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Administrative Law/Legislation II: Final Examination (May 1973)

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This examination consists of five questions. The first is for 80 points, the second through fifth, for 5 points each. Over two hours should be allocated for question one, about 30 minutes for questions 2-5. In question one, great care should be taken in organization as well as legal analysis and accurate statement of the relevant law. The last four questions require brief statements of law, result and reason with relatively less analysis and organizational ability. The questions ought to be factually complete, but you may assume added facts if needed by stating them.

GOOD LUCK!!
1. The City of Wythe received in 1965 a grant from the federal government to pay for fifty percent of the $1,500,000 cost of acquiring the McCarthy Estate of 196 acres for a park under the Open-Space Land Program of the Housing Act of 1961. The City of Wythe now proposes to use 47 acres of the McCarthy Estate as the site of Wythe Community College, the first community college (established in 1948) in the State of Marshall which is now located in delapidated, overcrowded quarters in downtown Wythe. In exchange, the City of Wythe plans to convert Munford Meadow into a substitute park. It is 30 acres of open area just acquired in 1968 adjacent to the Wythe City Beach, which in turn is next to a blighted low income area of Wythe which has no recreational area, and will serve this area well. On January 13, 1972, the Secretary of Housing and Urban Development approved the transfer. The Secretary found that the modification of use of the McCarthy Estate was essential to the long-range development of Wythe, stating "The proposed conversion was in accord with the applicable comprehensive plan for the area." This was based on the following:

A letter of July 7, 1971 from the Mayor of Wythe, stating that both the McCarthy and Munford properties were, under the Master Park Plan, reserved for open space, that open space was at a premium in this highly urban area, and that the college-park complex accorded with the Master Park Plan, the Master Education Plan and was made especially feasible by the Master Transportation Plan. A letter from Franklin Fosse, Special Consultant on planning, stating "that while Wythe has no single Comprehensive Plan, the Master Park Plan, Master Education Plans and Master Transportation Plan are superior efforts to reconcile the needs of the larger community in Wythe, and accordingly the proposed transfer of McCarthy lands to educational uses and the addition of Munford land to open space is endorsed."

And finally a letter from the Director of Planning of the Marshall State Planning Review Agency, stating that he and his staff endorse the plan, that they feel that the added open space for residents of the blighted areas of Wythe was desirable and that the Review Agency had consistently approved all requests for land for community colleges pursuant to the Governor of Marshall's executive order to promote community college education to benefit youth who otherwise could not continue their education.

An open forum was held by the Regional Director of HUD on August 16, 1971, at 8:00 P.M. in West High School at which time these documents (and others not here relevant) were available. Notice of the hearing stated it was to be held on August 17, 1971, at 8:00 P.M. at West High School and were posted at City Hall, the Post Office, and at 100 other locations such as grocery and drug stores. 87 people attended according to HUD records. A synopsis of the forum indicates that all but a handful approved, but that "5 to 10" spoke against the plan and urged the land be utilized for a public golf course, citing the gross inconvenience of playing either the crowded Wythe County Club course or the short, poorly planned Wythe Athletic Club's course. In doing so they urged a substantial green fee to pay for the construction of the course. Some of both of the aforementioned club's memberships were represented among the 87 and, presumably among the "5 to 10" who spoke.

On January 10, 1972, Franklin Fosse again provided a memorandum to the Secretary. It stated: "I have again reviewed the situation in Wythe re open space transfers. The proposal is the most thoughtful effort I have seen to accommodate the competing interests of recreation, education and transportation, especially in maximizing benefits to the disadvantage. Only one discordant note exists. A group of devote liberal elitists in Wythe - the very type you and your administration so deplore - are attempting to block this worthy project so they may have more extensive golfing facilities. I urge immediate action to prevent this deplorable possibility."
The Marshall State Planning Review Agency must approve the plan. It was scheduled to meet on April 3, 1972, to do so, while Wythe was prepared to begin construction on April 6, 1972 or thereafter on the Community College. On March 20, 1972, the Wythe Country Club, the Wythe Athletic Club, and seven named persons, none of whom had been involved in any way in the case heretofore, sought an injunction in the U.S. District Court of Wythe. While that court denied the injunction, it stayed action pending appeal to the Circuit Court of Appeals.

Parts of the following statutory material are pertinent:

CHAPTER 8C.-OPEN-SPACE LAND

§ 1500. Congressional declaration of findings and purpose

(a) The Congress finds that the rapid expansion of the Nation's urban areas and the rapid growth of population within such areas has resulted in severe problems of urban and suburban living for the preponderant majority of the Nation's present and future population, including the lack of valuable open-space land for recreational and other purposes.

(b) The Congress further finds that there is a need for the additional provision of parks and other open space in the built-up portions of urban areas especially in low income neighborhoods and communities and a need for greater and better coordinated State and local efforts to make available and improve open-space land throughout entire urban areas.

(c) The Congress further finds that there is a need for timely action to preserve and restore areas, sites, and structures of historic or architectural value in order that these remaining evidences of our history and heritage shall not be lost or destroyed through the expansion and development of the Nation's urban areas.

(d) It is the purpose of this chapter to help curb urban sprawl and prevent the spread of urban blight and deterioration, to encourage more economic and desirable urban development, to assist in preserving areas and properties of historic or architectural value, and to help provide necessary recreational, conservation, and scenic areas by assisting State and local public bodies in taking prompt action to (1) provide, preserve, and develop open-space land in a manner consistent with the planned long-range development of the Nation's urban areas, (2) acquire, improve, and restore areas, sites, and structures of historic or architectural value, and (3) develop and improve open space and other public urban land, in accordance with programs to encourage and coordinate local public and private efforts toward this end.

§ 1500a. Grants to States and local public bodies for acquisition and for development of open-space land - Authorization; limitation on amount of grant; limitation on donations for non-Federal share

(a) The Secretary is authorized to make grants to States and local public bodies to help finance (1) the acquisition of title to, or other interest in, open-space land in urban areas and (2) the development of open-space or other land in urban areas for open-space uses. The amount of any such grant shall not exceed 50 per centum of the eligible project cost, as approved by the Secretary, of such acquisition or development. Not more than 50 per centum of the non-Federal share of such eligible project cost may, to the extent authorized in regulations established by the Secretary, be made up by donations of land or materials.
Restrictions on use of grants

(b) No grants under this chapter shall be made to (1) defray ordinary State or local governmental expenses, (2) help finance the acquisition by a public body of land located outside the urban area for which it exercises (or participates in the exercise of) responsibilities consistent with the purpose of this chapter, (3) acquire and clear developed land in built-up urban areas unless the local governing body determines that adequate open-space land cannot be effectively provided through the use of existing undeveloped land, or (4) provide assistance for historic and architectural preservation purposes, except for districts, sites, buildings, structures, and objects which the Secretary of the Interior determines meet the criteria used in establishing the National Register.

Determination of further terms and conditions for assistance

(c) The Secretary may set such further terms and conditions for assistance under this chapter as he determines to be desirable

Review of applications; consultation with Secretary of the Interior; exchange of information

(d) The Secretary shall consult with the Secretary of the Interior on the general policies to be followed in reviewing applications for grants under this chapter. To assist the Secretary in such review, the Secretary of the Interior shall furnish him (1) appropriate information on the status of national and statewide recreation and historic preservation planning as it affects the areas to be assisted with such grants, and (2) the current listing of any districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture which may be contained on a National Register maintained by the Secretary of the Interior pursuant to other provisions of law. The Secretary shall provide current information to the Secretary of the Interior from time to time on significant program developments.

Technical assistance

(e) The Secretary may provide such technical assistance to States and local public bodies as may be required to effectively carry out activities under this section.

§ 1500b. Planning requirements

The Secretary shall make grants under section 1500a of this title only if he finds that such assistance is needed for carrying out a unified or officially coordinated program, meeting criteria established by him, for the provision and development of open-space land which is a part of, or is consistent with the comprehensively planned development of the urban area.

§ 1500c. Conversions to other uses

No open-space land for the acquisition of which a grant has been made under section 1500a of this title shall be converted to uses not originally approved by the Secretary without his prior approval. Prior approval will be granted only upon satisfactory compliance with regulations established by the Secretary. Such regulations shall require findings that (1) there is adequate assurance of the substitution of other open-space land of as nearly as feasible equivalent usefulness, location, and fair market value at the time of the conversion; (2) the conversion and substitution are needed for orderly growth and development; and (3) the proposed uses of the converted and substituted land are in accord with the then applicable comprehensive plan for the urban area, meeting criteria established by the Secretary.
§ 1500d. Authorization of appropriations

There are authorized to be appropriated for purposes of making grants under this chapter not to exceed $660,000,000 prior to September 30, 1972. Any amounts appropriated under this section shall remain available until expended.

§ 1500d-1. Review of State Decision

The final decision of local public bodies may be reviewed by the independent review committee which may suggest modifications to the Secretary.

§ 1500d-2. Definitions

As used in this chapter—

(1) The term "open-space land" means any land located in an urban area which has value for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic, architectural, or scenic purposes.

(2) The term "urban area" means any area which is urban in character, including those surrounding areas which, in the judgment of the Secretary, form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(3) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States.

(4) The term "local public body" means any public body (including a political subdivision) created by or under the laws of a State or two or more States, or a combination of such bodies, and includes Indian tribes, bands, groups, and nations (including Alaska Indians, Aleuts, and Eskimos) of the United States.

(5) The term "open-space uses" means any use of open-space land for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic, architectural or scenic purposes.

(6) The term "independent review committee" means the Under Secretary of the Department of Health and Urban Development, the Under Secretary of Interior and the Deputy Director of the Environmental Protection Agency.

The plaintiffs below appeal. Indicate all legal problems raised (except of bias or combination of functions) even though one of them might settle the case, discuss them and indicate their proper resolution.

(5 points)
2. The Federal Communications Commission issued a subpoena to Franklin Ambrose, manager of WPTM, to bring all records of broadcasts between September 3, 1972 and September 14, 1972. Ambrose refused. The FCC found him in contempt and fined him $1,000. What problem and result?
3. The Security Exchange Commission asked George Kennard, president of Westoner Fruit Processing Company, Inc., if the company had employed Alfred Maxwell, an accountant, to falsify its books during a period prior to Kennard's employment by Westoner. He asserts the 5th amendment on behalf of Westoner. What problem and result?

4. Herbert Axelrod was licensee of the Silver Slipper Lounge and Grill, a licensee of the Marshall Alcoholic Beverage Commission. Axelrod has been accused of various forms of misconduct, none proved, which do not relate to his licenses. On January 17, 1973, the Commission revoked Axelrod's license without hearing or reason. Marshall has no provision to protect licenses in its Alcohol Beverage Code, no administrative procedure act and applies early common law concepts to its administrative action. What problem and result?

5. On January 4, 1973, the FCC revoked the license of WEOU-FM, an educational station, for playing the full new album of the Viewers Woot Quartet, Paradis and Paradoxxx, which is generally conceded obscene, and with the most debatable redeeming value. Nevertheless, the album became a massive seller nationwide, especially in New York City. On April 2, 1973, WCBS, the Columbia Broadcasting Station in New York, began to play the album regularly on its all-news station. The FCC receives many complaints. As it would, the New York stations were due for renewal on May 1, 1973. Acting with uncharacteristic speed, the FCC reviewed all New York licenses on May 4, 1973, including that of WCBS. What problem and result?