

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

===== Start of Answer #1 (1631 words) =====

To: John Trammell

From: Applicant

Date: February 23, 2017

Re: Objective Memo - Claim by Blanchard Engineering, Inc. against City of Corson

Dear Mr. Trammell,

Please find attached the objective memorandum you requested regarding Blanchard Engineering's potential *quantum meruit* claim against the City of Corson.

Warm regards,  
Applicant

**MEMORANDUM****Whether the City is immune from Blanchard's claim**

The issue of governmental immunity has been discussed by Columbia's Supreme Court in Lyman v. Town of Barnett in 1958 and Galax Consultants, Inc. v. Town of Avalon Beach in 1994. In Lyman, the court explained that, "A municipality may become obligated 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" and instructed that governmental immunity

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should be applied depending on whether the municipality was acting in a governmental or proprietary capacity. If acting in a proprietary capacity, the municipality must comply with the same rules that apply to private corporations. If acting in a governmental capacity, the municipality is entitled to governmental immunity. The court advised that, "A function is governmental in nature if it is directly related to the general health, safety, and welfare of the citizens. In contrast, a function is proprietary in nature if the municipal corporation provides a service that other private commercial businesses also provide, and that benefits the corporation financially."

In Galax, the court held that the town was acting in a proprietary capacity when it contracted with Galax to repair and renovate a ballpark. The court concluded that the plaintiff should not be barred from recovery when a town retains a benefit when it would be unfair for the town to retain the benefit were it not a municipality. The issue of governmental immunity has also been addressed by the Columbia Court of Appeals in Hiram Grant Partnership v. City of Vanderbilt in 2005. In Hiram, the court held that a municipality has no inherent power, may only exercise the power it has been delegated, and that when the city enters a contract in abrogation of its delegated power or in excess of its contracting authority, the contract will be deemed *ultra vires* and void. A dissenting judge, Judge Quantrill, disagreed and opined that, "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."

Here, the Mayor and the City's attorney drafted a contract with Blanchard to provide the city help in drafting an application for a state grant that it could use to upgrade its wastewater treatment facility. The mayor authorized Blanchard to start working on the contract before getting the City Council's approval, a formal requirement pursuant to Corson City Charter Section 17-4. However, regardless of whether or not the City Council approved the contract after Blanchard had already begun performing the work, the City's contract with Blanchard was

clearly formed in the City's governmental capacity. The purpose of Blanchard's work was to help the City apply for a grant from the State of Columbia it hoped to use to upgrade a government facility. As such, the City is entitled to governmental immunity. Comparing Blanchard's situation to the holding in Lyman, although it's plausible that non-governmental businesses also maintain wastewater treatment facilities, the City was not acting as a municipal business or financially benefiting as a business. Although the reason the Mayor gave for wanting to upgrade the facility was to avoid large fines, it's inferable that upgrading the facility would be for the benefit of the health, safety, and welfare of the citizens because it's related to the proper disposal and treatment of potentially hazardous wastewater. Galax is distinguishable from Blanchard's situation because the town was clearly acting in a proprietary capacity in contracting to improve a ballpark. Because the City was acting in its governmental capacity when contracting with Blanchard and did not obtain the City Council's approval, it seems likely that the court would deem the contract *ultra vires* and void.

Accordingly, the City will be entitled to governmental immunity both because it was acting in its governmental capacity in contracting with Blanchard to prepare the City's application for the state grant and because the contract was *ultra vires*.

**Whether Blanchard can prove its claim for *quantum meruit***

In order to prove its claim for *quantum meruit*, Blanchard will have to establish four elements. The plaintiff must establish that: 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 that reasonably notified the recipient that the plaintiff expected to be paid by the recipient for performing work. Lyman.

With respect to the first two elements, Blanchard supplied design engineering specifications for the City's use in its application for a state grant the City hoped to use to upgrade the City's wastewater treatment facility. The facility appears to be unable to keep up with growing demand and the City could face fines of potentially millions of dollars if it allows the facility to fall into disrepair.

Blanchard's work helped the City prepare and apply for the state grant. In the course of preparing the specifications, Blanchard spent considerable time and labor on analyzing the existing facility, designing a new facility, applying for permits, and conducting other necessary work for the City's application. All of this work had to be, and was, completed in time for the City to apply for the grant. These services were valuable because the City would not have been able to apply for the grant without Blanchard's contribution. Although the City was not awarded the grant, it would not have been able to even apply for the opportunity without Blanchard's work. Further, Blanchard's work can be used in applying for future grants, provided the data remains relevant. As such, it appears that Blanchard furnished valuable services to the City.

As for whether the City accepted the charges, Mayor Reyes informed Blanchard that he had the City Council's support and explicitly authorized him to start the work in mid-June, despite not having the Council's formal approval. It is questionable whether Mayor Reyes had the authority to authorize work on behalf of the City without the City Council's approval, as required pursuant to Corson City Charter Section 17-4. However, it is possible that the City accepted the charges by ratifying the contract as the August 8, 2016 City Council meeting. The minutes reflect that all of the council members expressed their consent to Blanchard's contract, although Councilwoman Sidney's hesitant questioning of the high expense of his work and eventual response of, "Ok. No objection." may indicate that her approval was more of an acquiescence to the Mayor's decision to authorize the work rather than a clear approval of the City's contract with Blanchard. Further, it is unclear whether the City Council would have approved the contract with Blanchard if it had been presented at the June meeting. It's also

possible that the City Council would have pressed Mayor Reyes to negotiate a better price on the contract.

As for whether Blanchard reasonably notified the City that he expected to be paid, his company prepared a proposal to accomplish the work for \$210,000 and presented it to Mayor Reyes. He also sought assurances that the City would follow through with the contract, which Mayor Reyes confidently provided. It is clear that Blanchard reasonably notified the City that he expected to be paid for his work.

Due to the Mayor's failure to get the City Council's approval before she authorized the work, it's uncertain whether Blanchard will be able to prove its claim for *quantum meruit*. However, in Galax, the Supreme Court held that when a municipality is acting in a proprietary function where it would be unfair for the municipality to retain a benefit were it not a municipality, "a plaintiff should not be barred from recovering a retained benefit *solely* because the defendant is a municipality." [emphasis included]. If the court found that the City was acting in a proprietary function in its contract with Blanchard, it seems likely the court will find it unfair for the City to retain the benefit provided by Blanchard, and allow Blanchard to prove his claim for *quantum meruit*. Although Judge Quantrill, the dissenting judge on the Court of Appeals in Hiram, did not address whether the company was acting in a proprietary or governmental function, his dissent suggested that plaintiffs should be allowed to pursue claims for *quantum meruit* despite failing to comply with formal city charter requirements.

Accordingly, it seems likely Blanchard will be able to prove his claim for *quantum meruit*.

**How a court will evaluate damages if Blanchard recovers under *quantum meruit***

If Blanchard is able to successfully prove his claim for *quantum meruit*, the proper measure of damages according to the Supreme Court in Galax is "the value of the benefit actually received and retained by the defendant." Because the City was not awarded a state grant, the concrete benefit provided by Blanchard may be difficult to demonstrate, but the court continued that, "A plaintiff may prove the value of this benefit by proving not only the value of physical improvements, but also the value of work, labor, services, and materials furnished."

Accordingly, if the court finds that Blanchard's work on the application provided a benefit to the City and that the City cannot assert governmental immunity, it will review and assess the value of Blanchard's work, labor, services, and materials. According to Blanchard's submitted invoice, this amount totals \$203,409.00. The court will have the discretion to adjust this amount if it finds that Blanchard's invoice was unreasonable.

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Question #1 Final Word Count = 1631

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**END OF EXAM**