IN THE SUPREME COURT OF FLORIDA

J. ROBERT ROWE,

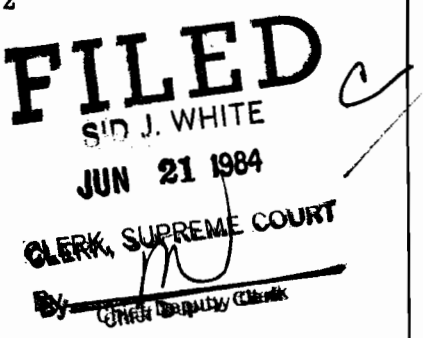
Appellant,

vs.

PINELLAS SPORTS AUTHORITY, et al.,

Appellee.

CASE NO. 65,322



PINELLAS RESORT ORGANIZATION, INC., et al.,

Appellant,

vs.

PINELLAS SPORTS AUTHORITY, et al.,

Appellee.

CASE NO. 65,420

APPELLANTS' BRIEF ON THE MERITS

GERALD F. RICHMAN
BRUCE A. CHRISTENSEN
FLOYD PEARSON RICHMAN GREER WEIL ZACK & BRUMBAUGH, P.A.
One Biscayne Tower
Twenty-Fifth Floor
Miami, Florida 33131-1868
Telephone: (305) 377-0241

Attorneys for Appellants

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STATEMENT OF THE CASE

This direct appeal is from a Final Judgment entered April 18, 1984 by the Circuit Court of Pinellas County rendered final by an Order Denying Petition for Rehearing entered May 4, 1984. Jurisdiction is appropriate under Article V, Sec. 3(b), Florida Constitution (1968) and Rule 9.030(a)(1)(i), Fla.R.App.P.

An action for Declaratory Relief under Chapter 86, Florida Statutes and for Injunctive Relief, (Case No. 83-15264 the "Declaratory Relief Action") was filed on December 29, 1983 by the Pinellas Resort Organization ("P.R.O."), HOLIDAY HOUSE MOTEL-APTS. INC., HAROLD E. SLAUGHTER and WILLIAM A. TOLLIVER (collectively "these parties" or the "P.R.O. Group") against the Pinellas Sports Authority ("P.S.A."), Pinellas County (the "County"), and the City of St. Petersburg (collectively referred to as the "P.S.A. Group"). This multi-count action action sought a declaration that the County's pledge of Tourist Development Tax Revenues to secure $85,000,000.00 of revenue bonds to be issued by the P.S.A. to build a baseball stadium was invalid. It also sought various other declarations involving construction of Florida Statute § 125.0104, and construction and validity of certain Pinellas County Ordinances and Resolutions. These as well as constitutional issues were raised and injunctive relief was sought in tandem with the declaration of rights.

On February 8, 1984 the P.S.A. Group filed a Bond Validation Proceeding (Case No. 84-1463) which joined all of the P.R.O. Group parties as defendants[1] along with the State of Florida, and the taxpayers of the area. Taxpayer J. Robert Rowe intervened as a party to the bond validation case raising

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[1]Because certain parties are Plaintiffs in one action and Defendants in the other they are referred to here by name. The trial court designated the PSA Group "Plaintiffs" and the P.R.O. Group, States Attorney, and Rowe as "Defendants" and exhibits in evidence are so divided.

certain defenses to the validation of the bonds,[2] not the least of which were violations of the Florida Sunshine Act. The P.R.O. Group joined in that defense. The P.S.A., County and City affirmatively raised in the Bond Validation case the same issues (by way of negative allegations) raised by the P.R.O. Group in the Declaratory Relief Action. Likewise, P.R.O. and Rowe raised as affirmative defenses in the Bond case the issues of the Declaratory Action. Thus, the primary focus of the trial was upon those issues dealing with the validity of the Tourist Development Tax in Pinellas County and the pledge of its revenues to secure the stadium bonds, along with the violations of the Sunshine Act.

On February 17, 1984 the Circuit Court consolidated the Declaratory Relief and Bond Validation cases, and on February 21, 1984 issued its Order to Show Cause, setting a very abbreviated discovery schedule and setting the trial for April 6, 1984.[3] The trial took the entire day and evening (approximately 9:30 a.m. until 11:50 p.m. without even a dinner break) of that day and included extensive legal argument and memoranda.

Oddly, the 19-page Final Judgment almost completely ignores the Declaratory Action case and the issues in it, also raised as defenses to the Bond validation case. It includes lengthy findings and comments on matters which either were extraneous to the case, only briefly mentioned at trial, or were completely without controversy, while ignoring the fundamental issues on which the trial and

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[2] In addition to the Stadium Bonds, the P.S.A. Group sought to validate an Interlocal Agreement and certain other resolutions or documents, all of which relate to the stadium and are generally referred to here together as the bonds.

[3] The Order of Consolidation also purports to consolidate these two cases for appellate purposes. While no party objects to this, a trial court cannot determine this Court's jurisdiction. Thus, out of caution, these parties have likewise filed a Notice of Appeal in the Declaratory Action case in the District Court of Appeal of the Second District.

argument focused. Even the most rudimentary findings relating to a declaratory relief action are absent from the Final Judgment, as are basic findings of fact and law on the most controversial issues tried. This insufficiency of appropriate findings was raised by the Petition for Rehearing and denied. Thus the form of the Final Judgment is a point of error. Because it is addressed last in the Brief, we note here that this error is considered as fundamental as the substantive issues discussed first. Likewise it necessitates that all arguments on each point advanced by our opponents be dealt with since it is impossible to tell from the Judgment the basis of the trial court's decision.

STATEMENT OF FACTS AND BACKGROUND

In 1977 the Florida Legislature adopted Section 125.0104, Florida Statutes, the Tourist Development Tax. It authorizes all Florida counties to levy and impose a 2% tax on the rental of certain accommodations when rented for less than a 6 month period.[4] The Statute requires that prior to enactment of an ordinance levying the tax, a tourist development plan must be prepared, submitted to and approved by the County. The Statute further mandates that:

> The plan shall set forth . . . a list, in order of priority, of the proposed uses of the said tax

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[4] Fla. Stat. 125.0104(3)(a) provides:

> (a) It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, tourist or trailer camp, or condominium for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of chapter 212. (Emphasis added)

> revenue by specific project or special use as the same are authorized under subsection (5). The plan shall include the approximate cost or expense allocation for each specific project or special use. [Emphasis added].

Two applicable Pinellas Ordinances do not comply with this statutory designation for a "tourist development plan".[5] The Statute indicates that a county tourist development council must prepare such a plan which then must be adopted before the Ordinance levying the tax and required voter referendum. Because of the wording of the initial referendum ballot question and subsequent amendments to the Pinellas Tourist Development Plan, the citizens of Pinellas County never authorized the use of their revenues for the proposed stadium. Whether the citizens' right to a proper referendum was circumvented was a premier issue in the case below. The Final Judgment also does not speak to this question.

Pinellas County adopted Ordinance 78-20 purporting to impose the Tourist Development Tax in 1978. The Ordinance provides a Tourist Development Plan in Section 2:

> The tourist development tax for Pinellas County is to strengthen our local economy and increase employment by investing the total receipts of the tourist development tax into a trust fund to be used exclusively for tourist advertising and promotion for Pinellas County and its communitites.

Section 3 of the Ordinance (not part of the Plan) provides:

> Section 3. All or any portion of the revenues raised by the tax hereby levied may be pledged by the Board of County Commissioners to secure and liquidate revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, improvement, maintenance,

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[5] This requirement of a list in order of priority of specific projects was a substantial issue at trial and one of the many such issues not ruled upon directly by the trial court.

> operation or promotion of one or more publicly owned and operated convention centers, sports arenas, sports stadiums, coliseums or auditoriums within the boundaries of Pinellas County which projects are set forth within this ordinance or may be hereinafter adopted by appropriate amendment to this ordinance, as one of the uses to be made of the tourist development tax hereby levied. [Emphasis added].

The Ordinance was subjected to the initial referendum. That referendum ballot inquired of the voters:

> Shall Pinellas County Ordinance No. 78-20 be approved? This ordinance levies and imposes a countywide two (2%) percent tourist development tax on each whole or major fraction of each dollar of the total rental charge for the lease or rental of any tourist accommodations or living quarters for a term of six (6) months or less. Such tax shall be used to promote and develop the tourist industry in Pinellas County.
>
> FOR THE TOURIST DEVELOPMENT TAX _____
>
> AGAINST THE TOURIST DEVELOPMENT TAX ____

In 1982 at the urging of the County Attorney, Pinellas Ordinance 82-19 was enacted which amended Ordinance 78-20.[6] This Amendment replaced the original Tourist Development Plan (Section 2) of the first Ordinance with the following:

> TOURIST DEVELOPMENT PLAN
>
> (a) The Tourist Development Tax for Pinellas County is to strengthen our local economy and increase employment by investing the total receipts of the Tourist Development Tax into a Tourist

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[6]By memo dated July 14, 1981 the Assistant County Attorney informed the Tourist Development Council expenditure of the tax monies for a stadium study was "clearly not permitted or authorized under the current County Ordinance" which he had noted "only permits expenditure of these funds for purposes of promoting and advertising tourism". [Defendant's Exhibit 3, emphasis added]

Development Trust Fund to be used for the following purposes only:

> 1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county. However, these purposes may be implemented through service contracts and leases with persons who maintain and operate adequate existing facilities;
>
> 2. To promote and advertise tourism in the State of Florida and nationally and internationally; or
>
> 3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county.

Prior to and following the adoption of this Amendment, tourist tax revenues were expended on projects unrelated to "tourist advertising and promotion", (as originally required by Ordinance 78-20), most particularly the proposed baseball stadium. On November 8, 1983, following an informal meeting (discussed in the Sunshine Law violations section below), the Pinellas County Commission adopted by a 3-2 vote Resolution 83-598 authorizing the PSA to proceed with development of a bond issue to finance the stadium. That Resolution also approved a financing plan requiring the City and the County to contribute funds to the PSA, with the revenue bonds to be secured by pledges of certain City tax revenues and County Resort Tax funds. This pledge of Tourist Development Tax revenues was the focus of the P.R.O. Group's Declaratory Action and defense to the Bond Validation case.

During the course of all these events, gatherings occurred which the PRO Group and taxpayer Rowe assert violated the Florida Sunshine Law. (see

argument in part V below). These gatherings consist first of discussions on vital stadium related issues, including financing, where at least one representative of each of the parties to the Interlocal Agreement was present. Also included are joint staff meetings on the project. The most serious of these occurred on the days preceding the adoption by the Pinellas County Commission by a 3-2 vote of Resolution 83-598, authorizing the PSA to pursue its financing plan, which plan is the central controversy in this case and hotly contested in the County right now. Prior to the November 8, 1983 adoption of the same at least two meetings occurred in the home of Commission Chairman Barbara Todd. Present were Mrs. Todd, City Councilman Bill Bond, and Mr. Healey from the PSA and a Mr. Hough who was a paid consultant on the financial aspects of the bond issue. Testimony concerning the occurrence of these meetings is not in controversy (A. 192-199, 246-251, 266-282). Another meeting occurred just prior to the actual adopting of the Resolution at the Commission Chambers (A. 201-203, 253) at which others were present as well.

Both Todd and Bond were members at the time of the Tourist Development Council whose finances were directly and negatively affected by the decision to pledge tourist tax revenues to the stadium project.

Other meetings of committees or staff also occurred out of the sunshine (A. 161-163). Additionally, members of all the bodies socially discussed matters which eventually came before the various bodies dealing with stadium design, location and financing (A. 166-175). The PSA also had a closed door Sunday meeting concerning stadium matters in February, 1983 (A. 190-191) and on December 14, 1983 which specifically excluded a member of the press (A. 257).

In mid-December, 1983 the PSA adopted a Note Resolution and formally entered into a long contemplated Interlocal Agreement with the City and

County. PSA is the "issuer" of the revenue bonds for which City and County tax revenues are pledged. Pinellas County has never been authorized to issue the Bonds. On December 31, 1983 the P.S.A. sold $61,000,000.00 of Bond Anticipation Notes. These remain outstanding awaiting replacement by the Bonds, if validated finally upon appeal. The funds also remain held pending the outcome of these proceedings.

ISSUES ON APPEAL[7]

I. Whether Pinellas Ordinance 78-20 And The Referendum Adopting It Are Invalid

A. Whether Ordinance 78-20 is invalid because it does not comply with the statutory requirements for a Tourist Development Plan.

B. Whether Section 3 of Ordinance 78-20 is impermissibly vague and in irreconcilable conflict with Section 2 of the Ordinance.

C. Whether the Referendum was invalid because the ballot question on the Tourist Tax Referendum never apprised the voters of the substance of Ordinance 78-20 or that it could be altered without voter approval.

II. Whether Pinellas Amended Ordinance 82-19 Is Invalid Because It Does Not Comply With The Statutory Mandates Of Florida Statutes § 125.0104.

III. Whether The County's Tourist Development Tax Funds May Be Lawfully Pledged To Payoff Bonds Issued By Another Entity, The Pinellas Sports Authority

IV. Whether Florida Statute 125.0104 Is Unconstitutional Because It Denies Equal Protection Of The Laws

V. Whether Actions Of The Pinellas Sports Authority, Pinellas County And The City Of St. Petersburg Regarding The Stadium Project Are Invalid Because Of Violations Of The Florida Sunshine Law

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[7] These parties rely upon and adopt the memorandum of J. Robert Rowe as to questions pertaining to the effect on ad valorem taxes.

VI. Whether The Trial Court Committed Error In The Final Judgment By Omitting Findings Of Fact And Law As To Numerous Issues Raised In The Declaratory Relief Action And As Defenses In The Bond Validation Proceeding

ARGUMENT

I. Pinellas Ordinance 78-20 And The Referendum Adopting It Are Invalid

Pinellas Ordinance 78-20 imposed a Tourist Development Tax in that County pursuant to the authorization of Florida Statutes §125.0104. That Ordinance and the referendum purporting to adopt it should have been declared invalid by the trial court for three principal reasons: (a) the Ordinance does not comply with the Statute's requirements for a Tourist Development Plan; (b) section 3 of that Ordinance is in irreconcilable conflict with Section 2; and (c) most importantly, the voters of Pinellas County were not properly informed by the referendum ballot of the contents of the Ordinance, or that without resubmission to the voters it could be so altered in the future as to permit expenditure of their tax funds on projects not mentioned at all on the ballot. Thus, the constitutional right of a meaningful referendum as to approval of Tourist Development Tax revenues being used for a stadium project was circumvented.

A. Ordinance 78-20 is invalid because it does not comply with the statutory requirements for a Tourist Development Plan.

In permitting Florida counties to levy a Tourist Development Tax, Florida Statutes § 125.0104(4)(a) provides:

> (a) The tourist development tax shall be levied and imposed pursuant to an ordinance containing the county's tourist development plan prescribed under paragraph (c) enacted by the governing board of the county. The ordinance levying and imposing the tourist development tax shall not be effective unless the electors of the county or the electors in the sub-county special district in which the tax is to be levied approve the ordinance authorizing the levy

> and imposition of the tax, in accordance with subsection (6).

Pinellas Ordinance 78-20 does not comply with these two requirements: (1) inclusion of a proper tourist development plan and (2) approval by a proper referendum. As further prescribed in the Statute there are certain requisites for the ordinance levying the tax. These are: (1) 60 days or more before enactment of the ordinance, the County must adopt a resolution establishing a County Tourist Development Council; (2) preparation of a County Tourist Development Plan by the Council and submission of that plan to the County Board for approval; (3) the plan shall set forth the net tourist development tax revenue for the next twenty-four (24) month period; (4) the plan shall include a list in order of priority of the proposed uses of the revenue by specific project or use; (5) the plan shall include the approximate cost for each specific use.[8]

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[8] Florida Statutes § 125.0104(4)(b) and (c) contain these requirements:

> (b) At least 60 days prior to the enactment of the ordinance levying the tax, the governing board of the county shall adopt a resolution establishing and appointing the members of the county's Tourist Development Council, as prescribed in paragraph (e), and indicating the intention of the county to consider the enactment of an ordinance levying and imposing the tourist development tax.
>
> (c) Prior to enactment of the ordinance levying and imposing the tax, the county's Tourist Development Council shall prepare and submit to the governing board of the county for its approval a plan for tourist development. The plan shall set forth the anticipated net tourist development tax revenue to be derived by the county for the 24 months following the levy of the tax; the tax district in which the tourist development tax is proposed; and a list, in the order of priority, of the proposed uses of the said tax revenue by specific project or special use as the same are authorized

Pinellas Ordinance 78-20 complies with only one of these five requirements: an estimate that Tourist Development Tax revenues for 24 months will be 4.8 million dollars. Section 2 of Ordinance 78-20 contains the entire Tourist Development Plan purportedly adopted by Pinellas County:

> Section 2. The tax revenues received pursuant to this ordinance shall be used to fund the Pinellas County Tourist Development Plan, which is hereby adopted as follows:
>
> TOURIST DEVELOPMENT PLAN
>
> The anticipated annual revenue for a two percent (2%) tourist development tax for all of Pinellas County over a 24 month period is $4.8 million, less costs of administration as retained by the Department of Revenue, State of Florida. The tourist development tax for Pinellas County is to strengthen our local economy and increase employment by investing the total receipts of the tourist development tax into a trust fund to be used exclusively for tourist advertising and promotion for Pinellas County and its communities. [Emphasis added].

This Tourist Development Plan does not include "a list in order of priority" of the uses of the tax revenue or the "approximate cost" of such specifically listed projects. This Plan requires "investing the total receipts" in a trust fund "to be used exclusively for tourist advertising and promotion for Pinellas County and its communities." It is not unreasonable to interpret this to require the entire estimated $4.8 million to be spent on one special use, "tourist advertising and promotion". Indeed the unrebutted expert testimony at trial was that it is only one use (A. 109-121). However, it is clarion clear that this Tourist Development

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Footnote 8 (Continued)

> under subsection (5). The plan shall include the approximate cost or expense allocation for each specific project or special use.

Plan includes no reference to a project nor a cost estimate remotely related to a baseball stadium.[9] The only possible reference to such a stadium in Ordinance 78-20 occurs in Section 3 of the Ordinance, not part of the Plan:

> Section 3. All or any portion of the revenues raised by the tax hereby levied may be pledged by the Board of County Commissioners to secure and liquidate revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, improvement, maintenance, operation or promotion of one or more publicly owned and operated convention centers, sports arenas, sports stadiums, coliseums or auditoriums within the boundaries of Pinellas County which projects are set forth within this ordinance or may be hereinafter adopted by appropriate amendment to this ordinance, as one of the uses to be made of the tourist development tax hereby levied.

As discussed below, this Section is in obvious direct conflict with the Tourist Development Plan set forth in Section 2. Section 3 purports to authorize that tax revenues could be pledged for certain acquisition or construction projects relating to, among other things, a sports stadium. This is critical to the referendum question also discussed below because such a potential future use of tax monies was never disclosed to the voters on the ballot for the referendum. Such a construction or acquisition project has nothing to do with the sole authorized use of the revenues under the statutorily mandated Tourist Development Plan, "tourist advertising and promotion".

Certainly Section 3 does not constitute a "list in order of priority" of the special uses of Tourist Development Tax revenues since a) it is not included in the plan; b) it is not a list in order of priority; and c) it does not include an

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[9] The issue here is not whether the Statute permits possible use of Tourist Development Tax revenues for a stadium, but whether the Pinellas County Ordinance and then its citizens ever approved the use of their tax revenues for this purpose, or were even informed that such a use was possible in the future without voter approval.

estimated cost for the projects. Any notion that the stadium project somehow had its genesis in this section of the Ordinance is unfounded.

Standard statutory construction principles require this Ordinance or at least Section 3 be declared invalid.

> A municipal ordinance should be clear, definitive and certain in its terms and is invalid if it is so vague that its precise meaning cannot be ascertained.

City of Naples v. Miller, 243 So. 2d 608 (2d DCA Fla. 1971). Apparent inconsistency between parts of a statute or ordinance cannot stand. Florida State Racing Commission v. McLaughlin, 102 So. 2d 574 (Fla. 1958). Vague and ambiguous references which have no meaning in the context of the statute cannot be permitted. A.B.A. Industries v. City of Pinellas Park, 366 So. 2d 761 (Fla. 1979). An ordinance not in compliance with state statutes must be declared unconstitutional. State ex rel Dade County v. Brautigam, 224 So. 2d 688 (Fla. 1969); Board of City Com'rs of Dade County v. Wilson, 386 So. 2d 556 (Fla. 1980).

Absolutely no reference to studying a stadium project appears anywhere in Ordinance 78-20. Thus, all of the Tourist Development Tax revenues so far spent for the stadium study were unauthorized, as the County Attorney correctly noted.[10] The trial court committed error here by not so holding and by denying the restitution of these illegally spent funds to the Tourist Development Tax Trust Fund.

Faced with the obvious exclusion of anything remotely resembling reference to a stadium study or construction project in the Tourist Development Plan of Ordinance 78-20, the PSA Group suggested that somehow the phrase "tourist advertising and promotion" can encompass such projects. That is absurd.

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[10] See Memorandum of July 14, 1981 [Defendant's Exhibit 11].

> When a statue does not specifically define words of common usage, such words are construed in their plain and ordinary sense. We have consistently held that it is appropriate to look to the ordinary dictionary definition of common words used in legislation.

State v. Stewart, 374 So. 2d 1381, 1383 (Fla. 1979). Cf. State v. Brown, 412 So. 2d 426 (4th DCA Fla. 1982). Dictionaries define "promote" and "promotion":

> WEBSTERS - **Promote.** 1.a. To raise to a more important or responsible job or rank. b. To advance (a student) to the next higher grade. 2. To contribute to the progress or growth of; to further. 3. To urge the adoption of; to advocate. 4. To attempt to sell or popularize by advertising or by securing financial support.
> **Promotion.** 1. The act of promoting. 2. An advancement in rank or responsibility. 3. Encouragement; furtherance. 4. Advertising or other publicity.

[Emphasis added].

> BLACKS - **Promote.** To contribute to growth, enlargement, or prosperity of; to forward; to further; to encourage; to advance. People v. Augustine, 232 Mich. 29, 204 N.W. 747, 749.

Common sense as well as standard rules of statutory construction require a word such as "promotion" to be given its meaning in context with its use. Thus, the phrase "tourist advertising and promotion" in the Ordinance clearly points to the fourth meaning of "promotion" or "promote" noted from Webster's above.[11]

Even if "promotion" were interpreted to be substantially different than "advertising", and thus a second separate "special use", this only highlights the County's obvious failure to comply with the Statute's requirement of a list of priorities of specific projects with cost estimates for each. Then all of the

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[11] In other contexts (fruit and vegetable promotion laws), this Court has held that "advertising and promotion" are clear as to their limitations and use in a statute. Conner v. Joe Halton, Inc., 216 So. 2d 209, 212 (Fla. 1968). Cf. State, Department of Citrus v. Griffin, 239 So. 2d 577 (Fla. 1970).

revenues could not then be used "exclusively" for two different "special uses" ("advertising" and "promotion") without the enumeration of priorities and cost estimates. Lacking that, the Ordinance would be invalid as a matter of law. Any way it is examined, the stadium's big foot will not fit in the Tourist Development Plan's custom made slipper.

The last deficiency of Ordinance 78-20, with regard to the Tourist Development Plan is basic. Florida Statutes § 125.0104(4)(b) mandates that at least 60 days prior to the enactment of the tax ordinance the County Board "shall adopt a resolution establishing and appointing the members of the County Tourist Development Council . . . indicating the intention of the County to consider the enactment of an ordinance levying [the tax]." Pursuant to Florida Statute 125.0104(4)(c), it is this Council which "shall prepare and submit to the governing board of the County for its approval a plan for tourist development." Section 4 of Ordinance 78-20 initially establishes the "Pinellas County Tourist Development Council" and appoints its members. The same Ordinance both adopts the Plan and levies the tax. Thus, the requirement that by resolution the County Commission establish a tourist development council and appoint its members at least 60 days prior to the enactment of the taxing ordinance has never been met.

The County never could produce a Resolution to conform to this statutory requirement. Instead, it offered a portion of the minutes of the County Commission meeting of December 6, 1977 [Plaintiff's Exhibit 38], appointing certain people to a tourist development council. However, these minutes are not in the form of a resolution, do not indicate the intention of the County to consider the enactment of an ordinance levying and imposing a tax, and do not specify the term for which these appointees are to serve, all mandated by Sec. 125.0104(4)(e).

Under the County's view, the Commission could sneeze at a meeting and call it a "Resolution". At a minimum a resolution should indicate that it is such (either by title or use of the words "Be it resolved"), specify that the council is to prepare a tourist development plan (as required by Fla. Stat. § 125.0104(4)(c)), clearly set forth the intention of the County to consider imposing the tax, and specify the term of office of the initial members. The minutes do not even mention that the council is to develop a plan, provide no term of appointment, and do not indicate that the County is considering levying the tax.

B. Section 3 of Ordinance 78-20 is impermissibly vague and in irreconcilable conflict with Section 2 of the Ordinance.

Section 2 of Ordinance 78-20 limits the use of revenues "exclusively" to tourist "advertising and promotion". Section 3 permits use of revenues to be pledged, inter alia, for construction of a sports complex. They are in direct and irreconcilable conflict. The Ordinance or at least Section 3 is invalid as a matter of law. The voters cannot on one hand restrict use of the monies to the specific "exclusive" use of "advertising and promotion" and simultaneously on the other hand authorize a pledge of the same monies for construction of a sports complex. Common sense says they would not and could not. The fact is, in the referendum, they did not.

C. The Referendum was invalid because the ballot question on the Tourist Tax Referendum never apprised the voters of the substance of Ordinance 78-20 or that it could be altered without voter approval.

A critical issue of this case is whether the voters of Pinellas County effectively were deprived of their right to a referendum to approve the use of their tourist development tax revenues. Regrettably, despite its central nature to this case, the trial court failed to make findings on this issue, one way or the other.

First, the referendum actually held to approve Ordinance 78-20 was invalid. Second, by avoiding any mention of any stadium or other specific projects initially, then by amendment of the Tourist Development Plan to include such uses, the right to a referendum has been circumvented completely and rendered meaningless.

Because Ordinance 78-20 itself was invalid, no valid referendum could be held to adopt an invalid ordinance. Likewise, the referendum ballot question was not worded so as to apprise voters that anything remotely resembling a stadium project could be the subject of tourist tax expenditures. The Canvassing Board certified the passage of the following ballot question regarding Ordinance 78-20:

> Shall Pinellas County Ordinance No. 78-20 be approved? This ordinance levies and imposes a countywide two (2%) percent tourist development tax on each whole or major fraction of each dollar of the total rental charge for the lease or rental of any tourist accommodations or living quarters for a term of six (6) months or less. Such tax shall be used to promote and develop the tourist industry in Pinellas County. [Plaintiff's Exhibit 7]

Courts will intervene as to a referendum "where the ballot question is misleading and deprives the voter of an opportunity to know and to be on notice as to the proposition on which he is to cast his vote". Metropolitan Dade County v. Shiver, 365 So.2d 210, 212 (3d DCA Fla. 1978). The Constitution and law compel "that the voter have notice of that which he must decide". Hill v. Milander, 72 So.2d 796, 798 (Fla. 1954). Otherwise stated, "the law simply requires that the ballot give a voter fair notice of the decision which he must make." Miami Dolphins v. Metropolitan Dade County, 394 So.2d 981, 987 (Fla. 1981).

Where on this ballot question could the voter possibly have been advised that funds generated by the Tourist Development Tax could be used for a stadium study or pledge revenues for construction? Where do those words appear? Since no

question relating to expenditures or a pledge of tax revenues on the stadium, a stadium study, or any other project was submitted to the voters of Pinellas County, no valid referendum was ever held on this issue. At a minimum the trial court should have found that nothing relating to a stadium or other such projects or a pledge of monies for such projects was ever approved by the electorate. Under such circumstances Florida law requires the referendum to be held invalid. Christensen v. Commerical Fisherman's Ass'n, 187 So. 699 (Fla. 1939). The ballot question does not touch upon Section 3 ("pledging monies") of Ordinance 78-20, and even as to Section 2 is misleading. The Ordinance says "tourist advertising and promotion" whereas the ballot question says of "promote and develop the tourist industry". Prior cases concerning the Tourist Development Tax are instructive as to what constitutes a proper ballot question. Clearly under the requirements of Florida Statute § 125.0104 if the voters were to approve as a specific project or use for the Tourist Development Tax revenues a stadium study and/or construction, that should have been clearly set forth on the ballot as in the Dade County example.[12]

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[12] In Metropolitan Dade County v. Shiver, supra, aff'd as Miami Dolphins v. Metropolitan Dade County, supra, the ballot language on the referendum read as follows:

TOURIST ROOM TAX

> The Board of County Commissioners of Dade County, Florida, has adopted Ordinance No. 78-62 levying and imposing a Tourist Room Tax at the rate of two percent (2%) on hotel, motel, and similar accommodations rented for a term of six (6) months or less. Said ordinance further provides the following plan for the expenditure of the tax revenues received:
>
> 1. To fund a Tourist and Convention bureau. $437,900 (10 percent).
>
> 2. To promote and advertise Dade County tourism within domestic and international markets.

The controversy in the Dade case as related to the ballot question concerned the use of "tourist room tax" instead of "tourist development tax." Both the Third District and this Court approved this deviation because of the more explicit explanation. This Court stated:

> The ballot here met the above requirements. It contained a brief description of the tax plan, i.e., the rate, the group on whom it would be imposed, the expected revenues, and the planned expenditure of those revenues.

Miami Dolphins v. Metropolitan Dade County, 394 So. 2d at 987. The District Court in the same case had held:

> The ballot question contains an essential, although not exhaustive, description of the tourist tax ordinance and its purposes.

Metropolitan Dade County v. Shiver, 365 So. 2d at 213. [Emphasis added].

The ballot question in Dade County was far more thorough than was the entire Tourist Development Plan in Pinellas County, to say nothing of the

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Footnote 12 (Continued)

> $2,189,500 (50 percent).
>
> 3. To promote Dade County tourism by sponsoring tourist-oriented cultural and special events such as visual and performing arts including theater, concerts, recitals, opera, dance, art exhibitions, festivals and other tourist-related activities. $875,800 (20 percent).
>
> 4. To modernize and improve the present Orange Bowl Football Stadium including chairback seats, additional food and beverage concessions, additional and improved parking facilities and additional restrooms and construction. $875,800 (20 percent).
>
> Shall this ordinance levying and imposing such Tourist Room Rax be approved?
>
> FOR THE TOURIST ROOM TAX ____
> AGAINST THE TOURIST ROOM TAX ____

perfunctory and vague ballot description. That Dade ballot included a list of specific projects with both the percentage of tax revenues and estimated cost of each project delineated. By comparison, both the Pinellas Plan and ballot are appallingly deficient.

At trial the PSA Group made two arguments regarding the wording of the ballot. Since it is impossible to tell from the Final Judgment what the trial court believed as to the ballot question,[13] these two are discussed herein. One of these arguments is so simplistic that it competely ignores the case law which forms the basis of the attack, and the other is factually inaccurate.

The PSA Group first maintained that Florida Statute § 125.0104(6)(b) merely required that the ballot question call for a vote "for the tourist development tax" or "against the tourist development tax". Indeed, that is true, but meaningless. The focus of the case law as to whether voters are adequately informed or misled by a referendum ballot is on the description of the matter being voted upon, not the "for" or "against" places on the ballot where the voter marks his "X". In the Pinellas ballot description there is not even a hint that a stadium project could be the subject of either the expenditure or pledge of Tourist Development Tax revenues or that the Tourist Development Plan adopted could be amended competely by the Board of County Commissioners after referendum approval. These are material omissions from the ballot, are misleading, and deprived the voters of an opportunity to be apprised of the proposition upon which they were asked to make a decision. That is not valid under Florida law. Hill v. Milander, supra; Miami Dolphins v. Metropolitan Dade County, supra; Metropolitan Dade County v. Shiver, supra. Where the ballot description does not apprise the

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[13] It omitted any finding at all on the language of the ballot and merely generally said a valid referendum was held. See paragraph 37 of Final Judgment.

voters of the substantial nuances of the proposition being put to a vote, the referendum is invalid. Christensen v. Commerical Fisherman's Ass'n, supra.[14]

As its second argument on this critical issue, the PSA Group stated that there was "no question in the minds of Pinellas County voters in 1978" that tourist development tax revenues could be pledged to a stadium construction project. (See County's Trial Memorandum, p. 12). No one has revealed how such clairvoyance on the part of the ordinary voter occurred, or how the PSA Group knew what was in the electorate's minds. This fanciful leap was then joined by the suggestion that any voter who read the entire statute and the entire ordinance would have certainly understood the issue. That simply begs the question. The test is not to determine what the most intelligent and informed voter might possibly know, but what the ordinary voter would understand from the ballot. We lawyers complement ourselves too highly if we believe that the average non-legally trained citizen understands the language of most statutes and ordinances, much less that such a voter would typically read them before voting in an election that has many other issues and political offices for determination. The weakness of this argument only highlights the obvious omissions from the ballot description.

Likewise asserted without support from any evidence offered at trial was the notion that the electorate was apprised of the full meaning of the ordinance "by the communication and dissemination of publicizing information" proceeding the election. This could not be further from the truth. At trial it was noted that one county commissioner had specifically sought prior to the adoption of

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[14] In Christensen the referendum was invalidated because a law which prohibited certain types of seining in certain waters of Martin County did not adequately describe all of the waters to which the law was applicable. Accordingly, the Supreme Court held the referendum invalid because the voters were deprived of their opportunity to understand the proposition completely.

Ordinance 78-20 to earmark a portion of the funds for a stadium. This was rejected by the County Commission, which rejection was duly reported in the press. Thus, the exact opposite of what the PSA has asserted was the reality. Not only did the ballot fail to include any reference to pledges of money for a stadium project, but the pre-election publicity contained information specifically noting the defeat of such a move within the Commission. Thus, the typical voter was far more likely to believe that such funds were specifically excluded from rather than included in the ordinance he was voting upon.

The constitutional right of voters to a valid referendum ballot, fairly describing the choice to be made, was denied to the citizens of Pinellas County. The people's right to a valid referendum is one of the most protected of constitutional guarantees, Hill v. Milander, supra. Courts of this state are unwaivering in the view that "where doubts exist in laws concerning the requirement of an election as a condition precedent to official action, such doubts should be resolved in favor of allowing the people — the ultimate source of soverign power —to decide it." State v. City of Boca Raton, 172 So.2d 230, 233 (Fla. 1965). Pinellas voters, not having ever approved by referendum use of their Tax funds for any project such as a stadium, have been deprived of this valued right.

The right to a referendum was sidestepped by amendments to the tourist plan which purport to encompass use of the tax revenues for stadium construction. A primary deficiency of the ballot is its failure to advise electors that once they approve the tax and plan of expenditure, it can be changed immediately by the County Commission. How can this not be fundamental to apprising voters of the nature of their decision?

It is unreasonable to ask this Court to read the Statute's amendment provision so broadly as to essentially give the Commission authority to emasculate what the voters approved. Yet that error is, in essence, what the trial court approved. Could then the plan be completely gutted the day after the election? Such an interpretation renders the people's right to a referendum meaningless and frustrates the Legislature's intent in establishing the right of referendum initially. If the Statute's amendment provision means that, then the Statute is in conflict with itself and should have been declared void. If the voters can so easily be denied due process of law as to their right to a meaningful referendum, then the amendment provision of the Statute is unconstitutional.

The peoples right to a referendum is as jealously guarded as any democratic right in this nation.

> The referendum . . . is a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactments of representative bodies. The practice is designed to "give citizens a voice on questions of public policy." James v. Valtierra, supra, 402 U.S., at 141, 91 S.C. at 1333.

City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 96 S.Ct. 2358, 49 L.Ed.2d 132 (1976).

In Florida and the United States when there is a doubt as to the fulfillment of referendum requirements, the court should favor the holding of a referendum. Easterlin v. City of New Port Richey, 105 So.2d 361 (Fla. 1958); State v. City of Boca Raton, supra; Williams v. Town of Dunnellon, 169 So. 631, (Fla. 1936; Metropolitan Dade County v. Shiver, supra.

This Court should reverse the trial court for failing to invalidate expenditures of funds in the past by Pinellas County on a stadium study and any attempt to pledge such funds in the future toward unauthorized stadium bonds

unless approved by a new and proper ordinance and referendum. This Court has stated that the referendum requirement "is more persuasive when applied to statutes relating to elections for the purpose of submitting questions of incurring indebtedness to those who must ultimately pay the bill." Id. That basic right must not be circumvented.

This Court should reverse the trial court and now make appropriate declarations, require restitution to the Trust Fund of all monies spent illegally by the PSA from the Trust Fund and invalidate the bonds at least to the extent they are secured by a pledge of these revenues.

II. Pinellas Amended Ordinance 82-19 Is Invalid Because It Does Not Comply With The Statutory Mandates Of Florida Statutes § 125.0104.

Pinellas Ordinance 82-19 was adopted in July 1982 to amend Ordinance 78-20, and specifically Section 2 thereof, the Tourist Development Plan. The Amended Ordinance provides:

> (a) The Tourist Development Tax for Pinellas County is to strengthen our local economy and increase employment by investing the total receipts of the Tourist Development Tax into a Tourist Development Trust Fund to be used for the following purposes only:
>
> 1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county. However, these purposes may be implemented through service contracts and leases with persons who maintain and operate adequate existing facilities;
>
> 2. To promote and advertise tourism in the State of Florida and nationally and internationally; or
>
> 3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with

the chambers of commerce or similar associations in the county.

This Amended Tourist Development Plan does not comport with legislatively mandated requirements for such a plan as contained in Fla. Stat. § 125.0104(4)(c). The language of the Amendment merely tracks the Statute section which sets forth the authorized possible uses of the revenue, Fla. Stat. § 125.0104(5)(a). This Amendment still does not contain "a list, in order of priority, of the proposed uses of the tax revenue by specific project or special use" nor the "approximate cost or expense allocation for each specific project or special use" as required, Fla. Stat. § 125.0104(4)(c). No basis exists to argue that a substantial amendment to a plan is not subject to the statutory mandates for an initial plan. Otherwise such requirements are meaningless. The Circuit Court failed to make any explicit findings, one way or the other, that it complied with Fla. Stat. § 125.0104 nor that it did not have to comply. Paragraphs 37 and 38 of the Final Judgment merely state in passing that the Amended Ordinance was valid. Because of this lack of any articulated basis for the lower court's holding, it is appropriate to review here the arguments of the PSA Group at trial.

The PSA Group incredibly argued that this Amended Plan was in the most specific detail available to the County Commissioners at the time of its adoption. Clearly, the amendment does not include a list of projects in order of priority or an estimate of those projects' cost. If that was all the detail that was available to the County Commission four years after adoption of the tax, what was the point of changing it at all? If the Commission had so little information (essentially no information since the amendment merely copies words out of the statute), why could they not wait to change it until they did have sufficient information on specific projects? It is simply no "plan" at all and an absurd excuse for failure to comply with the statutory requirements for a plan.

The real reason the plan was amended is shown by the memoranda of the County Attorney. (Defendant's Exhibits 11, 12 and 13) The County Attorney's office apparently was concerned that the monies being spent on a stadium study were nowhere authorized by the original Tourist Development Plan, which only permitted expenditures of monies "exclusively" for "tourist advertising and promotion". Oddly, even the amendment fails to authorize a stadium study.

The PSA Group's next theory advanced in the trial court was that the Amended Plan need not meet the requirements of the Statute. No authority for this proposition was cited. Common sense indicates that a statutory mandate that a plan include a list of specific projects in order of priority with estimates for their cost would be meaningless if the day after a qualified plan were adopted the whole statutory scheme could be avoided by an amendment.

As a third excuse for the obvious defects of Ordinance 82-19, the PSA Group argued that substantial compliance with the statute, coupled with lack of prejudice to the complainant, should prevent a declaration that the Ordinance was invalid. This reasoning is completely inapplicable to the situation here for two obvious reasons. First, neither Pinellas Ordinance is in substantial compliance with Florida Statute § 125.0104 and, in fact, both evidence little compliance at all. Secondly, the PRO Group alleged and proved prejudice and damage as a result of the invalid ordinances, neither rebutted nor challenged by the PSA Group at trial.

Even the Amended Ordinance does not anywhere authorize studies for a stadium. Florida Statute § 125.0104(5)(a) likewise does not authorize revenues to be spent on studies. Unquestionably the monies spent on such a study should have been ordered returned to the Trust Fund by the trial court. Here again, the trial court failed to make any substantive findings leaving the parties and the reviewing court without a clue as to how the stadium studies were authorized.

As discussed in I C above, the voters of Pinellas County never approved this amended plan. Since the voters never originally approved a tourist development plan providing for their tax revenues to be used for any project related to a stadium, it is inequitable for the County to circumvent voter approval by completely changing the plan later to avoid the ballot box. Nor were the voters advised on the ballot that, once approved, the spending plan could be so completely altered. The Statute does contain a provision for amendment, Sec. 125.0104(4)(d). Pinellas voters were not informed on the ballot of it. That itself was a material omission from the ballot, requiring the referendum be invalidated.

The Amended Plan of Ordinance 82-19 is invalid, wholly failing to comply with the Florida Statutes. In failing to so rule, the trial court committed error which requires reversal.

III. The County's Tourist Development Tax Funds May Not Be Lawfully Pledged To Payoff Bonds Issued By Another Entity, The Pinellas Sports Authority

Revenue bonds for the proposed stadium complex are to be issued by the PSA. The Interlocal Agreement provides, generally, that Pinellas County's only significant relationship to the stadium project is that of funding. The stadium is to be built by the PSA with funds from the bonds issued by the PSA and is to be operated by the City. Pinellas County is not authorized to pledge Tourist Development Tax revenues to bonds issued by the PSA for constructing this stadium. Florida Statutes § 125.0104(5)(a) provides in pertinent part:

> (a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:
> (1) to acquire, construct . . . or promote one or more publicly owned and operated convention centers, sports stadiums . . . .
> (b) In any county in which the electors of the county . . . have approved by referendum the ordinance levying and imposing the tourist development tax, the revenues to be derived from

> the tourist development tax may be pledged to secure and liquidate revenue bonds issued by the county for the purposes set forth in subparagraph a1. [Emphasis added].

The Statute thus contains no authorization for the County to pledge Tourist Development Tax revenues to bonds other than issued by the County. It specifically limits use of these revenues to only those projects enumerated in the statute. Likewise, Pinellas Ordinance 78-20 in Section 3 states:

> All or any portion of the revenues raised by the tax hereby levied may be pledged by the Board of County Commissioners to secure and liquidate revenue bonds issued by the county for the acquisition, construction, . . . [of a] sports stadium . . . .

This Section of Ordinance 78-20 was not altered by the Amendment of Pinellas Ordinance 82-19. In tracking the language of the state statute, this Amended Ordinance purports to authorize expenditures of Tourist Development Tax revenues by the County only for certain enumerated purposes including a sports stadium. No authority exists in the Florida Statutes or Pinellas Ordinances to authorize the County to pledge Tourist Development Tax revenues to bonds issued by any entity other than itself, in this case the PSA.

The PSA Group argued that Pinellas County is allowed to pledge these taxes to bonds issued by the PSA because of the Interlocal Agreement. To the extent that an oblique reference to this issue was even included in the Final Judgment, it may have been the basis of the trial court's decision. (See paragraph 42 of the Final Judgment) Close analysis of the Florida Statutes regarding interlocal agreements reveals the fallacy of this argument and implicit holding.

In Florida one governmental body may expend and pledge non ad valorem taxes to certain projects undertaken by another governmental entity if so authorized and if the expenditure is a proper purpose. See e.g. Orange County

Civic Facilities Authority v. State, 286 So.2d 193 (Fla. 1973); State v. Tampa Sports Authority, 188 So.2d 795 (Fla. 1966) and State v. City of Daytona Beach, 431 So.2d 981 (Fla. 1983).[15] None of these cases, however, authorizes the pledge of Tourist Development Tax revenues by a county to bonds issued by another entity, even pursuant to an Interlocal Agreement. The Florida Interlocal Cooporation Act, Florida Statutes § 163.01, clearly does not permit such a pledge. That Statute provides:

> A public agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege or authority which such agencies share in common and which each might exercise separately. [Emphasis added].

Clearly neither the PSA nor the City of St. Petersburg has the power, privilege or authority to levy a tourist development tax or to pledge its revenues. Thus the pledge of those revenues cannot be made the subject of an Interlocal Agreement because such power is not shared in common nor may it be exercised by each of the entites separately. The requirement that the power being exercised be common to all entities involved was the subject of an Attorney General's opinion.

> [I] t is not necessary that the public agencies made parties to an interlocal agreement be of identical conformation as to power, privilege, or authority; it is only necessary that the particular power, privilege, or authority sought to be jointly exercised thereby be common to all members to the

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[15] The PSA Group relied upon the City of Daytona Beach case for authority for the pledge of County revenues pursuant to Interlocal Agreement for the PSA issued bonds. However, that case on its facts is clearly inapplicable. There the City of Daytona Beach agreed in an interlocal agreement with Volusia County to provide the county certain payments to help satisfy county revenue bonds which had been used to build a convention center. The City brought a validation proceeding regarding the interlocal agreement which was ultimately upheld. There was not, however, any issue raised that revenues of Daytona Beach could not be pledged for the bonds issued in that case by the county. Thus, the case had nothing to do with the issue before the lower court.

> agreement, each of which might exercise that power, privilege, or authority separately.

A.G.O. 077-16.

Likewise, no argument is appropriate that the Interlocal Agreement created, in essence, a separate entity which could issue bonds. Florida Statutes § 163.01(7)(c) provides in pertinent part:

> (c) No separate legal or administrative entity created by an Interlocal Agreement shall possess the power or authority . . . to issue any type of bond in its own name, or in any way to obligate financially a governmental unit participating in the Interlocal Agreement.

In another Opinon, the Attorney General held that Palm Beach County could not disburse funds from certain beach acquisition bonds to Delray Beach because the County was not authorized to do so. A.G.O. 072-171. Here the County lacks authority to pledge tourist taxes to revenue bonds issued by the PSA. Moreover, as discussed more fully above, no referendum has ever approved the County pledging its tourist development tax revenues to bonds concerning a stadium project, regardless of who issues those bonds.

The trial court erred in allowing County tourist tax revenues to be pledged to satisfy bonds issued by the PSA.

IV. Florida Statute 125.0104 Is Unconstitutional Because It Denies Equal Protection Of The Laws

The Tourist Development Tax, Sect. 125.0104, Fla.Stat. is unconstitutional because it violates the Equal Protection Clause of the United States Constitution, the Fourteenth Amendment thereto, and the Florida Constitution, Article I Section 2.[16]

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[16] For purposes of this issue in the case, the Florida Department of Revenue also appeared and made oral argument.

The Act creates an arbitrary class of living quarters or accommodations which are subject to the tax. Florida Statutes § 125.0104(3)(a) subjects to the tax rentals of less than 6 months duration of accommodations in hotels, apartment hotels, motels, resort motels, apartments, apartment motels, rooming houses, tourist and trailer camps and condominiums. Excluded from the tax levy are other types of living accomodations, specifically single family houses, duplexes and cooperatives, which may also be rented or leased for the same 6 month term or less. Because this classification bears no rational relationship to the purposes of the statute, tourist development, it is an unreasonable classification in violation of Equal Protection guarantees.[17] This constitutional attack on the Tourist Development Statute is new. It was not previously raised, argued or decided in this Court's 1981 decision initially passing on the Tourist Development Tax, Miami Dolphins v. Metropolitan Dade County, supra.

A rational basis for disparities existing in classifications of those subject to a taxation statute must exist. Osterndorf v. Turner, 426 So.2d 539 (Fla. 1982). In Osterndorf this Court invalidated the distinction among Florida residents as to length of residency for purposes of qualifying for a stepped up Homestead exemption. The classification bore no relationship to a legitimate state purpose and had no rational relationship to the purpose of the statute. This Court long ago held that differences alone are insufficient to justify disparate application of a

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[17]There is no question that the requirement of reasonable classifications for purposes of fulfilling the Equal Protection Clauses of the Federal and Florida Constitutions applies to classifications for purposes of taxation. U. S. Steel Corp. v. Dickinson, 272 So.2d 497 (Fla. 1972); Faircloth v. Mr. Boston Distiller Corp., 245 So.2d 240 (Fla. 1970); Just Valuation & Taxation League Inc. v. Simpson, 209 So.2d 229 (Fla. 1968); State v. Anderson, 208 So.2d 814 (Fla. 1968) appeal dismissed 833, 93 U.S. 22, 89 S.Ct. 49, 21 Lawyers Ed.2d 18 (1968).

statute. In State ex rel Vars v. Knott, 135 Fla. 206, 814 So. 752, 754 (Fla. 1938), the Court stated:

> Mere difference is not enough; the attempted classification must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis.

In West Flagler Kennel Club v. Florida State Racing Com'n., 153 So. 2d 5 (Fla. 1963), the Court noted:

> Thus, with all due regard to presumptions of statutory validity and reasonable basis for legislative classification, we must and do conclude that the applicability of Chapter 61-1940 is delimited in such fashion and to such extent that the alleged classification can have no conceivable foundation in real and substantial differences in conditions affecting the subject regulated, and therefore is not based on distinctions "appropriate to a class."

Cf. Shelton v. Reeder, 121 So. 2d 145 (Fla. 1960); Brewster Phosphates v. State, D.E.R., 444 So.2d 483 (1 DCA Fla. 1984).

The Tourist Development Tax is imposed upon rentals for a term of less than 6 months of certain types, but not all types of accommodations. Single family dwellings, duplexes and cooperatives are not included within the ambit of the tax statute. What rational basis or legitimate state purpose can possibly exist for this classification? As between cooperatives and condominiums, most people would be hard pressed to draw any distinction, much less one related to the purpose of tourist development. Undisputed expert testimony at trial demonstrated the lack of any substantive difference in this distinction. (A. 132-137)[18] How can one

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[18]The expert testified:

> You may proceed.
>
> [F]rom a use point of view, from a structural point of view, from an everything except niceties, legal niceties of ownership, they're identical. I

justify subjecting a condominium unit to a tourist development tax when rented to a tourist for a month and exempt from the same tax a similar cooperative unit standing nearby rented for the same period? Quite simply there is no rational basis for the distinction. Equal protection is denied where disparate treatment is given under similar circumstances. Trindade v. Abby Road Beef'N Booze, 443 So.2d 1007, 1012 (1st DCA Fla. 1983). This Court has recently stated:

> Under the equal protection clauses, governmental acts that classify persons arbitrarily may be invalid if they result in treating similar people in a dissimilar manner. State v. Leicht, 402 So.2d 1153, 1155 (Fla. 1981), cert. denied, 455 U.S. 989, 102 S.Ct. 1611, 71 L.Ed.2d 848 (1982); State v. Lee, 36 So.2d 276, 279 (Fla. 1978).

Dept. of Ins. v. Southeast Volusia Hosp. Dist., 438 So.2d 815, 821 (Fla. 1983).

What possible relationship can differences as to the physical type of residence have to the imposition of a tourist development tax particularly when both the condominium and cooperative are rented on an individual basis? If the tax is to be imposed without running afoul of equal protection considerations, then it must be imposed uniformly on all types of accommodations rented for shorter durations. Otherwise the classification is blatantly arbitrary, capricious and unconstitutional. No legitimate state purpose or rationale supports the classification. It is arbitrary and invalid. Zobel v. Williams, 457 U.S. 55, 102 S.Ct. 2309 (1982). The trial court erred in not so holding, or making any explicit findings on the matter. This Court now must so declare.

Footnote 18 (Continued)

> would say as an owner of a co-op and owner of a condominium there would be no, as you call it, factual difference whatsoever in their renting it. [A. 137]

At trial the PSA Group and the State Department of Revenue advanced four arguments to justify the Statute's distinctions as to imposition of the tax. All four arguments fail. They argued:

1. Section 125.0104 incorporates portions of Chapter 212 which has been around for thirty (30) years and has withstood attacks, therefore, no attack may be made in this proceeding. The P.S.A. Group relies upon Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950). This argument is specious. The word "condominium" was not added to Chapter 212 until 1979. The challenge on the basis of the condominium vs. cooperative distinction has never been determined by an appellate court and with regard to Chapter 212 could not possibly have been before the Court when Gaulden v. Kirk and other cases were decided prior to 1979. Indeed, the first Florida Condominium Act was not enacted until 1963. This challenge is a matter of first impression and is being made in part by a condominium unit owner who pays the tax [William A. Tolliver; A. 132-138] and whose standing to make the challenge was conceded.

2. In a novel approach, the State argued that the distinction is justified because a condominium is real property whereas a cooperative is personal property. This argument is ludicrous for at least two reasons. First, it is established by the undisputed evidence at trial (A. 138-146), that the Department of Revenue has, albeit illegally, by administrative fiat been imposing the excise tax on cooperatives as well as condominiums. Unquestionably this concedes that the Department and the Attorney General see no valid distinction based upon personal property, real property, or any other such classification as to the imposition of the tax. Second, it is not real property or personal property that is being taxed by this excise tax; it is the privilege of renting for a period of six (6) months or less certain types of living quarters. The tax upon the privilege of renting whether it

be a hotel, motel, apartment motel, etc., is surely not dependent whether the lessor owns the property leased or is a lessee who is subleasing.[19] This is not an ad valorem tax; it is an excise tax. It is the privilege of leasing that is being taxed, not the entity itself. This argument ignores the whole purpose of the equal protection analysis. The Department never suggested a rational basis for drawing a distinction between a condominium and cooperative for the purpose of levying a tourist development tax.

3. Conversely the State then argued that there was no basis for challenge since cooperatives are being taxed anyhow. In other words, by administrative fiat a constitutionally defective statute may be amended to make it constitutional! This argument is so specious as to warrant no further reply.

4. The PSA Group argued that the distinction disappears when reference is made to certain sections of Chapter 212, Florida Statutes. Condominiums did not exist nor did the word "condominium" appear in Chapter 212 when Gaulden v. Kirk was decided. It was added by Laws of 1979, Chapter 359. Once the word "condominium" was added to Chapter 212, it was not added to the section which imposes the tax, Fla. Stat. § 212.03(1), but, paradoxically, only to the section of that statute which provides certain exemptions from the tax, Fla. Stat. § 212.03(4).[20] Thus, there was no possible analogy with Section 125.0104 as to imposition of the tax in the first place.

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[19] Following the Department of Revenue's logic as to a personal vs. real property distinction, every condominium owner subject to the Statute could circumvent its provisions by entering into a lease for the premises for a period in excess of six (6) months and then simply subletting for a period of less than six (6) months. We seriously doubt that the Department of Revenue would advance the distinction if used for that purpose.

[20] Fla. Stat. § 212.03(1) & (4) provide:

> (1) It is hereby declared to be the legislative intent that every person is exercising a taxable

The PSA Group's second argument related to Chapter 212 was essentially that both condominiums and cooperatives are taxed under Section 125.0104 because Florida Statutes § 212.02(6)(b) defines the term "apartment house" which, they argued, includes both condominiums and cooperatives.[21]

Indeed Section 212.03(1) does impose the transient rentals tax on certain leases of "apartment houses". However, the Legislature did not use the term "apartment house" in imposing the tax under Section 125.0104(3)(a), which instead imposes it upon "apartment hotels", "apartments", and "apartment motels" as well as condominiums. The omission of the statutorily defined term "apartment house" from Section 125.0104 certainly must be viewed as intentional by the Legislature, since it did not use the companion words "apartment hotel" or "apartment motel" in writing Section 212.03(1). Additionally, the Legislature has

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Footnote 20 (Continued)

> privilege who engages in the business of renting, leasing, or letting any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.
>
> * * *
>
> (4) The tax levied by this section shall not apply to, be imposed upon, or collected from any person who shall have entered into a bona fide written lease for longer than 6 months in duration for continuous residence at any one hotel, apartment house, roominghouse, tourist or trailer camp, or condominium .... [Emphasis added]

[21] Section 212.02(6)(b) defines "apartment house" as follows:

> (b) Any building, or part thereof, where separate accommodations for two or more families living independently of each other are supplied to transient or permanent guests or tenants shall for the purpose of this chapter be deemed an apartment house.

affirmatively demonstrated in Fla. Stat. § 212.03(4) that it must regard "condominium" as being separate from "apartment house" since in the exemption portion (leases longer than 6 months) it uses both terms. If "condominium" were included in the term "apartment house" there would be no reason to add it. In short, it is apparent that this argument was circuitous and should not have been relied upon by the trial court.

No rational distinction exists as to types of residences taxed. The Statute is unconstitutional.

V. Actions Of The Pinellas Sports Authority, Pinellas County And The City Of St. Petersburg Regarding The Stadium Project Are Invalid Because Of Violations Of The Florida Sunshine Law

Unrebutted testimony from officials of the PSA, Pinellas County and City of St. Petersburg (A. 160-308) established that they discussed matters relating directly to the stadium project, bond financing, Interlocal Agreement and Note Resolutions at meetings held "out of the sunshine". This is simply illegal in Florida. Fla. Stat. § 286.011. The trial court erred in not holding that these private meetings violated the Sunshine Act and further committed error by not making any factual findings as to the occurrence of the meetings. Since the evidence of the occurrence of the meetings was undisputed, this itself was error. Ackerly Communications, Inc. v. City of West Palm Beach, 427 So. 2d 245 (Fla. 4th DCA 1983).

Testimony indicates that two or more members of these public bodies met in private on occasion and discussed considerations relating to the stadium, in particular its financing. All were matters before each body. More prevalent are closed door meetings of individual representatives of each of these three parties to the Interlocal Agreement, where the stadium project and Interlocal Agreement, joint undertakings, were considered. In particular a private meeting was held

during the November 8 session of the County Commission, just before the stadium financing plan "compromise" was announced and Resolution 83-598 adopting it passed, 3-2. (A. 201-203, 253) Additionally, County Chairman Todd invited officials of the other governmental bodies to her home to privately discuss stadium financing on two separate occasions preceding this regular Tuesday meeting of the County Commission, which then adopted the financing plan and Interlocal Agreement. (A. 192-199, 246-251, 266-282) Present at one or both of those meetings was City Councilman Bill Bond. Both Bond and Todd were then members of the Tourist Development Council. The substance of these two secret meetings substantially affected the future of the TDC and the funds available to it (the tourist tax revenues) to spend on its projects.

Florida law could hardly be more clear that private or informal meetings of two or more members of a public body where matters apt for consideration by that body are discussed are flatly prohibited. In Board of Public Instruction of Broward v. Doran, 224 So.2d 693 (Fla. 1969), this Court enunciated the prohibitions of the Sunshine Act, Florida Statute § 286.011, as very broad:

> The obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board.

Id at 698. [Emphasis added].

The extent of Sunshine Law prohibition of private meetings is in essence, absolute. In Ruff v. School Board of Collier County, 426 So.2d 1015 (2d DCA Fla. 1983), the District Court of Appeal for the Second District held the law applicable to an organizational meeting of a county school board sex education policy task force. In Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974), this Court upheld the Sunshine Law's application to a subordinate group or committee dealing with zoning matters. The Court tersely said:

> However, a subordinate group or committee selected by the governmental authority should not feel free to meet in private.

Id. at 476. [Emphasis added].

There was no dispute at trial that private meetings occurred between members of the three public bodies involved in the Interlocal Agreement, the stadium project or their staff, where critical matters regarding the stadium, in particular its financing, were considered. No Florida case has yet dealt with the applicability of the Sunshine Law to an intergovernmental project, formalized by an interlocal agreement. Now this Court is squarely faced with this initial determination. Under all the cases interpreting this Act, that decision ought to be made to apply the Act to such situations.

Meetings of officials or staff representing the governmental bodies involved in a joint project must be open to the public. Intergovernmental projects, such as construction of this $85,000,000.00 sports complex, often involve the most major projects undertaken by governmental bodies. To sanction private meetings of one representative from each public agency involved in such a joint project circumvents the intent of the Sunshine Act, and thwarts the people's right to view first hand the process of government on the most important of local projects.

The people's right to scrutiny of their government in dealing with public issues and public funds has been soundly protected by this Court. Chief Justice Adkins writing in Town of Palm Beach v. Gardison, supra, stated:

> One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystalization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion

> stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency and relates to any matter on which foreseeable action will be taken.

Id. at 477. [Emphasis added].

This Court left no doubt as to how any question dealing with open meetings should be resolved:

> The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the state.

Id.

Likewise, the result of not following the broad dictates of the Sunshine Law is not in doubt:

> Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void, ab initio.

Id.

Recently this Court has again reinforced the absolute dictates of the Sunshine Act. In Wood v. Marston, 442 So.2d 934 (Fla. 1983), the Court held that a public meeting which reviews matters discussed previously in private does not sanitize sunshine violations:

> Review is a second-hand retrospective reflection upon the decision-making process, not the first-hand observation to which the public is entitled.

Id. at 939.

The Court added:

> No official act which is in and of itself decision-making can be "remote" from the decision-making process, regardless of how many decision-making steps go into the ultimate decision.

Id. at 941.

Citing the decision of Town of Palm Beach v. Gradison, the Court stated:

> To allow a review procedure to insulate the decision itself from public scrutiny invites circumvention of the sunshine law. We reaffirm the position enunciated by Justice Adkins in Town of Palm Beach; "the Statute should be construed so as to frustrate all evasive devices".

Id. at 940. [Emphasis added].

Could it ever be clearer that horse-trading sessions concerning public matters must be in the open? This Court should hold that the various private meetings of officials of the three public entities involved in this interlocal project should have been in the sunshine.

Summary

The pattern which emerges through the years as to the public's involvement with this interlocal stadium project is extremely disturbing. The initial ordinance levying the Tourist Development Tax and referendum ballot submitted to the electorate omitted any reference to a stadium. That Ordinance was later amended to include the possibility of such a stadium, without any public referendum. Meetings and agreements were reached in secret, later adopted in public, as to all aspects of the stadium including location and financing. Quite simply, it is well past time that the whistle be blown as to this continuing concerted effort to circumvent the public's participation in one of the most expensive governmental projects ever conceived for Pinellas County, Florida. In the public interest and as a matter of law this Court should now do so.

VI. The Trial Court committed error in the Final Judgment by omitting findings of fact and law as to numerous issues raised in the Declaratory Relief Action and as Defenses in the Bond Validation Proceeding.

In what can only be described as a bizarre aspect of this case, the trial court in its 19-page Final Judgment seems to have forgotten what the whole trial

and controversy was about. Most of the paragraphs of the Judgment are findings or wordy comments on matters which are, at best, of limited utility and no controversy. While this superfluous verbiage prejudices no party, what is so odd is that key issues upon which testimony, pages of trial memoranda from all parties and substantial oral argument was spent are not the subject of any findings of fact or law! Vital issues are dealt with so tersely that this reviewing Court will be hard pressed to discern that much controversy even existed.[22]

The whole purpose of a Declaratory Relief action is for the court to make findings of fact and law to interpret parties' rights and responsibilities. Fla. Stat. § 86.01. Failure to set forth findings on issues properly raised and make a declaration as to the same is error. Sloane v. Dixie Gardens, Inc., 278 So. 2d 309 (2d DCA Fla. 1973); Kelly v. Edward A. Kelly & Sons, Inc., 296 So. 2d 559 (3d DCA Fla. 1974); Kickliter v. National Union Fire Ins. Co., 188 So. 2d 872 (1st DCA Fla. 1966); Ennis v. Warm Mineral Springs, Inc., 203 So. 2d 514 (2d DCA Fla. 1967). This Court has consistently required trial courts to make their findings of fact and law known so that the appellate courts can review them properly. State v. Bruno, 104 So. 2d 588 (Fla. 1958).

In Furlong v. Coral Gables Federal Savings & Loan Ass'n, 121 So. 2d 797 (3d DCA Fla. 1960), the court noted that

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[22] For example, the trial court spent at least 57 lines of the Judgment (paragraphs 17, 32 and 33) describing provisions of the Interlocal Agreement. Yet this Agreement was offered without objection into evidence and no party raised a single issue as to its contents, execution, or interpretation. By contrast, the validity of Pinellas Ordinance 78-20 and its original Tourist Development Plan received about 5 perfunctory lines of reference in the Final Judgment. Yet this Ordinance was the subject of three distinct issues, each with subparts, and consumed 14 pages of the P.R.O. Groups trial and supplemental memoranda. The PSA Group divided this subject into six issues (one with three subparts) and spent about 19 pages of their trial and supplemental memorandum discussing it. Lengthy oral argument was expended on this central issue as well.

> [Questions] . . . as they bear on the rights, remedies and defenses of the parties, were not determined in the decree, but were within the pleadings before the court, and we are of the opinion that for substantial justice to be done between the parties such questions also should be determined.

Id. at 802 (emphasis added). In Breuil v. Hobbs, 166 So. 2d 825 (3d DCA Fla. 1964), the Court reversed and remanded a case because

> [t]he chancellor should have received evidence and made findings of fact in regard to this issue, and thereafter propounded an order that would clearly illustrate to the parties [what they could and could not do].

Id. at 826.

The trial court should be reversed because it "failed to rule directly upon the validity" of a plethora of the key issues in the case. D & W Oil Co., Inc. v. O'Malley, 293 So. 2d 128 (1st DCA Fla. 1974). The trial court here committed reversible error by not making findings or rulings on the central controversies in this case, and by denying the Petition for Rehearing which raised this error to the trial court's attention.[23]

Of a fundamental nature, omitted are any findings relative to the issues concerning whether Pinellas Ordinance 78-20 and the Tourist Development Plan

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[23]Even absent from the Final Judgment are findings concerning the most basic elements of any Declaratory Action including: (1) no finding one way or the other that Plaintiffs in the Declaratory Action have or have not been irreparably harmed; (2) no finding one way or the other that they were in doubt of their rights; (3) no findings regarding the parties and their standing to challenge the various statutes, ordinances, resolutions and documents. These items were not even in controversy or were stipulated. The trial court even failed to make any ruling that Plaintiffs HOLIDAY HOUSE MOTEL-APTS. INC., HAROLD E. SLAUGHTER and WILLIAM A. TOLLIVER, proved or did not prove entitlement to any variety of relief. Such a finding is made in paragraph 50 as to only the PINELLAS RESORT ORGANIZATION, but the Final Judgment is silent as to these other parties. One of the adjudication clauses does purport to deny the claims of parties about whom the court made no substantive findings.

contained therein comply with the requirements for such an ordinance and plan under Fla. Stat. § 125.0104, a central issue of the whole case. Other than a cursory reference to the enactment of the Ordinance contained in paragraphs 37 and 38, the trial court did not include any finding one way or the other concerning:

1. Whether sixty (60) days or more before enactment of the Ordinance the County adopted a proper Resolution establishing a County Tourist Development Counsel.

2. Whether the County Tourist Development Plan was prepared by the Counsel and submitted to the County Board for approval.

3. Whether the Plan set forth a list, in order of priority, of the proposed uses of the revenue by specific project or special use.

4. Whether the Plan included the approximate cost for each specific use.

5. Whether the use "tourist advertising and promotion" did or did not encompass expenditures of money on a stadium study or on stadium bonds under the Ordinance.

6. Whether sections 2 and 3 of Pinellas Ordinance 78-20 are impermissibly vague and contradictory, or if not, the basis upon which they are not so.

A second key issue virtually omitted from the Final Judgment was whether the referendum ballot question regarding Ordinance 78-20 was worded in such a way as to properly and fairly apprise voters of what they had to decide; or whether that ballot question was misleading because it failed to include any reference that Tourist Development Tax revenues could be used for a stadium project, stadium study or that the Tourist Development Plan could be substantially amended by the County Board without voter approval. Despite considerable time

and memoranda spent by the parties on this subject, the Final Judgment does not even mention the ballot question. It merely concludes that the referendum was "lawfully noticed, held and conducted" (paragraph 37).

Another issue overlooked concerns Pinellas Ordinance 82-19 and the Amended Tourist Development Plan contained therein. Again the trial court only cursorily mentioned this Amended Ordinance in paragraphs 37 and 38 as to its enactment, but failed to make any findings, one way or the other, as to the following:

1. Whether the amendment to the Tourist Development Plan (Ordinance 82-19) complied with the requirements of Florida Statutes § 125.0104(4)(c) as to its inclusion of a list in order of priority of the proposed uses of the tax revenues by specific project or special use, and the approximate cost or expense allocation for each project or use. Conversely, there was also no finding that the Amendment was not required to comply with this Statute either.

2. Whether the amended Ordinance anywhere purports to authorize stadium studies, and if not, how else they were authorized.

3. Whether the amended Ordinance was required to be submitted to a referendum and, if not, findings as to the basis for any such a ruling.

No findings relative to the issue of whether county tourist development tax funds could be lawfully pledged, under Florida Statute § 125.0104(5)(a) as well as under Ordinances 78-20 and 82-19, to secure revenue bonds being issued by the Pinellas Sports Authority were made. The only reference in the Final Judgment remotely related to this issue is contained in paragraph 42 and it does not make any findings as to the issue. Notably, that paragraph of the Final Judgment does not even mention Ordinances 78-20 and 82-19, both of which state that tourist development tax monies may only be pledged to secure bonds issued by the County.

Likewise, the Final Judgment included no contrary finding that such tax funds may be pledged to bonds issued by the Pinellas Sports Authority.

Substantive findings relative to whether Florida Statute § 125.0104 is unconstitutional because it denies equal protection of the laws under the United States and the Florida Constitutions are absent. The only reference at all to this is in paragraph 44, which includes no findings one way or the other concerning the issues raised on this subject. There is only a terse ruling. Specifically the trial court omitted any determination whether Florida Statute § 125.0104(3)(a) makes a distinction or classification of types of residential accommodations subject to the tax including, specifically, whether condominiums and cooperatives are differentially treated under the tax statute, and whether single family houses and duplexes are excluded from the tax. Extensive argument and testimony (including unrebutted expert testimony), that these differentiations exist and have no rational relationship to the imposition of a tourist development tax occurred at trial. Yet the trial court curiously makes no findings at all.

During closing argument both the Department of Revenue and the County argued at once that cooperatives were taxed under the Statute, and then argued that they were not taxed and it is appropriate to omit them. For purposes of appellate review, the trial court certainly should have decided this one way or the other. It held the Statute constitutional, but does not give a clue of how (or even whether) it silently decided this very basic matter. Additionally, the trial court found that the classification of the Statute was not arbitrary or irrational and was reasonably related to the purpose of the statute, but failed to set forth any reason at all for that conclusion. The trial court did not even announce what it found the classifications to be, much less how they were rational or reasonably

related to the imposition of a tourist development tax. These are material omissions on a serious constitutional issue.

Puzzlingly, the trial court even omitted findings relative to violations of the Florida Sunshine Act. Specifically, it made no findings of fact as to the occurrence of the particular meetings which are the basis of the Sunshine Act violations. Yet, the evidence of the occurrence of these meetings was uncontradicted at trial and wholly came from the testimony of their own witnesses. It is fundamental error for the trial court to simply ignore unrebutted testimony. Ackerly Communications Inc. v. City of West Palm Beach, supra; In re: the Estate of Frank J. Hannon, _____ So.2d _____ (Fla. 4th DCA 1984); 9 FLW 767; Laragione v. Hagan, 195 So.2d 246 (Fla. 2d DCA 1967). Certainly it was error to fail to make a direct ruling as to whether these meetings of representatives of each party to an interlocal agreement concerning a specific joint project of the public agencies involved are or are not even subject to the Florida Sunshine Law.

CONCLUSION

This Court should reverse the Final Judgment for a myriad of substantial reasons. The pledge of Tourist Tax revenues to the bonds is invalid, never having been part of a proper tourist development plan or approved by the voters. The 1978 tourist development plan only authorized expenditures for advertising and promotion. It included no list of projects in order of priority nor any cost estimates. The plan was not prepared by a tourist development council which had been established by resolution 60 days prior to levy of the tax. The 1982 Amended Plan also did not comply with the statutory requisites for such a plan as it too omitted any list in order of priority of specific projects for the tax revenues. Neither plan authorized "studies" nor does the Statute. The intial referendum was invalid because the initial plan and Ordinance were invalid and because the ballot

was misleading, never informing voters that funds could be used for a stadium, a pledge to bonds or that the County Commission could substantially change the plan approved by the voters without resubmission to the electorate.

Florida Statute § 125.0104 is unconstitutional because it denies equal protection of law, creating an arbitrary classification system as to the types of residences to which it applies. Violations of the Florida Sunshine Act occurred in adoption and consideration of stadium matters by the three public bodies involved in its creation. County tourist tax revenues may not be pledged to bonds issued by the PSA.

The County has circumvented the process of obtaining voter approval of its pledge of tourist tax revenues to a stadium. This circumvention is a denial of fundamental rights and due process. This Court should reverse the trial court and declare the illegality of the Ordinances, Statute and agreements which form the steps by which this circumvention has occurred. This Court should also correct the fundamental error of the trial court in failing to make findings or rulings on the most basic issues of the case

FLOYD PEARSON RICHMAN GREER WEIL ZACK & BRUMBAUGH, P.A.
Attorneys for Appellants PRO, Holiday House, Slaughter and Tolliver
One Biscayne Tower
Twenty-Fifth Floor
Miami, Florida 33131-1868
Phone: (305) 377-0241

By _____
Gerald F. Richman

By _____
Bruce A. Christensen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 20 day of June, 1984, to: George H. Bailey, Jones & Foster, P.A., Attorneys for J. Robert Rowe, 601 Flagler Drive Court, P.O. Drawer E, West Palm Beach, FL 33402; W. Gary Dunlap, Esq., Attorneys for Pinellas Sports Authority and Pinellas County, 315 Haven Street, Clearwater, FL 33515; Michael S. Davis, Esq., Attorneys for City of St. Petersburg, 175 5th Street North, Room 210, St. Petersburg, FL 33731; C. Lawrence Stagg, Esq., Co-Counsel for Pinellas Sports Authority and Pinellas County, Holland & Knight, P.O. Box 1288, Tampa, FL 33601; J. Terrell Williams, Assistant Attorney General, Attorney for Department of Revenue, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32301.

By _____
Bruce A. Christensen