

CITY, COUNTY & LOCAL GOVERNMENT LAW CERTIFICATION EXAM
SAMPLE QUESTIONS

Disclaimer: The following questions are provided to the public as examples of the types of questions that appear on City, County & Local Government certification exams, as well as the subject areas that are tested. All questions have been pulled from previous exams and were correct and factual at the time of administration; however, the City, County & Local Government Law Certification Committee acknowledges that some questions and/or answers may no longer be accurate due to the passage of time since administration. None of these questions will appear on future exams.

Public Sector Liability

1. Beautiful City operates a Fire Rescue Explorer Program for children ages 14-16. In order to participate in the program, the child's parent is required to sign a hold harmless agreement in favor of the City for any negligence of the City. If a child is injured and the parent sues the City, how should the City be advised regarding the hold harmless agreement?
 - a. The agreement is void as against public policy.
 - b. The agreement is enforceable as an explorer program is a commonplace child- oriented community or school-supported activity for which a parent may waive their child's litigation rights.
 - c. The agreement is void as against sovereign immunity.
 - d. The agreement is enforceable as an explorer program is otherwise immune from these types of claims.

Answer: B

Sovereign Immunity

2. The city of Miami Beach controls the beach area within the city limits pursuant to an agreement with the State of Florida, owner of the Beach. Under the terms of the agreement the city provides public restrooms, picnic tables and parking areas. The beach has not been designated by the city as a public swimming area and thus no lifeguards are provided although the city is aware that people use the area for swimming.

A guest in a local hotel ventured out onto the beach and while there rented a beach chair and umbrella from a concessioner licensed by the city. The guest decided to go for a swim and was dragged under by prevailing rip currents and drowned. Subsequently a wrongful death action was brought by the estate against the city, who after responding to the suit moved for summary judgment. At the hearing on the motion the trial court should:

- a. grant the summary judgment motion because the city does not have a duty of care to warn beachgoers of naturally occurring rip currents when it did not have control over the area and does not take express action to designate it a swimming area.
- b. grant the summary judgment motion because the city has the discretionary authority to operate or not operate swimming facilities and is immune from suit on that discretionary question.
- c. deny the summary judgment motion because the City controls the beach area and, therefore, had a duty of care to warn of dangers that were known or should have been known, and is not shielded from liability based on sovereign immunity.
- d. deny the summary judgment motion because it was reasonably foreseeable that people would use this area for swimming.

Answer: C

Civil Rights

3. In 2000, City implemented an ordinance which prohibited City residents from holding a business tax receipt for an eating establishment unless the applicant was Scandinavian, because the City Commission believed “only Scandinavians knew how to cook.” In 2000, just after the ordinance was enacted, Resident Ricardo, of Italian decent, applied for and was denied a business tax receipt for a restaurant based on the ordinance. In 2005, Resident Ricardo filed suit against the City under Section 1981 and Section 1983, for the denial of the business tax receipt. Resident Ricardo’s claims are barred:
- a. by the statute of limitations.
 - b. as municipalities cannot be sued under Section 1983.
 - c. by the doctrine of qualified immunity.
 - d. by the United States Constitution.

Answer: A

Public Finance

4. City adopted a road impact fee, setting its rate at the highest in Florida's history. County wants to adopt the same rate. Under Florida Statutes §163.31801, "Florida Impact Fee Act," what is County unable to do when it adopts its new rate for roads impact fees?
- a. Calculate the impact fee based on the most recent and localized data.
 - b. Charge an administrative fee for the collection of impact fees that exceeds its actual costs of collection to pay for the next impact fee study.
 - c. Adopt its ordinance with more than 90 days notice before the effective date of imposition of a new or amended impact fee.
 - d. Create a separate accounting fund to account for the revenues and expenditures of the road impact fee.

Answer: B

Procurement and Public Contracts

5. You represent an asphalt supplier to a subcontractor to a contractor for Pretty DOT in Pretty County, Florida. Pretty has paid the contractor, and supposedly, the contractor paid the subcontractor, in full and received a general release in favor of itself and the surety. However, the subcontractor did not pay your client. The contractor and subcontractor have filed for bankruptcy protection. Your client wants payment from the performance bond, even though your client failed to comply with all of the notice and time requirements contained in section 255.05(2) when perfecting these claims. You advise your client:
- a. Statutory notice and time limitation provisions may be enforceable, even where bond at issue does not contain reference to those provisions as required by statute.
 - b. The bond should be treated as a “common law bond,” subjecting the bond to the more general statute of limitations because the bond did not contain the notice essential by statute.
 - c. The statute only applies to state buildings, and not roads constructed by counties.
 - d. To sue Pretty County, because they should have caught the mistake during their procurement process.

Answer: A

Land Use and Zoning

6. Prior to purchasing a vacation home in Key West the property owner approached the city attorney to be sure the city would allow the unit to be rented. The city attorney, interpreting the current city ordinance, assured the property owner that the property could be used for short term rentals so long as both the property was not rented for more than a total of 25 weeks per year and the property owner obtained a non-transient business tax receipt from the City. A couple of years later the City adopted new land development regulations which replaced the city ordinance for rentals and told the property owner he could no longer engage in short-term rentals. If the property owner files an action for declaratory relief seeking a determination of whether the new ordinance is applicable to the property, the trial court should:
- a. rule in favor of the City because the property's use was no longer a valid use.
 - b. rule in favor of the property owner because the property owner established a valid nonconforming use.
 - c. rule in favor of the property owner because the property owner asked permission.
 - d. rule in favor of the city if the evidence establishes that the city attorney interpretation of the ordinance was in error and was never presented to the City Commission for approval.

Answer: B

Eminent Domain

7. Eminent City needs property for a road project from Property Owner. Eminent City elects to obtain the property under the Eminent Domain “Quick Take” provisions of Chapter 74 of the Florida Statutes. After complying with all of the statutory prerequisites and obtaining an order after notice and hearing, the City deposits the amount of its good faith estimate of value into the registry of the Court. The deposit is made eleven (11) days after the date of the order granting the taking. The attorney for Property Owner claims that the deposit is not timely. The Judge should declare that the order granting the taking is:
- a. void and cannot be reinstated because the deposit of the City had to be made within ten (10) days.
 - b. valid and because the deposit of the City had to be made within twenty (20) days.
 - c. void because the statute requires the deposit of the City had to be made within ten (10) days but the order may be reinstated on the basis that a deposit on the eleventh (11th) day is in substantial compliance with the statutory process.
 - d. valid and because the deposit of the City had to be made within fifteen (15) days.

Answer: B

Practice & Procedures Before Local Gov't Legislative & Quasi Judicial Bodies

8. An applicant properly appealed the planning and zoning division's denial of his application to build a canopy over his marina slip to the town council. At the quasi-judicial hearing, the town council approved the building permit after the applicant presented substantial competent evidence supporting his position. However, no written ruling was filed with the town clerk. The town later voted, at a rehearing 35 days later, to reconsider the applicant's building permit and deny it. The applicant filed for a writ of prohibition in the circuit court, contending that the town did not have jurisdiction to reconsider the approval of the permit. Should the writ be issued?
- a. No, because a written order on the first decision had not been filed with town clerk, the time for invoking review jurisdiction of circuit court had not started to run.
 - b. Yes, because more than 30 days passed from the initial action approving the permit; therefore, the council's actions became final under the Florida Rules of Appellate Procedure.
 - c. No, because the applicant has not exhausted his administrative remedies under the Administrative Procedures Act.
 - d. Yes, because no new evidence was presented at the rehearing before the town council to justify the denial.

Answer: A

Sunshine Law and Public Records Law

9. Which of the following statements is **incorrect**?
- a. An agency of the state must allow inspection of its records but it is not required to provide copies.
 - b. If a requestor identifies a record with sufficient specificity to permit the agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record.
 - c. Members of an advisory council are not entitled to copies of public records free of charge.
 - d. An agency may not charge for travel costs, search fees, development costs, or other incidental costs of producing a record.

Answer: A

Home Rule and Exercise of Police Power

10. The town council entered into a management agreement with the Friends of the Theater, Inc. (the “Friends”), a non-profit corporation, to fix-up and operate an old city recreation center as a performing arts center. Under the contract, the Friends agreed to split the net revenues with the town, but the Friends are also able set the cost of tickets and the rental rates for use of the building. A small group of performing artists (the “Artists”) opposes the contract claiming an illegal restraint of trade, and the creation of an illegal monopoly by the town, because there are no other venues to use downtown. However, the town council wants to be more entrepreneurial and approves the contract. The Artists file a lawsuit asking for a declaratory judgment pointing out that Section 542.18, Florida Statutes, states in part that “every contract, combination, or conspiracy in restraint of trade or commerce in the state is unlawful.” As town attorney, you are aware that Section 166.021(1), Florida Statutes provides the town with “governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.” What should your advice to the town council regarding this lawsuit be?
- a. It doesn’t matter whether the town created a monopoly because the town cannot contract with a private entity to perform a public function.
 - b. The town council clearly created a monopoly which restrains trade and the contract must be terminated.
 - c. The town council may have created a monopoly, but it isn’t illegal because it is not “expressly prohibited by law” from doing so.
 - d. The town council is permitted to contract with a private entity to operate its facility, but depending on the facts, it may nonetheless be prohibited from doing so, if it creates an illegal restraint of trade.

Answer: D

Conflict of Interest/ Financial Disclosure

11. Space County Fire Department employs firefighters and paramedics to provide emergency services to the residents of Space County. In addition, Space County has granted two private, non-profit companies exclusive franchises to provide emergency fire and paramedic services within certain defined geographic areas of the county. Firefighters and paramedics employed by the Space County Fire Department also supplement their income by working for one or the other of the two franchised emergency services companies. Does this supplemental employment by the firefighters and paramedics constitute a prohibited conflict of interest under the code of ethics for public employees?
- a. Yes however, Space County may adopt an ordinance allowing the firefighters and paramedics to work for franchised emergency services companies.
 - b. Yes, and Space County may not adopt an ordinance allowing the firefighters and paramedics to work for franchised emergency service companies.
 - c. No, so long as the firefighters and paramedics do not work for the franchised companies during the working hours assigned by Space County.
 - d. No, the firefighters and paramedics have a constitutional right to find work to supplement their income and benefits.

Answer: B

Ethics

11. Under which of the following circumstances would the Code of Ethics for Public Employees require that a member of a county commission abstain from voting?
- a. A vote regarding commissioner's salaries.
 - b. A vote that results in a financial gain of the commissioner's uncle.
 - c. A vote that affects many citizens of the county, including the commissioner.
 - d. A vote that results in a financial gain of the commissioner's business associate.

Answer: D

ESSAY #1

Jane Citizen, a well-known local podcaster and former star of a cable access television show called “Question Everything...Especially Town Council!” attends the Wednesday meeting of the Town Council. At the beginning of the meeting, the Chair of the Town Council announces that due to the heavy traffic caused by the circus being in town, he will limit the Town Council meeting to the morning session and defer the public comment portion of the agenda to the next regular meeting.

Outraged, Jane Citizen rushes to the dais and shouts into the microphone “How dare you! Public comment is my first amendment right!” While motioning to the Town Police Chief in the back of the room, the Council Chair yells back “We can just watch your silly Internet show, Jane! We know how you feel!” Jane begins to shout statutory citations when the Town Police Chief and his deputy chief tackle Jane and pin her to the ground. The fall causes a scrape on her arm that bleeds onto the carpet. The Police Chief places Jane under arrest, handcuffs her and drags her from the room as she shouts, “Pursuant to Chapter 119, I want all of your calendars too!” The deputy chief laughs and begins to insult her appearance, her ancestry, and her podcasting abilities.

The Chair calls the meeting back to order. The first item on the agenda is the renewal of insurance policies carried by the Town. One Council member announces he is an automobile insurance agent and he believes the Town does not need costly insurance, explaining that the Town’s Home Rule authority makes it immune from tort actions. After his statements, a motion not to renew the policies passes 5-0. The Town Council addresses the rest of the agenda and adjourns before noon.

Because the Town Attorney was delayed in traffic caused by circus fans, she arrives just as the meeting concludes. The Town Clerk shares the meeting recording with the Town Attorney and Administrator. The Town Administrator asks the Town Attorney to prepare a memorandum summarizing the legal issues created by the Council’s actions today and instructs her to share the memo with him and no one else.

MODEL ANSWER

Sunshine Law; 768.28 issues; decorum

- The public has a right to participate and speak at public meetings before a final decision is made. See section 286.0114, Florida Statutes. So deferring public comment to next meeting may violate that law.
- On the issue raised by a council member that because the Town has home rule authority, it is immune from tort actions, and therefore it can go without insurance, the council member is incorrect. Under section 768.28, Florida Statutes, the Florida legislature has waived sovereign immunity for state, county, municipal and other agencies for tort actions up to \$300,000. Liability insurance is not required but it would not be prudent not to carry it.
- Ms. Citizen should not have shouted in the microphone and assuming that the Town has rules of decorum the Chair should have ruled her out of order instead of yelling back at her. A Town Council has the right to have rules of decorum or procedures to enable the commission to have an orderly meeting. See Jones v. Heyman, 888 F.2d 1328, 1331 (11th Cir. 1989) (finding a significant government interest in controlling the agenda and preventing the disruption of public meetings). Therefore, Jane Citizen was acting disorderly and could therefore be told to stop shouting or even removed from the meeting. Brown v. City of Jacksonville, 2006 U.S. Dist. Lexis 8162 (Feb. 17, 2006).

Public Records

- As it relates to Jane Citizen's Chapter 119 request for "all of your calendars too," the request is not clear. Whose calendars? The elected officials? The police chief? The deputy chief? What is the timeframe for the request? The Town is obligated to comply with the public records request. See § 119.07(1), Fla. Stat. But has the right to seek clarification from Ms. Citizen and make a concerted effort to narrow the request and make sure that the proper persons have the request at town hall.
- The town should also advise Ms. Citizen that it has received her request to ensure that Ms. Citizen doesn't have the right to seek attorney's fees if she files a public records lawsuit and the Town has otherwise met the statutory requirements of notice, etc. See § 119.12, Fla. Stat.
- Memo to the town manager can be confidential and exempt from public record if it is written in anticipation of imminent civil or criminal litigation. See section 119.071(d).

42 USC Section 1983

- Jane Citizen may have a claim against the Town and/or the officers because the police tackled her, pinned her to the ground and scraped her arm.
- Jane Citizen may have a first amendment rights claim for not being allowed to express her thoughts at a public meeting.
- No statutory cap on monetary damages
- Excessive Force - tackling Jane Citizen, causing injuries and by arresting her without any indication that Ms. Citizen was dangerous in any way.

- Custom and Policy? Liability against the town is debatable. See McDowell v. Brown, 392 F.3d 1283 (11th Cir. 2004) (a plaintiff suffering a deprivation of federal rights at the hands of a municipal employee is insufficient to establish a municipality's liability without showing a custom or policy.)
- Liability to the officers? Probable cause to arrest? If there is probable cause, then a valid arrest includes the right to use reasonable force. See Graham v. Connor, 490 U.S. 386, 395 (1989). 598 F.3d 753, 762 (11th Cir. 2010) (without the benefit of hindsight would a person know the alleged conduct violates the constitution).
- Qualified immunity can be asserted. So long as the actions of the officers do not violate a clearly established constitutional or statutory rights of which a reasonable person would have known. Lee v. Ferraro, 284 F. 3d 1193 (11th Cir. 2002). Qualified immunity allows the officers to be dismissed from a lawsuit.
- But, bad faith can preclude qualified immunity. Actions of the deputy chief who laughed and insulted her shows bad faith. See Hadley v. Guiterrez, 526 F.3d 1324, 1329 (11th Cir. 2008), discussing the application of force, the relationship between the need and the amount of force used, the extent of the injury inflicted, and whether the force was applied in good faith or maliciously.

State claims

- Negligence of the police chief and officer can be asserted.
- damages up to \$200,000, under section 768.28, Florida Statutes, but unlike section 1983, her damages are limited to that amount.