Power Administrative Law 6 pages

Exam No	
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FINAL EXAMINATION

ADMINISTRATIVE LAW

Time: 3 hours

This is a closed book examination. It consists of 3 essay questions. Spend 1 hour on each question as the questions will be weighed equally. Questions I and II contain sub-parts and you should follow the time recommendations for the sub-parts, as they reflect the weight each sub-part will receive in the grading process.

The examination contains 6 pages. Be certain that you have the entire examination. You are required to hand in your copy of the exam along with your exam booklets. Please write your exam number where indicated on this page as well as on each of your exam booklets. On each booklet, please indicate both the number of that particular book in the series of books you write and the total number in the series, e.g., Book 2 of 3.

It is essential that your writing be legible. You will not be given credit for illegible answers. **Please write on only one side of each page** and if your handwriting makes it necessary, **on every other line.**

If you find it necessary to make any assumption as to law or fact in writing your answer, please state the assumption and explain why you are making it.

I. (60 minutes)

You are the General Counsel of the U.S. Department of Interior (DOI), which is responsible for all public lands and natural resources. One of these public lands is the Mojave Desert, a large land area in the eastern part of California that is hot, dry, dusty and empty much of the year. For most of its history, DOI has taken an attitude of benign neglect toward the desert. Recently, however, a number of people have suggested that it change this approach.

The concern about the Mojave Desert began last year when the Secretary, Euell Gibbons, leased a 40-square-mile area of the desert for 10 years to the Hot Oil Co., which now conducts oil drilling in the area. The Cactus Lovers Society (CLS), an environmental group, then conducted a media campaign to have the Mojave Desert closed to all oil exploration. One way of doing this would be to make the desert a national park. This would be accomplished under the National Parks Enabling Statute (NPES), which authorizes the DOI "to designate and set aside for recreation public lands the Secretary deems suitable for such use."

A. The Secretary wants to know what procedures he should use to make the Mojave Desert a national park. Answer him, under the assumption that the APA and the above-referenced portion of the NPES are the only applicable statutory provisions. (15 minutes)

B. Assume that the DOI recently designated the desert as a national park, effective January 1, 1989. The DOI's decision provided that the Hot Oil Co. may continue to drill under its lease but that at the end of the ten years it must return the land to its previous condition and leave the park. As is often the case with governmental attempts at compromise solutions, no one is very happy with this decision. Hot Oil is angry because it will be unable to obtain another lease after its present lease runs out; CLS is irked because the Hot Oil lease remains in effect; and the Eastern California Motorcycle Fanatics, a group of motorcycle hobbyists, is perturbed because motorcycle racing is banned in national parks and it has conducted a race across the Mojave Desert every year. Advise the Secretary 1) whether these entities can obtain judicial review of the Secretary's decision, at least at this time, and 2) what arguments they are likely to raise on the merits. (25 minutes)

C. One group that is pleased by the decision is Boring Foods of America (BFA), a company that operates trail-mix and Perrier water stands in many national parks. A provision in the NPES authorizes the DOI to "grant licenses to operate concession stands in national parks as required by the public interest, convenience and necessity" and "to deny applications for licenses only on the record after opportunity for an agency hearing." BFA applied to the DOI for a license to operate such a stand in the Mojave Desert. The DOI granted the license only after the President of BFA met privately with the Secretary and argued its case. Southwestern Desert Supplies (SDS), which has also applied for a license to operate a concession stand, has complained to you about this. Advise the Secretary whether he violated the law in granting the license to BFA and whether SDS would be able to bring an action challenging the issuance of that license. (20 minutes)

II. (60 minutes)

Historically, the State of Connecticut has forcibly taken homeless people into shelters during particularly cold or snowy weather. Last year the Supreme Court of Connecticut held that this practice was not authorized by law. Accordingly, the General Assembly enacted a statute that provides, in pertinent part, as follows:

"The Department of Public Safety is hereby authorized to adopt regulations that provide for taking homeless persons into state protection when, due to weather or other emergency conditions, such persons are not safe out-of-doors, and to act in furtherance of those regulations."

A. It is December 1987. Discuss the procedures the Department must follow in adopting regulations. (10 minutes)

B. Assume that the Department has adopted the following regulation through valid procedures:

"The Department of Public Safety will take into protection any homeless person not otherwise sheltered when the outdoor temperature drops to 32 degrees F. or there is more than 1" of snow on the ground. All persons will remain in protection until the temperature rises above 32 degrees F. or the snow melts.

You are the attorney for Donald Trumpet, a wealthy but eccentric individual who owns no home of his own and prefers to live in Seaside Park in Bridgeport. He contacts you because he is concerned about the regulation. Advise him whether the Department may summarily take him into custody or whether more is required. (20 minutes)

C. In the course of your investigation, you learn that the Commissioner of the Department of Public Safety, Joanie Caucus, was formerly a director of the Walden Pond Foundation, a public interest group that assists the homeless. In her capacity as director, she once filed a suit claiming that the state had a constitutional and moral duty to provide shelter for all homeless persons, even if they did not want it. Discuss how you would be able to use this information in a challenge to the regulation or to an attempt to take Trumpet into state protection.

(20 minutes)

D. The Department is concerned with protecting homeless people in other respects as well. For example, it recently announced that it would take into state protection all homeless people discovered in high crime areas after 10 p.m. Seaside Park is such an area. Advise Trumpet whether this announcement presents any issues different from those presented by the "cold weather" regulation set forth above. (10 minutes)

III. (60 minutes)

You are a law clerk for the Honorable Mazda MacTruck, a U.S. District Judge. She wishes to issue an opinion in the case of U.S. v. Scam Auto Sales, Inc., but must dash off to Washington to testify at Judge Kennedy's confirmation hearing and has left it for you to write. The case was presented by the parties on the following agreed stipulation of facts.

Stipulation of Facts

- 1. On July 1, 1986, the Department of Transportation (DOT) issued a subpoena to Scam Auto Sales, Inc. (SAS) directing its president to appear before the DOT to testify and to provide the following records:
- a. invoices, bills of sale, and all other records of all auto sales by SAS during the period January, 1986 through June, 1986.
- b. copies of all odometer certifications (mileage certifications) for used autos sold during that time period.
- 2) The Anti-Odometer Fraud Act includes the following provisions:
- a. "No person, corporation or other entity shall sell any used automobile without certifying to the purchaser the accuracy of its odometer reading. If the seller is unable to confirm the accuracy of the odometer, it shall explain to the purchaser that it cannot do so, explain why it cannot do so, and estimate the actual mileage of the auto and explain how it arrived at the estimate.

- b. "The DOT shall have the authority to demand information from all auto sellers concerning compliance with the provisions of this Act."
- c. "A knowing and willful violation of this statute is a criminal offense punishable by a six-month prison term."
- 3. Dollree Scam, the president of SAS, refused to comply with the DOT subpoena.
- 4. The DOT brought this action asking the court 1) to compel SAS and Scam to provide the demanded information and 2) to hold them in contempt for failing to comply with the Department's subpoena.
- 5. Scam and SAS defend the refusal to comply and oppose contempt sanctions on all arguably applicable legal grounds.
- 6. SAS filed a counterclaim challenging the DOT's failure to provide documents it requested under the Freedom of Information Act (FOIA).
- 7. The FOIA request demanded copies of documents relating to enforcement of the Anti-Odometer Fraud Act. The request reasonably described the requested documents and was filed in compliance with all applicable procedural regulations.
- 8. The DOT denied the request in its entirety, citing all arguably pertinent provisions of the FOIA. It identified three documents as responsive to SAS's request. They were:
- a) a memo from an attorney in the General Counsel's office that contains the Department's "official" interpretation of the Anti-Odometer Fraud Act;
- b) a complaint issued to Sting Used Cars, Inc., which claims that the company violated the statute (the case was settled without litigation);
 - c) a report concerning SAS (see also below).
- 9. SAS's counterclaim demands 1) that the DOT be required to provide these documents under the FOIA and 2) that the court enjoin any DOT investigation concerning SAS's activities until the documents are provided.

You have read the report concerning SAS (see stipulated fact 8) in chambers. It states in its entirety:

"To: Director

From: Inspector Clousseau

Subject: Complaint re Scam Auto Sales

I received a call from J. T. Gorman, who complained that he recently purchased a used Volvo from Scam Auto Sales, Inc. and believes that it has substantially more mileage than the 25,000 miles indicated by the odometer. I examined the automobile and, using our secret electromicrodometer thermometer, was able to determine that the odometer had been disconnected and set back approximately 60,000 miles. I then examined the sales papers and discovered that the odometer certification said "25,000 miles more or less." Gorman said to keep his name out of it and I agreed. I recommend that we begin proceedings against Scam Auto Sales, as this strikes me as a serious violation of the Anti-Trust Odometer Fraud Act."

Draft an opinion in this case, ruling on the DOT's action and SAS's counterclaim in all respects.