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Municipal Corporations: Final Examination (Spring Term 1973)

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Medical Structures, Inc. (Medical Structures) filed a Petition for Declaratory Judgment against the Board of Supervisors of Fairfax County alleging that Medical Structures was the owner of a tract of land in Fairfax County and that the County Board of Zoning Appeals had issued a special use permit allowing it to construct a nursing home on the property. It was further alleged that, subsequent to the issuance of the special use permit and to the filing of a site plan as required by county ordinance, the Board of Supervisors had unlawfully amended the zoning requirements having the effect of prohibiting petitioner's nursing home. This was done, it was alleged, arbitrarily and capriciously in disregard of Medical Structures' rights.

At hearing before the Circuit Court of Fairfax County, the evidence established that on April 23, 1963, a special use permit was granted to Henry Polfs, Medical Structures' predecessor in title, permitting a 160-bed nursing home on his property located on Columbia Pike in an R-17 zoning district (residential 17,000 square feet). At that time nursing homes were allowed in all residential districts under special use permits. The use permit on the subject property was extended a number of times and did not finally expire until January 8, 1970.

On December 24, 1968, Medical Structures purchased the property from Polfs for $250,000, reflecting the value of the use permit, and filed a site plan on March 7, 1969, as a prerequisite to the issuance of a building permit. This site plan was resubmitted to the county with alterations on June 16, August 18, and November 12, 1969, which procedure was not unusual in Fairfax County.

On January 7, 1970, John F. Gilton, chief of the land planning department of Fairfax County, affixed his signature to the site plan approving it and the requisite bonding, siting and easement agreements. However, after consultation with the county attorney on the same day, Gilton rescinded his signature and notified Medical Structures on January 8, 1970, that the passage of amendments to the zoning ordinance on October 3 and November 19, 1969, prevented approval of its site plan. Gilton advised Medical Structures by letter that if the ordinance had not been
amended, he would have approved the site plan, entitling Medical Structures to the issuance of a building permit before the expiration of the use permit on January 3, 1970.

The actions of the Board of Supervisors on October 8 and November 19 amended the zoning ordinance to prohibit nursing homes of over 50 beds in any residential district of less density than RG-10 (residential townhouses), which prohibition included Medical Structures' P-17 property. The amendments provided, however, an existing non-conforming "grandfather clause" which permitted an existing nursing home with future expansion plans for more than 50 beds located 2000 feet from the subject property on Columbus Pike in a district of less density than PT-10 or R-17.

Medical Structures spent considerable sums of money in the development and preparation of site plans and bond deposits. The uncontradicted evidence shows that it spent $59,600 for engineering and architectural plans alone and a total for the entire project of $247,500 exclusive of the purchase price.

Every site plan submitted under the Fairfax County Zoning Ordinance (Chapter 30, Code of Fairfax County) must contain, among other things, topographical maps, surveys, engineering studies and proof of notice to landowners in the vicinity. The filing of such a plan creates a monument to the developer's intention, and when the plan is approved, the building permit, except in rare situations, will be issued.

There was no evidence that the proposed construction would be harmful to the public health, safety, morals or general welfare. What questions or questions are presented? How should the Court rule and why?

QUESTION 2:

In this action filed in the U. S. District Court for the Western District of Missouri, the plaintiffs are: (1) Springfield (Mo)-CATV, Inc., a Missouri corporation authorized by its corporate charter to operate a community antenna television (CATV) system; (2) Springfield Television, Inc., and Independent Broadcasting Company, Inc., the separate television broadcasting stations licensed by the FCC to operate separate television stations in the City of Springfield, Missouri; and (3) four individuals who are registered voters and taxpayers of the City of Springfield. The first named plaintiff (Springfield (Mo)-CATV) is named in equal parts by the other two corporate plaintiffs and was formed specifically
for the purpose of obtaining the franchise to provide the City of Springfield with CATV service. The four individuals named are stockholders and some are directors of the two broadcasting stations.

The defendants are the City of Springfield, Missouri, a constitutional home rule city, the individual members of the Springfield City Council, and International Telemeter of Springfield, Inc., a corporation authorized by its charter to operate a community antenna television (CATV) system.

The amended complaint alleges that the Springfield City Council passed two resolutions and Special Ordinance No. 15121 by which a CATV franchise was granted to International Telemeter. Plaintiffs seek a declaratory judgment declaring the ordinance invalid and an injunction prohibiting the City of Springfield, its City Council members and International Telemeter from enforcing or implementing the ordinance and franchise grant.

Article XVII of the Springfield City Charter reads:

"Section 17.1. Granting franchises.

"All public utility franchises and all renewals, extensions and amendments thereof shall be granted only by ordinance. No such ordinance shall be adopted within less than thirty days after application therefor has been filed with the council, nor until a full public hearing has been held thereon. No such ordinance shall become effective until it has been submitted to the electors and has been approved by a majority of the electors voting thereon.

"No ordinance shall be submitted at an election less than sixty days after the grantor named therein has filed its unconditional acceptance of such franchise, and it shall not be submitted to a special election unless the expense of holding the election, as determined by the council, shall have been paid into the city treasury by the grantee. No exclusive franchises shall ever be granted, and no franchise shall be granted for a longer term than 20 years. No such franchise shall be transferable directly or indirectly, except with the approval of the council expressed by ordinance after a full public hearing."

The City of Springfield, as a home rule city, has provided in its charter for the granting of public utility franchises (Article XVII) and for the supervision by a Board of Public Utilities (Article XVI). Article XVI provides:

"The term 'public utilities' by way of description, but not as a limitation shall include electric systems (and appropriate stove heating apparatus and piping,) gas systems, water systems, transit systems and public communication systems (including all plants, apparatus, equipment and distribution facilities related to any such system,) or any other service or facility commonly considered to be a public utility or so declared to be by any statute, ordinance or court decision."

At the hearing in the District Court, the evidence showed that the CATV system proposed by International Telemeter would by lease use telephone lines and cables, poles and underground conduits of Southwestern Bell Telephone Company located in the public streets and ways of the City of Springfield. The evidence also
established that Special Ordinance No. 15121 was not submitted to the vote of the electorate of the City of Springfield.

Springfield is empowered by Missouri statute (§ 82.230 V.A.M.S.) to grant and control the exercise of all public franchises which make use of "the streets or public places of such city."

On April 23, 1965, prior to the enactment of Ordinance 15121, the FCC released a Notice of Inquiry and Notice of Proposed Rule Making (1 F.C.C.2d 453, 30 Fed. Reg. 6078 (1965)) announcing its intent to regulate all CATV systems. And, in its Second Report and Order, 2 F.C.C.2d 725, 31 Fed. Reg. 4540 (1966), rules concerning the regulation of these systems were adopted. The Supreme Court of the United States had upheld these regulations based on the authority of the FCC to regulate all interstate "communications." United States v. Southwestern Cable Co., 392 U.S. 157, 83 S.Ct. 1704, 20 L.Ed.2d 1001 (1963). In that decision it was said:

"CATV systems, formerly no more than local auxiliaries to broadcasting, promise for the future to provide a national communications system, in which signals from selected broadcasting centers would be transmitted to metropolitan areas throughout the country." 392 U.S. at 164, 83 S.Ct. at 1998.

While this case has been pending, the FCC has issued certain guidelines concerning the maximum franchise fees which a franchising authority can require of a franchisee. 37 Fed.Reg. 3276-3277 (Feb. 12, 1972). While these regulations do not establish a fixed ceiling, a percentage range of three to five percent was indicated to be the appropriate standard. The ordinance in this case (No. 15121) went beyond the recommended amounts by requiring not only a lump sum fee of $100,000 by the grantee to the city, but also an annual payment of 12.1% of gross receipts with minimum monthly payments of $2,500 for the first twelve months of the franchise term and $46,000 per month for the remainder of the franchise period.

What question or questions are presented? What decision should the Court render and why?

QUESTION 3:

This action in the U. S. District Court for the Northern District of Illinois, Eastern Division, arose out of the Frank Collin's unsuccessful efforts to secure a permit for holding a rally in Marquette Park, Chicago. Specifically, the complaint sought to compel the defendant Chicago Park District to issue such a permit for Sunday, April 25, 1971, as well as seeking declaratory and injunctive relief.

Collin, leader of the National Socialist Party of America, also known as the...
Neil Party, filed his action pursuant to 28 U.S.C. §§ 1331, 1343 and 2201 and 42 U.S.C. § 1983 (See Appendix for these statutes). Designated as defendants were the Chicago Park District and various functionaries thereof, herein collectively referred to as "Park District."

The complaint and evidence taken at hearings below fairly establish the following general background.

In May of 1970, Collin filed an application for a permit to hold a demonstration in Marquette Park for purposes of speech making on June 28, 1970. The estimated attendance was indicated as going as high as 500 persons. Under date of May 22, 1970, a letter from the Park District recreation director denied permission without stating any reasons. In late July 1970, Collin again applied for permission to hold a demonstration for the purpose of making speeches at Marquette on September 6, 1970. No response was received from the Park District until Collin made contact with officials thereof on August 25, 1970, and was informed that his application had been denied. He then learned, independently, of his right to administrative review and appealed his denial. After a hearing, the denial was upheld in a letter dated September 1, 1970.

The letter of denial referred to the fact that the area sought to be used was normally used on Sundays in warm weather as a family picnic area and was in the vicinity of recreational facilities. The letter then referred to the fact that a public assembly held by Collin in Gage Park September 27, 1969, "led to a public commotion which required police presence and action, and which was, or could have led to a riot or breach of the peace."

The letter then adverted to the fact that Collin had stated that he would produce for review by the Park District all of the pamphlets, literature and posters he intended to use at his proposed public meeting but he had refused to do so at the review. The writer of the letter stated his conclusion in the light of this refusal and in the light of literature previously distributed by Collin on Park District property that Collin intended to violate the Criminal Code of the State of Illinois.

The letter was then completed as follows:

"Such conclusion is particularly disturbing in light of the fact that this abrasive and incendiary material is to be disseminated in an area normally used by families and others for picnics and recreational purposes, and has previously resulted in a public commotion which required police action and protection."
4. In connection with the denial of the pending application, may I
again point out the four free forum areas where applicant may conduct a public
meeting and assembly on Park District property without a permit, as defined
in Section 17-6.2 of the Park District ordinances."

On January 15, 1971, Collin again applied for permission to hold a rally to
speak at Marquette Park, this time on April 25, 1971. He heard nothing from the
Park District and this suit followed.

At the hearing there was introduced in evidence several leaflets setting
forth aims and accomplishments of the National Socialist White People's Party in
1969. Collin was active in this organization, apparently a predecessor of his

The animus of the 1969 literature seemed to have been directed principally
at black people and communists. The horizon apparently was considerably broadened
the following year as reflected by an exhibit in the record entitled "Thirty Point
Program for the National Socialist Party," which Collin testified was the 1970
program of the party. Reminiscent of a page from the history of the Third Reich,
the list of the organization's anathematic subjects included communists, the
federal income tax, "cheap quality products" (whatever they may be), Negroes, the
Federal Reserve System, Jews, the United Nations, incompetent bureaucrats, teachers
disloyal to the "Aryan race" pronography paddlers and small families. One of the
program points was the immediate prosecution of all "who have been proven guilty
of polluting our natural resources." Although two of the points were "the shooting
on sight of all Black and anarchist rioters and looters" and "liquidation of all
Communists, pro-Communists, Zionists and other treasonous organizations," point
thirty was "installment of the above Program through legal, Constitutional means."

The evidence did not establish any background of violence reflected insofar as
the Marquette Park area was concerned, or insofar as the recently organized National
Socialist Party was concerned. The evidence did show that in 1968 Collin had been
involved in breaking up downtown peace rallies.

The pertinent portions of the ordinance upon which the Park District based
its denial of this permit read as follows:

"No application for a permit made pursuant to this chapter shall be
denied except for one or more of the following reasons: . . . (c) The
use of the facility intended by the applicant would present an unreasonable
danger to the health or safety of the applicant, or other users or of the
public; . . . (e) The use of the facility intended by the applicant is
inconsistent with the purpose for which facility has been established or
The site at which Collin sought to hold his rally was in Marquette Park, Chicago. If he were to have a receptive audience, Marquette Park appeared to be his most likely place as it was centrally located in the area in which the bulk of his supporters resided. Marquette Park was and is primarily used for a family picnic area. However, it was not a small, exclusively picnic area. There was not flat land on demonstrations. Other rallies had been held in the park.

Further, it appears clear in cases other than Collin's that when a requested area in Marquette Park had not been deemed appropriate, suggestions had been made by the Park District which would permit a gathering in another part of the same park. Rather than suggesting another area in Marquette Park, the superintendent of the Park District pointed out four free forum areas where Collin might conduct a public meeting and assembly on Park District property without a permit as defined in § 17-8.2 of the Park District Ordinance. The four areas were Washington, Garfield, Lincoln and Burnham Parks. Two of the free forum areas are located in parks used almost exclusively by blacks, being Garfield and Washington, and a third, Burnham, although "at one time predominantly Negro, . . . has gone right now to about 50/50 situation."

The Chicago Park District Permit Ordinance Sec. 17-8.2(b) established the procedures for permit applications for public speeches and assemblies in Park areas open to the public. Applications to hold gatherings of 75 persons or more are to be in writing and are to be filed with the Park District Director of Recreation.

Further procedure is then set forth in the ordinance as follows:

". . . the Director of Recreation (or his designated representative) shall have five days, excluding Saturdays, Sundays and Legal Holidays from receipt of said application within which to grant or deny said permit. In the event of inaction or denial by the Director of Recreation (or his designated representative) within said five day period, excluding Saturdays, Sundays, and legal holidays, the applicant shall be entitled to a review of his application by the General Superintendent upon the filing by the applicant of a written request therefore with the General Superintendent. The permit shall be deemed to be issued unless expressly denied with a statement of reasons therefore by the General Superintendent within five days, excluding Saturdays, Sundays and legal holidays, from receipt of said request for review."

What question or questions are presented? What decision should the Court render and why?

QUESTION 1:

The decision of Winston-Salem to locate a sanitary landfill (also referred to as a garbage dump) in proximity to plaintiffs' property resulted in this suit for
declaratory and injunctive relief being filed in the U. S. District Court for the Middle District of North Carolina.

The undisputed facts are that the Board of Aldermen of Winston-Salem, acting on the recommendation of the City-County Planning Board, rezoned eighty-five acres of city land located outside its territorial limits from its previous zoning by the Board as residential to industrial zoning. A sanitary landfill is a permitted use only under the rezoned industrial classification.

Both general and local public acts of the General Assembly of North Carolina authorize the exercise of the extra-territorial zoning powers asserted by Winston-Salem in this case. These powers are exercised by the Board of Aldermen who are elected only by the residents of Winston-Salem.

Garren and Eddinger bring this suit in behalf of themselves and all other persons residing within the one mile extraterritorial zoning area and particularly all persons who will suffer alleged irreparable harm by construction of the landfill.

Jurisdiction is asserted under the Civil Rights Act, 42 U.S.C. Section 1983, and 28 U.S.C. Section 1343 (3) (see Appendix), which specifically confers federal jurisdiction over claims arising under Section 1983. The Complaint does not undertake to allege the requisite amount in controversy to confer federal question jurisdiction under 28 U.S.C. Section 1331.

The record discloses that the 85 acre landfill area was established pursuant to an ordinance passed by the Board of Aldermen after required publication of notice of public hearings on the proposed ordinance, at which hearings the complainants appeared and presented evidence and arguments. The evidence at the hearing established that the City's 85 acres was part of approximately 1600 acres that the Board on recommendation of the Planning Commission had zoned residential two years earlier; that while a number of lots had been sold since it was zoned residential, it was still relatively undeveloped, only ten houses having been erected in scattered locations on the 1600 acres. The Complainants had erected homes and were living in them. The evidence showed that the City acquired the 85 acres subsequent to the original residential zoning. At the remonstrance hearing, the complainants had introduced evidence that two other sites located outside the City limits on the other side of town would be more desirable locations for the sanitary landfill. However, individuals residing on those acres opposed in opposition to such relocation, and introduced evidence that because of the rough pully eroded
terrain of most of the City’s 85 acres it could be operated as a sanitary landfill at minimal expense to the City.

What question or questions are presented? What should be the Court’s decision, and why?

**QUESTION 5:**

Virginia’s annexation laws grant broad discretion to an annexation court. Essentially, the court is required to determine “the necessity for and expediency of annexation.” Va.Code Ann. § 15.1-1041. Under the Virginia procedure, a city wishing to expand its territory must file an action in the Circuit Court of the county containing the coveted area. A special court of three judges is constituted; evidence is taken and the court decides whether or not some annexation is to be decreed. If some annexation is to be ordered, the court fixes the new boundary between city and county and determines an amount of money (as required by Virginia Statute) to be paid by the city to the county for schools, utilities and other improvements which had been built and installed by the county. A city may reject such an award, but if it accepts it, the area defined in the decree, by virtue of it, is effectively detached from the county and annexed to the city as of the following January first.

Within this framework, after an abortive effort to merge the City of Richmond and Henrico County in 1961, Richmond, in January 1962, instituted judicial proceedings for the annexation of portions of Henrico and Chesterfield Counties.

The Henrico County case, in the Circuit Court of that County moved first, but not hastily. After the disposition of several motions and the denial by the Virginia Supreme Court of Appeals of writs of prohibition, the trial began in June 1963. There was a decree in April 1964 awarding 16.16 square miles to Richmond. That part of Henrico County was inhabited by 45,310 people, of whom 98.5 per cent were white. After further proceedings, the amount to be paid by Richmond was fixed at $5 million dollars. Because of the amount of that award, Richmond rejected it and abandoned the Henrico annexation proceeding.

The City of Richmond then concentrated on the Chesterfield case, pending in the Circuit Court of that County. An order granting a motion to dismiss was filed in March 1966, but was reversed, and the proceeding reinstated by the Virginia Supreme Court of Appeals. After further pretrial proceedings, the formal trial began in September 1967 and proceeded until January 8, 1968, when one of the judges
disqualified himself and a mistrial was declared. A new three judge annexation
court was organized and proceeded with new hearings.

At these hearings before the annexation Court the primary threat of the evidence
was that Richmond was an old and intensively developed within the present City
limits; that it was crowded and its population was growing each year; that its
relatively few undeveloped portions were small in area and insufficient to provide
the space needed in the near future for development and expansion; that the
additional undeveloped land in the area sought to be annexed was particularly needed
for industrial development so as to afford the City substantial additional tax
revenues to fund the increasing costs of City government; that there was a highly
developed community of interest between the City and the contiguous area of
Chesterfield County sought to be annexed, most of the residents of that area of the
County being employed within the City; that the City enjoyed the highest municipal
credit rating and had the financial ability to provide for development after
annexation; that the City's fire department frequently had to assist the volunteer
fire companies in the County on fighting fires in the area sought to be annexed;
and that the annexation would accelerate the industrial development of the sought
to be annexed which would be in the best interest of the area, the County, the
City and the State.

Long before 1969, the annexation court had urged the parties to seek agreement.
They had sought some agreement, but such negotiations were unsuccessful until 1969.

After the new Court was constituted, Mayor Bagley of Richmond and Chairman
Corner of the Board of Supervisors of Chesterfield County resumed settlement
negotiations which earlier had been unproductive. In May 1969, they reached an
agreement on a new boundary line and in June, on the amount of money to be paid by
Richmond for the annexed area. The agreement, which also included a provision that
the County would take no appeal from the annexation decree, was approved informally
by a majority of Richmond's councilmen.

This negotiated settlement, of course, was not binding upon the annexation
court. The statute requires judicial determination of the new boundary and
appropriate compensation. Moreover, civic associations of Chesterfield County had
intervened in the proceedings, and the interveners did not subscribe to the settle-
ment. Thus, additional evidence, principally that which the intervenors wished
to introduce, was taken and the proceedings were concluded. The annexation court's
acree ordering annexation was in full accord with the settlement negotiated.

The intervenors sought review by Virginia's Supreme Court of Appeals, but that court denied a writ of certiorari on November 26, 1962, so that the decree became effective on January 1, 1970.

Under the terms of the annexation decree, which incorporated verbatim the negotiated annexation settlement the City obtained 475 acres (.74 of a square mile) of potential industrial land, and 729 acres (1.1 square mile) of potential commercial land. Developed industrial and commercial land amounted to 312 acres, industrial; and 351, commercial. On the other hand, residential land, of which almost half was already developed, aggregated 12,336 acres, or more than 19.5 of the 23 square miles annexed. The population density of the area annexed was so great that the city acquired approximately one-third of Chesterfield's school children and found itself with 3,000 more pupils than its then existing classrooms could accommodate. After annexation, Chesterfield was left with an area of 437 square miles and a population of 77,046. Richmond's area was increased to 50 square miles with a total population of 349,420.

In 1961, when efforts were first commenced by the City to annex a portion of Chesterfield County, Negroes were a minority (about 40%) of the City's population. Between 1961 and 1969, however, there had been a substantial increase in the Black population of the City so that Black citizens constituted 51.5 percent of Richmond's population before annexation. The annexation decree added 47,262 people, of whom only three percent were black. By this means the city's erstwhile majority of black citizens was reduced to a minority of 42 percent of the total population. This was so because Chesterfield County was better than 91% white and Richmond 52% black before annexation. After annexation Richmond would become 58% white and 42% black, since 47,262 new citizens (97% of whom, in the area annexed, were white) would be added to the 104,207 black and 98,152 white citizens (total 202,354) of the pre-annexed city.

A councilmenic election in the City was to be held in June 1970.

In 1969 city political affairs, there were two contending factions. One known as "Richmond Forward" had the support of a majority of the white voters in the city. Of the nine members of the Council in 1969, six had been elected with the endorsement and backing of that group. The other faction known as "Crusade for Voters" had a wide appeal among Negro voters. Three members of the 1969 Council had been elected with the endorsement of that faction, and they voted against the negotiated
annexation settlement. The political leaders of the two factions conducted themselves as leaders of political parties.

Shortly after the annexation decree was entered in June 1939 by the annexation court, this class action was instituted in the U.S. District Court for the Eastern District of Virginia by Black voters residing within the City, as the City existed prior to annexation. The defendants were the City of Richmond and the members of the City Council. The Complaint sought a declaratory judgment adjudicating the invalidity of the annexation and an injunction ordering the City to divest itself of the annexed area, alleging "unconstitutional motivations" on the part the Mayor and a majority of the City Council in agreeing with the officials of Chesterfield County upon a settlement of the annexation proceeding.

At the hearing in the District Court the evidence showed the compromise annexation which terminated the annexation suit was negotiated almost entirely between the Mayor of the City and the Chairman of the Board of Supervisors of Chesterfield County. At this hearing before the District Court the Mayor and the Chairman testified as follows:

The Mayor testified that he supported annexation for the following reasons:

"Because I was firmly convinced from my observation and from subsequent service on Council that the boundaries of Richmond had to be expanded. It was an old city. We had to go to any available space for industrial, business development. Some of the area that remained appeared to be open but it was not usable because of flooding, hogs of that sort. I felt we had to expand the boundaries of Richmond because I don't think you can be on Council long without it being abundantly clear that the demands and needs of the city are ever increasing, speaking of finances, and that the resources do not increase likewise on the same rate. You have got to get funds to provide city services, the police, fire department, schools, safety, and the demand for money had become so great the average citizen cannot continue to bear the tax burden. You have to look for business to help bear this great tax burden. We could not expand our business operations. We did not have any area in which to locate. We had to look for other areas for expansion."

The Mayor further testified,

"I was not particularly interested in voters. When you sit down to work up a budget for the City of Richmond, I don't think you can pay off people with voters. You have got to have dollars and cents.

When asked, "Did the councilmanic elections in June 1971, have any bearing on wanting to have this annexation effective?," he responded,

"No, sir. You had to have an annexation agreement or whatever. It had to be effective sometime. They had many Councilmanic elections since I have been trying to expand Richmond."

The Chairman testified:

Q. What did they [the city's representatives] talk about?
A. They talked about people.
Q. Did they talk about votes?
   A. I am sure in this discussion votes were talked about.

   They asked us in the fifty-one square mile area approximately how many black citizens were in this area. I had no definite census, but it was estimated about five percent of the area of fifty-one square miles were black and about ninety-five percent were white.

Q. When they discussed people, were they discussing a need for 44,000 white people or 44,000 black people?
   A. Well, in that area, they had to be talking about the ratio I just mentioned.

   Concerning a December 1963 meeting, the Chairman of the County Board testified:

"Q. What were the unreasonable demands?
   A. 44,000 people.

Q. Did they have any unreasonable demands about how much land they wanted?
   A. No, sir.

Q. Or how much schools they wanted? How many roads?
   A. They did not discuss them.

Q. Utilities? Assessables? The tax base?
   A. Those items were not discussed except other than to degree the city people at times, at some of the meetings, indicated they needed land for expansion. The amount or the quantity was not brought up.

Q. Were you successful in getting the city to put a line on the map?
   A. No, sir."

At a May 15 meeting between the Chairman and the Mayor, the Mayor was told that it was unlikely that the county board would agree on 44,000 people. The Mayor, on the other hand, reported that he had been in touch with the majority of city council members and he "knew what was on their mind. He knew about what they thought they would agree on ... and he indicated this was approximately 44,000 people."

At this meeting the annexation line was drawn. The Chairman of the Board of Supervisors was explicit in his testimony concerning it: "I said, let me dictate a line to you of an area that will encompass this many people. You write it down."

That line became the final annexation line "except for a couple of minor changes made at the county's request and one at the city's request." The Mayor did not ask about the number of school children; he did not ask about the vacant land in the area. He did, however, ask the Chairman "to verify [with the Executive Secretary of the Board] how many people were in the area of the line we draw. This I did ..."
In June, the Chairman and an attorney for the county met with the Mayor and other representatives of the city and agreed that the city should pay approximately $27,300,000 for the area to be annexed. At trial, the Chairman of the Board was asked, concerning the meeting, "Did they [the city's representatives] give you any conditions that went along with this line and a dollar amount, any conditions to the agreement?" He replied,

"They gave the condition--Our purpose of going there was to find out if they meant business and what they said, if they meant it, and if they were willing to stand behind it. They stipulated the condition they would go along with the agreement provided that no appeal was made by the county, and the annexation should take effect January 1, 1970, and the people in this area would be citizens from that date on and would be eligible voters in the Councilmanic election of 1970."

There had been no evidence introduced in the record of the annexation proceeding before the special annexation court as to what transpired at the negotiation meetings between the Mayor and the Chairman. Only the final negotiated annexation agreement between the City and the County was introduced into that record.

What question or questions are presented? What should be the U. S. District Court's decision and why?
§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85-554, § 1, 72 Stat. 415.

§ 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1923, 68 Stat. 390; July 7, 1958, Pub.L. 85-503, § 12(p), 72 Stat. 340.

42 USCA

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

APPENDIX

Instructions for Answers

Instructions: Answer each question in the following form:

"Question(s) Presented"

1.
2. Etc. "

(Here state in a sentence or two the legal question presented in relation to the pertinent facts on the case. Do not state the question presented in an abstract manner unrelated to the pertinent and dispositive facts in the particular case.)

"Summary of Argument"

The Court should ... (in terms of how the question is posed here state what the ruling should be, such as "overrule the exceptions; or deny the motion to dismiss; or grant the injunction; or reverse and remand with the following instructions, etc.") for the following reasons:

1.
2.
3. Etc. "

(Here in a summary of argument form outline concisely each point in your argument supporting the ruling your advocate.)

IMPORTANT: Limit your answers to each question to 4 pages (2 sheets) of the standard examination booklet.

Articulate with precision and brevity. Condense each answer into the narrowest compass possible which will admit of setting forth distinctly the pertinent questions presented and the dispositive legal principles involved. The development of this technique of precise analysis and concise articulation in briefs and memoranda is essential in the practice of law. In the words of the Sage of Monticello (who founded this Law School):

"This operation is doubly useful, inasmuch as it obliges the student to seek out the pith of the case, and habituates him to a condensation of thought, and to an acquisition of the most valuable of all talents, that of never using two words where one will do.

Th. Jefferson
Monticello Aug. 30, 1814"

Example of Question and Answer

Question: This was an action in the U.S. District Court for the Southern District of West Virginia seeking a declaratory judgment and injunction against the members of the City Council of the City of Montgomery, West Virginia, (City), and the officers of the Montgomery Park Association, Inc., a private corporation, (Corporation), that had leased a City-owned swimming pool. The complainants were local members of the Ku Klux Klan, local members of the American Nazi Party, members of a local political organization known as Parist For Freedom, and several Negroes, Orientals, American Indians and members of a hippie commune who lived in the City. The complaint alleged that these complainants had been denied the use of the swimming pool notwithstanding they had offered to purchase admission tickets.
The complaint sought a judgment declaring complainants' rights to use the swimming pool and an injunction against defendants to restrain them from preventing complainants from using the pool.

At the hearing the evidence showed that in the year 1940 the City of Montgomery, West Virginia, submitted to the voters of the City the question of issuing general revenue bonds in the amount of $15,000 for the purpose of constructing a public swimming pool. The bond issue was approved by the voters on June 28, 1940. The proceeds, together with other funds supplied by the Federal Government, were used for the intended purpose, but were exhausted before the project was completed. Later in the year 1942 the City floated an additional issue of so-called "self-liquidating" bonds (that is, bonds which were a lien only on revenues derived from the operation of the swimming pool, and were not otherwise obligations of the City). These self-liquidating bonds produced $19,800. With these additional funds the swimming pool and its appurtenances were completed and ready for operation, with the exception of a fence, in August, 1945. Because of the short time remaining in which the pool could have been used during the season of 1945, together with the lack of a fence, it was not opened to the public in that year.

In February, 1946, the present city administration took office. On May 27, 1946, pursuant to a resolution passed by the Council, the swimming pool property was leased for a term ending September 15, 1946, to the Montgomery Park Association. This was a private corporation formed for the purpose of taking over the operation of the swimming pool, its charter being dated May 25, 1946. The terms of the lease are as follows:

1. All net revenue derived by the lessee from the operation of the property and its appurtenances shall be used for the improvement and development of the property and its appurtenances, and providing additional recreational facilities.

2. The lessee shall keep the property in good repair and pay all utilities and other proper charges against said property.

3. The lessee shall provide all employees necessary for the efficient and proper management of the property.

4. The lessor may, at all reasonable hours, through its agents and employees, inspect said property, but the lessor shall not have any duty to make such inspection.

5. The lessee covenants and agrees to use the best known methods and means for the operation of like properties in order to provide safe, wholesome and efficient management of the pool, and to provide wholesome recreational facilities.

6. The lessee covenants and agrees that if said property, or any portion thereof, during the term of this lease, shall be damaged by the act, default or negligence of the lessee, or of the lessee's agent, employee or employees, patrons, guests, or any person admitted to said premises by said lessee, the said lessee will promptly restore said premises to their present condition. The lessee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said premises by the consent of said lessee, or by or with the consent of said lessee's employees or any person acting for and on behalf of said lessee.

7. The lessor assumes no responsibility whatever for any property placed on or in said property, and the said lessee is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of the occupancy of said property under this lease.
8. The lessee shall not assign this lease, nor suffer any use of said premises other than herein specified, nor sublet the premises or part thereof, without the written consent of the lessor.

9. The lessee shall not use said premises for any purpose or purposes other than that of providing recreational and cultural facilities, in accordance with the charter granted to the lessee by the State of West Virginia on May 23, 1946.

10. The lessee shall have the complete and full control of said property during the term hereof and shall establish and enforce proper rules and regulations governing the operation and management of said property and its appurtenances.

The lease required the Corporation to pay an annual rental of an amount that would completely service (both as to interest and principal amortization) the bonds issued by the City in connection with the construction of the pool plus a sum equal to the amount of ad valorem taxes that would have been assessed on the pool had it been privately owned. The lease also provided for a lien on the Corporation's revenue from the pool operation in favor of the bondholders.

In the summer of 1946 the Complainants at different times separately applied at the main office of the swimming pool for season tickets, tendering in cash the amount which was posted over the door as the proper fee for season tickets. They were refused permission to buy tickets, and this action was later confirmed by the manager of the Montgomery Park Association. On appealing to the president of the Park Association, defendant F. B. Eberhart, they got the answer that, "No tickets would be sold to any deam Klansman, or Nazi, or Facist, or Black or Yellow or Red or mop-headed son-of-a-bitch."

In September 10, 1947 this action was commenced. The complaint alleges and the answer admits that the swimming pool was authorized and established pursuant to Article 14 of Chapter 5, Michie's Code of West Virginia. This statute prescribes the procedure which is to be followed by municipalities which may elect to avail themselves of its provisions in "establishing, improving, developing, operating and maintaining a municipal public park system" (including swimming pools). The first step is the creation by the City of a Board of Park Commissioners. This Board is given exclusive control and management of the construction, operation, and maintenance of all property used in the public park system. It may take title from the City to land for park purposes, and having done so, it can sell and convey no part thereof except such as "it may determine to be of no advantage in the operation, management and maintenance of said public parks and swimming pools and other like public recreational facilities." The City is authorized to issue bonds for park projects, with the approval of the voters at a bond election, and in form prescribed by the Board. The ordinance to be passed by the City submitting the question of issuing bonds to a vote of the people is required to contain a statement of the purpose for which the debt is to be created, which statement is to be deemed sufficient if it specifies "that the same is for the purpose of establishing and operating a public park system for the municipality, without specifying the particular improvements." By general law, four weeks notice is required for calling the election, and the proceedings must be applied accordingly to the terms of the ordinance submitted to the voters. W.Va. Code (Michie, 1945), Ch. 12, Art. 3, §§ 9, 22.

The City did not comply with the statute in establishing the swimming pool. No Board of Park Commissioners was created. Therefore, none of the provisions relating to action of such a Board in connection with the issuance of bonds and subsequent management of the swimming pool were followed.

An amendment, Code, § 8-64-21, adopted at a session of the Legislature held subsequently to the passage of the original Act, provides that the City, by ordinance, lease the project; but if leased the City must receive enough revenue from the leases to maintain the sinking fund. A statutory lien on the revenue in favor of the bondholders is provided, and in default a receiver may be appointed.
Answer:

Questions Presented:

Does a municipal corporation act,

1. Ultra vires; and/or
2. In violation of constitutional guarantees of equal protection of the laws, when:
   a. Acting under a state statute authorizing municipalities to establish and fund public parks and recreational facilities therein, the City constructed a swimming pool in a public park and financed the cost by the issuance of municipal revenue bonds; and when
   b. Upon completion of the pool the City leased it to a private corporation, the lease providing for the corporation's establishing its own operation policies and for a rental that more than funded the revenue bond interest and sinking fund requirements, the lessee corporation having been formed for the specific purpose of leasing and operating the pool; and when
   c. The lessee corporation undertook to sell pool admission tickets on a selective basis refusing tickets to members of the Ku Klux Klan, the American Nazi Party, Fascists, the local hippie commune and several racial groups.

Summary of Argument:

The Court should enter a decree permanently enjoining the City and Corporation officials from operating the pool under this leasing arrangement for the following reasons which should be reflected in its declaratory judgment:

1. Even if the City has general leasing authority under state statutes, nevertheless, the action of the City in executing this pool lease was ultra vires.

   The state statute under which the City acted in constructing and financing the pool only authorized municipalities to establish and operate public parks and recreational facilities. Thus, it was the clear intent of the Legislature in conferring authority on municipalities to establish parks and recreational facilities, that such facilities as might be established pursuant to the statute must be for the use of the general public and not merely for selected portions of the public, regardless of the basis of selection.

   Thus, the City had no authority under the statute to enter into any contractual arrangements for the operation of the pool which did not assure its use by the general public on a non-discriminatory basis.

2. The City's indirect pool operation under this lease violated the equal protection clause of the 14th Amendment of the United States Constitution.

   The City having financed and constructed the pool by authority of the Legislature for public use, all members of the public in the City are entitled to use it on a non-discriminatory basis, regardless of race, politics or culture. The City acts under a 14th Amendment constitutional obligation to afford all its citizens equal rights in the use of the publicly constructed and financed swimming pool. The City cannot evade this constitutional obligation through the use of a lease of public property to private operators.