

**LOCAL GOVERNMENT LAW  
FINAL EXAMINATION  
Peter M. Malaguti**

**YOUR SOCIAL SECURITY NUMBER:** \_\_\_\_\_

**INSTRUCTIONS:**

PLEASE PUT YOUR ANSWERS IN THE LINES OR AREAS BELOW EACH QUESTION.  
PLEASE LIMIT YOUR ANSWERS TO THE LINES PROVIDED BELOW EACH QUESTION.  
I WILL NOT READ BEYOND THE LINES PROVIDED UNDER EACH QUESTION.  
PLEASE MAKE EACH ANSWER READABLE IN TERMS OF NEATNESS AND SIZE OF  
THE HANDWRITING. (I WILL NOT USE A MAGNIFYING GLASS TO READ YOUR  
ANSWERS.) PLEASE ANSWER THE QUESTION RESPONSIVELY; DON'T PROVIDE  
INFORMATION NOT ASKED FOR IN THE QUESTION. FOR EXAMPLE, IF THE  
QUESTION ASKS "WHO WINS," PLEASE STATE THE NAME OF THE PERSON WHO  
WINS; DO NOT STATE WHY HE OR SHE WINS. PLEASE STATE YOUR REASONING  
ONLY IF THE QUESTION ASKS FOR IT. PLEASE NOTE THAT THE LINES PROVIDED  
SOMETIMES EXTEND ONTO THE NEXT PAGE.

**GOOD LUCK!**

1. Please briefly explain "Dillon's Rule" in the space provided below.

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2. True or false, the relatively narrow strictures under which states may delegate powers to local governments as set forth in Brodhine v. Inhabitants of Revere pertain today.

True

False

3. In the space provided below, please briefly describe the difference between "mandatory" and "directory" statutes.

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4. In the space provided below, please briefly describe the difference between a "governmental function" and a "proprietary function."

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5. Why does the law often require someone to have "standing to sue" a municipality?

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6. Please describe the common law cause of action known as "mandamus."

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7. Please describe the common law cause of action known as "certiorari."

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8. In what circumstances is declaratory relief appropriate?

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9. As I have asked on many occasions, if there is one thing you should learn in Local Government Law, what is it?

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10. Why is "special legislation" considered bad?

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11. For how long has the law recognized the right to "self rule" in America?

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12. Name at least one instance under the Massachusetts Home Rule Amendment when the state legislature can enact "special legislation."

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13. Name at least one limitation on local power under the Massachusetts Home Rule Amendment.

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14. What do the Massachusetts Home Rule Amendment and Dillon's Rule have in common?

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15. What law prevents municipalities from levying, assessing and collecting taxes?

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16. Please describe the difference between a tax and a fee.

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17. Assume that the state has a broad and extensive regulatory scheme governing the licensing of firearms. Also assume that a town passes an ordinance dealing with the licensing of firearms kept within town limits. What is the best argument that the town's ordinance is invalid?

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18. Name at least one way that courts use to determine that a law has been preempted.

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23. What should a contractor with a municipality make sure occurred before he or she performs work under contract with the municipality?

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24. What is the “anti-aid” amendment?

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25. Please describe the test generally employed today to determine whether a particular act by government is protected by sovereign immunity doctrine.

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**END OF EXAM  
HAVE A WICKED GOOD SUMMER!**

***LOCAL GOVERNMENT LAW***

**FINAL EXAMINATION**

**MAY 26, 1999**

**PROFESSOR PETER M. MALAGUTI**

Your Social Security Number: \_\_\_\_\_

Your Social Security Number: \_\_\_\_\_

INSTRUCTIONS

THERE ARE 20 QUESTIONS. PLEASE PUT YOUR ANSWERS RIGHT ONTO THIS EXAM BOOKLET. THERE IS NO BLUE BOOK. YOU HAVE ONE HOUR.

ALL OF THE FOLLOWING QUESTIONS MUST BE ANSWERED WITHIN THE LINES PROVIDED AFTER EACH QUESTION. ALL ANSWERS EXCEEDING THE LINES WILL NOT BE COUNTED. THERE IS NO NEED TO USE UP ALL THE SPACE PROVIDED IF YOU CAN ANSWER THE QUESTION WITH JUST A FEW WORDS. PLEASE ALSO REMEMBER THAT I CAN ONLY CORRECT THAT WHICH I CAN READ. SO PLEASE TRY TO KEEP IT NEAT.

PLEASE NOTE THAT SOME OF THE LINES EXTEND ONTO THE NEXT PAGE. I GENERALLY GIVE FIVE (5) LINES PER QUESTION EVEN IF THE QUESTION CAN BE ANSWERED IN ONE WORD.

ASSUME THAT THE GENERAL LEGAL CONCEPTS WE STUDIED THIS SEMESTER APPLY UNLESS THE QUESTION CALLS FOR THE APPLICATION OF MASSACHUSETTS LAW.

QUESTIONS

1-5

PLEASE CONNECT THE CONCEPT ON THE LEFT WITH THE ONE ON THE RIGHT. PUT THE APPROPRIATE LETTER IN THE SPACE BESIDE THE NUMBERS IN THE LEFT COLUMN.

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|----|--|----|--|
| 1. | It can be found when a scheme of federal regulation clearly is intended to leave no room for additional regulation. _____                                | A. | Special legislation.   |
| 2. | Mandamus. _____  | B. | Enact private or civil law governing civil   |
| 3. | In determining whether this is lawful, it is sometimes beneficial to distinguish between whether it creates a "closed" as opposed to "open" class. _____ |    | relationships except as an incident to an exercise of independent municipal power. |
| 4. | It aims at preventing private citizens from interfering with the general civic interest. _____   | C. | The requirement of standing.   |
| 5. | Something a municipality cannot do under the Home Rule Amendment. _____  | D. | Preemption.  |
|    |  | E. | An action seeking to compel a public   |

official to perform an official duty that is ministerial and nondiscretionary.

6. Generally, how does the Home Rule Amendment work?

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7. Please explain the difference between directory and mandatory legislation.

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8. What does Dillon's Rule say?

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9. Under what circumstances may the Commonwealth of Massachusetts delegate powers to municipalities?

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10. Name one circumstance in which the Commonwealth of Massachusetts can enact special legislation.

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11. What is the difference between a governmental function and a proprietary function?

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12. True or false, the Rules of Civil Procedure provide that a cause of action seeking relief in the nature of certiorari may be combined in a complaint with other causes of action.

TRUE

FALSE

13. If there is one thing you should have learned in Local Government Law, it is that:

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14. Briefly describe the "police power."

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15. State one of the characteristics that distinguish a fee from a tax.

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16. Briefly describe how a "federated" government, such as Toronto or Dade County, operates.

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17. Under a strict reading of the Compact Clause of the federal Constitution, what must states secure before they can have an interstate compact?

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18. Can a state tax the income of federal employees?

YES

NO

19. State as an example a situation where an action seeking declaratory relief would be appropriate.

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20. State one difference between a city form of local government and a town form of local government.

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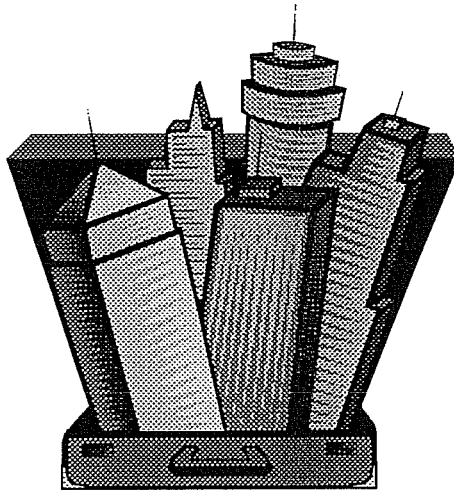
**END OF EXAM  
HAVE A GOOD SUMMER**

***LOCAL GOVERNMENT LAW***

**FINAL EXAMINATION**

**MAY 24, 2000**

PROFESSOR PETER M. MALAGUTI



Your Social Security Number: \_\_\_\_\_

Your Social Security Number: \_\_\_\_\_

INSTRUCTIONS

There are 20 questions. Please put your answers right onto this exam booklet. There is no blue book. You have one hour.

All of the following questions must be answered within the lines provided after each question. All answers exceeding the lines will not be counted. There is no need to use up all the space provided if you can answer the question with just a few words. Please also remember that I can only correct that which I can read. So please try to keep it neat.

Please note that some of the lines extend onto the next page. I generally give five (5) lines per question even if the question can be answered in one word.

Assume that the general legal concepts we studied this semester apply unless the question calls for the application of Massachusetts law.

QUESTIONS

1-5

Please connect the concept on the left with the one on the right. Put the appropriate letter in the space beside the numbers in the left column.

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|----|--|-------|----|---|
| 1. | It reserves to the states the power to deal with matters involving health, safety, welfare and morals.                         | _____ | A. | The failure to adhere to all its strictures is not fatal because it is considered more procedural than substantive. |
| 2. | Directory legislation.   | _____ | B. | Certiorari.   |
| 3. | Mandatory legislation.   | _____ | C. | The 10 <sup>th</sup> Amendment to the Federal Constitution.   |
| 4. | An action to correct an error of law or to prevent a government official or agency from taking arbitrary or capricious action. | _____ | D. | The municipality is compelled to follow it.   |
| 5. | An action seeking a binding determination of the rights, status and duties of parties.   | _____ | E. | Declaratory relief.   |

6. Under what circumstances would someone seek declaratory relief?

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7. In class we discussed one situation where a local government could take the land of the state government by eminent domain. What was the circumstance?

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8. When can a state *not* impose an income tax on federal employees?

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9. As stated in the Federal Constitution, what must occur for two or more states to validly enter into interstate compacts?

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10. Name one circumstance in which the Commonwealth of Massachusetts can enact special legislation.

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11. According the SJC, why can't the City of Boston adopt an ordinance providing health insurance for domestic partners?

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12. Why can't the town of Andover enact an ordinance which requires all landlords to renew residential leases when they end, and which further prohibits them from increasing the rent on such renewals by more than 3%?

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13. If there is one thing you should have learned in Local Government Law, it is that:

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14. Under the Home Rule Amendment, state at least one circumstance in which the legislature can enact special legislation.

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15. Andover wants to build a new middle school and elementary school, and wants to pay for it by establishing a "school user fee." The fee will be determined on a house-by-house basis, with larger houses paying a higher fee. Essentially, the town will determine the amount of the fee by counting the number of bedrooms in each house. It has justified the disparity in fees by stating that houses with more bedrooms generally have more children attending school. Why will Andover's "school user fee" be struck down?

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16. What are the types of preemption?

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17. Conceptually, how does preemption of state law by federal law differ from the preemption of local law by state law?

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18. Why must citizens have "standing" to challenge the actions of elected and appointed municipal officials?

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19. In local government law, when might one distinguish between an "open" class and a "closed" class?.

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# ***LOCAL GOVERNMENT LAW***

**FINAL EXAMINATION**

**MAY 22, 2002**

**PROFESSOR PETER M. MALAGUTI**

**This exam consists of four (4) essay questions. Please answer each one in a separate blue book. Label each blue book "Question One," "Question Two," etc.**

**You have three hours to complete the exam.**

**Good luck!**

## **Question One**

Franklin, Massachusetts is located 22 miles southwest of Boston, and 26 miles north of Providence, Rhode Island. Until fairly recently, the town has been rural in character. Since about 1980, however, the town has endured an unprecedented growth boom. From 1980 to 1995, the town's population increased 17,500 to 25,000. Despite the building of a brand new school in 1995, a research group hired by the town that same year projected that growth would cause the town's schools to overflow by the year 2000, with an estimated 320 more pupils than spaces.

On December 4, 1995, By-Law Amendment 95-300, adding a new chapter 83 to the town code, came into effect, under which the town imposed a "school impact fee" to "ensure[ ] that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development and to promote and protect the public health, safety and welfare." Carrying out the recommendations of the town council's forecast of overcrowding in the public schools, the legislative findings of the By-Law Amendment state that "Franklin must expand its school systems if new development is to be accommodated without decreasing current [educational] standards." The findings further state that "[e]ach type of residential dwelling unit [subject to this by-law] will create demand for the acquisition, expansion or construction of school improvements."

The pertinent part of the By-Law reads as follows: "No certificate of use and occupancy for any new or expanded residential building ... shall be issued unless and until the impact fees hereby required have been paid, unless exempted by this By-Law." The By-Law sets out a fee schedule, based on the estimated cost increase imposed by each kind of housing unit. Each single-family house, for example, is estimated to bring .68 children into the public school system, while each condominium brings .25 children. Initially, the town determined how much of the cost to expand the school system would remain after it utilized all other funding sources, and then applied the above formula to cover the deficit, charging proportionately higher school impact fees for single-family homes than for condominiums. Money collected under the by-law is funneled into one of two accounts earmarked to cover the cost of expanding schools in either the northern or the southern district, depending on the location of the new housing. The funds may not be used to maintain existing buildings, and after eight years, any remainder not used for expansion will be returned to the payer, if the payer applies for it.

The Greater Franklin Developers Association ("the Association"), a group of local real estate developers, would like to bring an action seeking to challenge the amendment to the By-Law. Please fully discuss the following in regard to such an action.

- A. Procedurally, what type of an action should they bring?
- B. What type of technical defenses will the Association have to be wary of?
- C. Will the Association prevail on the merits of the case?

## **Question Two**

The Worcester city council recently adopted, as part of the city's revised ordinances, an ordinance establishing a Human Rights Commission and an Advisory Human Rights

Committee. The stated policy of the ordinance is “to see that each individual regardless of his race, color, religious creed, national origin, sex, age or ancestry, shall have equal opportunity in or access to employment, housing, education, recreation and public accommodations; to assure that each individual shall have equal access to and benefit from all public services; to protect each individual in the enjoyment of his civil rights; and to encourage and bring about mutual understanding and respect among all individuals in the City by the elimination of prejudice, intolerance, bigotry, discrimination and the disorder occasioned thereby.”

The five member Human Rights Commission, to be appointed by the city manager, was given specific powers and duties in implementing the policy of the ordinance, including:

- (1) To receive and investigate complaints in regard to discrimination in employment, housing, education, recreation and public accommodations;
- (2) To attempt by mediation to resolve any complaint over which it has jurisdiction and to recommend to the City Manager or other appropriate governmental agency, federal, state or local, such action as it feels will resolve any such complaint and, in the case of any unresolved complaint or in the case of any investigation which would be aided thereby, to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath and in connection therewith to require the production of any evidence relating to any matter in question or under investigation before the Commission;
- (3) To make a written report of its findings and recommendations to the City Manager, School Committee, Massachusetts Commission Against Discrimination (MCAD) or any court or other applicable governmental agency;
- (4) To issue such publications and such results of investigations and research as will minimize or eliminate discrimination;
- (5) To cooperate with federal, state and City agencies, including the School Department and the MCAD, in developing courses of instruction for presentation in public and private schools, public libraries, and other suitable places, devoted to eliminating prejudice, intolerance, bigotry and discrimination; and
- (6) To create such sub-committees to study the problems of prejudice, intolerance, bigotry, and discrimination prevailing in the City of Worcester.

The Massachusetts Civil Rights Act, a state law codified at Chapter 151B, makes unlawful certain practices which discriminate on the basis of “race, color, religious creed, national origin, sex, age, or ancestry.” Chapter 151B authorizes the MCAD to investigate complaints, to subpoena witnesses, to compel their attendance, to hold hearings, to issue orders and to seek judicial relief, and further directs the MCAD to formulate policies to effectuate the purpose of the chapter. In fact, the powers enumerated under Chapter 151B § 3 are essentially identical to Worcester’s ordinance. In addition, Chapter 151C forbids unfair educational practices and grants to the MCAD the power to investigate and to hold hearings with respect to unfair educational practices. Among other things, it is generally an unfair educational practice for an educational institution to discriminate against any citizen seeking admission as a student “because of race, religion, creed, color or national origin.” In short, Worcester’s new ordinance seems to have mimicked much of the laws encapsulated in Chapters 151B and 151C.

Finally, Chapter 233 § 8 grants certain State and local agencies the right to summon witnesses. The MCAD is mentioned as an agency with such power to summons, but a local human rights commission is not mentioned in that section.

You are a staff attorney in the Office of the Massachusetts Attorney General, Municipal Division. The Worcester ordinance described above has just been presented to you for review. Please fully discuss the following in regard to the ordinance:

- A. What procedural constraints will you be under?
- B. Is the ordinance consonant with Massachusetts law?

### **Question Three**

The posting of signs in Longmeadow, Massachusetts is governed by two separate by-laws. Article 6, Chapter 300, Section 3 14 of the General By-Laws states as follows:

No billboard, sign or other advertising device shall be posted, erected, displayed or maintained in the Town of Longmeadow on any public way or on private property within public view from any highway, public park or reservation except as the same shall be permitted under the provisions of the statutes of the Commonwealth of Massachusetts and rules and regulations adopted thereunder, or as may be permitted under the provisions of this section....

The by-law provides exceptions. Subparagraph (a) permits residents to put out a sign "showing name and street number only...." However, if the resident is a "physician, surgeon, dentist, lawyer, accountant, or architect," the sign may also indicate the resident's profession. In addition, temporary signs relating to the proposed sale or rental of real property are allowed. Subparagraph (b) permits and sets forth the conditions for on-site business signs, while subparagraph (c) outlines an application process to the Board of Appeals for additional business signs under (b). Subparagraph (d) permits the installation of traffic signs by the Board of Selectmen.

The other relevant regulation is contained in Article 9, Section 1.2g of Longmeadow's Zoning By-Laws, which states similar provisions:

A sign may be erected and maintained in any zone as shown on the Zoning Map of the Town, showing name and street number only, which is affixed to the dwelling or attached to a suitable support. In the case of a physician, surgeon, dentist, lawyer, accountant, engineer or architect, such sign may show, in addition to the name and street number, the class of profession. Such sign shall not exceed one square foot in area, or two feet in linear dimension. A temporary sign relating to proposed sale or rental of a lot of real property, and any buildings thereon, may be displayed but may not exceed four square feet.

No other billboard, sign or other advertising device shall be posted, erected, displayed or maintained in the Town of Longmeadow except as the same may be permitted under the provision of the statutes of the Commonwealth of Massachusetts and rules and regulations adopted thereunder, or as may be

permitted under the provision of Section 117-A of the General By-Laws of the Town of Longmeadow, or as may be permitted by this Paragraph 1.2g, or by Article IV, Section D, Paragraph 4(b) and 4(c) of this Zoning By-Law.

On June 30, 1998, the Longmeadow Town Meeting considered an amendment to the General By-Laws submitted by Terry Tauber. Tauber's amendment would have specifically allowed the display on private property of signs for candidates or issues of general concern, and provided for the two-week display of signs advertising non-profit or political activities or functions. That measure was defeated by a majority of those present and voting.

Tauber is considering filing suit against the Town of Longmeadow claiming that the sign by-laws are unlawful. Please discuss the possible causes of action Tauber may raise in full detail, and determine whether he will succeed in his action.

#### **Question Four**

The Town of Westport, Massachusetts issued a warrant for the special town meeting that contained an article relative to the raising of funds for a proposed building and another article concerning an offer by the United States to grant to the town a certain percentage of the cost of the building. That was the only purpose for calling the town meeting. A town bylaw provided for the creation and maintenance of the Town Finance Committee. That bylaw stated:

Whenever the warrant for any town meeting contains an article or articles under which an appropriation or expenditure of money or the disposal of any property of the town may be made, the finance committee shall consider said articles after giving one or more public hearings thereon and shall report its recommendations to the town meeting.

Although the Finance Committee apparently did consider the matter, and did make a report to the town, it did not conduct a public hearing in regard to the articles on the warrant for the special town meeting.

Several taxpayers protested that the town meeting should not occur until the Finance Committee held such a public meeting. The town meeting occurred, and the vote was taken. Now those taxpayers are attempting to set aside the results of the vote. Please fully discuss the merits of their case.

**END OF EXAM**

**HAVE A GOOD SUMMER**