



University of Fort Hare  
*Together in Excellence*

**LGA: 122 – LOCAL GOVERNMENT ADMINISTRATION, 1B**

**SUPPLEMENTARY EXAMINATION, NOVEMBER/DECEMBER 2024**

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**Time: 3 Hours**

**Subject: PUBLIC ADMINISTRATION**

**Paper: LOCAL GOVERNMENT ADMINISTRATION, 1B**

**Marks: 100**

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**This paper consists of FIVE (5) pages including the cover page**

**INTERNAL EXAMINER**

Mr. S. Lungisa [University of Fort Hare]

**INTERNAL EXAMINER**

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***INSTRUCTIONS***

- (i) Answer ALL QUESTIONS.
- (ii) You are advised to spend at most, 1 hour on each of the sections.
- (iii) You are expected to draw relevant examples and illustrations from the theory and practice of local government.
- (iv) Do make use of relevant local government legislative frameworks.

<b>SECTION A: MUNICIPAL GUIDING PROGRAMMES</b>
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<b>33.3 MARKS</b>
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**QUESTION 1.1**

Outline the key principles underpinning District Development Model

**QUESTION 1.2**

Provide the main key objectives of the District Development Model.

<b>SECTION B: COOPERATIVE GOVERNANCE IN SOUTH AFRICA</b>
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<b>33.3 MARKS</b>
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The recent decision by the North West provincial executive to intervene in an additional seven municipalities has again placed the spotlight on provincial intervention mechanisms, their implementation and whether they yield results.

The latest list of interventions means that 15 of the 21 municipalities in the North West are subject to some form of intervention, and this by a province that itself was placed under administration by national government in May 2018. This foreshadowed the Auditor-General's latest report on municipal audit results which recorded another plunge in municipal performance and financial management.

The rate at which provinces are employing this mechanism is alarming, particularly given the autonomy that the Constitution confers on local government. Provinces are permitted, and indeed encouraged, to monitor and support municipal performance and strengthen municipal capacity to fulfil the developmental mandate of local government.

Where necessary, this includes intervention as endorsed by the Constitution. But it must be done in terms of the law.

**Question 2.1**

Using a municipality of your choice that has been put under administration. Detail and discuss whether the **provincial intervention was done in the practice of cooperative governance** if **not, what were the reasons?** Your answer must be in line with the four major principles of Cooperative Governance as outlined in the Constitution and Municipal Finance Management Act.

If the intervention was within the practice of cooperative governance elaborate on principle or principles invoked by the Provincial Government.

If the intervention was not done in the spirit of cooperative governance elaborate on the principle or principles that the Provincial Government has transgressed.

**keep in mind pieces of legislation that apply to this question and make reference to applicable Legislative Frameworks.**

<b>SECTION C: INTERGOVERNMENTAL RELATION IN VIEW OF LOCAL GOVERNMENT IN SOUTH AFRICA</b>
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<b>33.3 MARKS</b>
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**Court tells the City of Cape Town to exhaust intergovernmental dispute resolution mechanisms.**

In *City of Cape Town vs the Minister of Energy*, the Court had to decide whether the case between the City of Cape Town and the national Minister responsible for energy (the Minister) amounted to an intergovernmental dispute which had to be resolved in terms of dispute settlement procedures provided for in Chapter 3 of the Constitution and Chapter 4 of the Intergovernmental Relations Framework Act 13 of 2005. The Court ruled that the dispute between the City and the Minister was an intergovernmental dispute which the parties should have resolved in terms of the Intergovernmental Relations Framework Act before any of the parties could approach a court of law for resolution.

#### Background

Municipalities are tasked with supplying electricity to communities and businesses as part of their constitutional mandate to provide basic services. The practice has been that municipalities purchase bulk electricity from Eskom for onward selling to their consumers. However, Eskom has for many years failed to produce and therefore guarantee an adequate supply of electricity to its customers, including municipalities. This has forced municipalities and many other consumers of electricity to explore alternative supplies of energy. Independent power producers (IPPs) have the potential to become alternative suppliers of energy. Driven by the desire to guarantee energy supply to its customers, in 2015, the City of Cape Town began to explore the purchase of renewable energy from Daring Wind Project, an IPP.

In terms of section 7(1) of the Energy Regulations Act (ERA), the National Energy Regulator of South Africa (NERSA) must issue a license to the IPP for it to operate and sell electricity to

a municipality. However, before NERSA can issue a license the Minister has to determine whether the IPP is needed and could be established in terms of section 34 of ERA. In light of this provision, the City made an application to the Minister in November 2015 for determination. Two years passed without the Minister making a determination on the City's application. Instead, the Minister issued an instruction placing all applications for section 34 determinations on hold indefinitely. After failing to get a response to its application from the Minister in over two years, the City began exploring opportunities to purchase electricity from the IPP without first obtaining the consent of the Minister as required by section 34 of ERA.

#### Arguments of the City of Cape Town

The City sought an order declaring that a ministerial determination in terms of section 34 of ERA was not required for an IPP to establish a new power plant to supply electricity to the City. If the Court found that indeed the determination is required, the City sought an order declaring section 34 unconstitutional and invalid to the extent that it interfered with local government's constitutionally protected powers to supply electricity. The City submitted that if section 34 of ERA is valid the Court should compel the Minister to consider and respond to its application for determination. It also contended that the matter between itself and the Minister does not constitute an intergovernmental dispute because it does not comply with the definition of an "intergovernmental dispute" as provided in the Intergovernmental Relations Framework Act. It was submitted that NERSA is not an organ of state within a governmental sphere as it is an independent statutory body. It was further submitted that the dispute regarding the constitutionality of section 34 of ERA is not a dispute which arises from a statutory power or function assigned to any of the parties. Last, the City submitted if the Court found that the case between parties was indeed an intergovernmental dispute the Court should grant condonation to litigate.

#### Arguments of the national Minister responsible for energy

The Minister raised a procedural challenge arguing that the matter before the Court is an intergovernmental dispute between organs of State. As such, the City needs to comply with the principles of cooperative government and intergovernmental relations provided for in section 41 of the Constitution. It was argued that the City ought to have complied with provisions of the Intergovernmental Relations Framework Act, which obliges organs of State to exhaust intergovernmental dispute resolution mechanisms before approaching a court of law. Given

that the City did not exhaust these mechanisms, the Minister submitted that the Court should dismiss the City's application.

**QUESTION 3.1**

**The City of Cape Town has appointed you as an adviser. So, provide the City with FORMAL DISPUTE RESOLUTION MECHANISMS for the inter-governmental dispute it finds itself in with the Department of Energy**

**In your answer/response detail and describe how these dispute resolution mechanisms must be systematically applied by the City of Cape Town**

END OF EXAM PAPER

