performed all of these tasks with the full knowledge and consent of the mayor - who told him to go ahead with the project, assuring him that she had full support of city council on their June 13, 2016 meeting. Blanchard subsequently received verbal confirmation of the full knowledge and consent of city council members, as evidenced in the August 8, 2016 meeting, where all six Corson City Council members verbally expressed support or no objections. Transcript, Corson City Council Meeting. In addition, the facts also show that after the city council meeting, Mayor Reyes continued to receive regular reports from Blanchard Engineering and Bill Blanchard on progress under the plan. Internal Memorandum (February 13, 2017).

Therefore, having fulfilled all of the requirements in Lyman, Corson City may become obliged under *quantum meruit* to pay if Blanchard establishes the following elements outlined below.

In order to recover under *quantum meruit*, Blanchard must establish the following elements: 1) valuable services and/or materials were furnished, 2) to the party sought to be charged, 3) which were accepted by the party sought to be charged, and 4) under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient. Lyman.

In this situation, Blanchard has furnished valuable services amounting to \$190,000.00; and valuable materials with a cost of \$13,409.00. Invoice (November 15, 2016); to Corson City, which is the party sought to be charged; and those services and materials were accepted by Corson City; and Blanchard notified Corson City that they expected to be paid by delivering to them the Invoice dated November 15, 2016.

In conclusion, if the court finds that a wastewater treatment facility is a proprietary function, then Blanchard has met all requirements; and will be able to prove all elements outlined in Lyman for a *quantum meruit* claim.

**3) How would the Court calculate the damages if Blanchard were to recover under *quantum meruit*?**

In Galax (1994), the court stated that "the measure of damages for *quantum meruit* is the value of the benefit actually received and retained by the defendant. A plaintiff may prove the value of this benefit by providing not only the value of physical improvements, but also the value of work, labor, services and materials furnished. Other points of proof may include: 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 (e.g., through design and installation of safety measures); and similar items."

Here, the invoice provided by Blanchard Engineering detailed the cost of their time and labor as well as cost of materials. For time and labor costs, the review and analysis of the existing facility cost \$15,000; the assessment and analysis of

the EPA and Columbia EPA mandates cost \$25,000; the design of the upgraded wastewater treatment facility cost \$75,000; the applications for permits, variations, etc., cost \$40,000; the Preparation of reports to EPA/CEPA cost \$10,000; and the negotiations with subcontractors and suppliers cost \$25,000. As for materials, the cost billed was \$13,409 - resulting in a total of \$203,409. Under Galax, all of the itemized tasks will be perceived to be valued benefits.

While the current City Mayor argues that the City did not get any value from Blanchard's work since they did not receive the grant, it is unlikely that a court will view this the same way. All the work that Blanchard has done here will arguably be useful towards the City when they do decide to go ahead with upgrading their wastewater treatment facility. In addition, Blanchard has definitely performed valuable work in reviewing the current existing facility and assisting EPA mandates for the city.

Therefore, in conclusion, under a *quantum meruit* claim the Court would calculate the damages for Blanchard to recover the full amount of services that he detailed under the invoice, plus any applicable attorneys fees and interest.

### **Conclusion**

While it seems as though the City will have immunity and not be bound to pay if a wastewater treatment facility is considered to be a governmental function; but if it is viewed as a proprietary function, then Blanchard has a strong case for his *quantum meruit* claim and will be likely to recover the full contracted-for-amount under the calculations outlined in Galax.

Additionally, it is also important to note that in the Hiram case, Judge Quantrill wrote in a dissent that "claims for *quantum meruit* may be sustained, even where the city has not fully complied with formal requirements for contracting under the City Charter [...] Cities should not be unjustly enriched at the expense of an innocent plaintiff by the simple expedient of failing to comply with purely formal

requirements in the city charter." Therefore, this case may be looked upon unfavorably if it goes to the Court of Appeals, and with the current situation more egregious than the one outlined in Hiram, since the Corson City did not pay.

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Question #1 Final Word Count = 1911

**END OF EXAM**