

ISSUE PRESENTED

Florida courts uniformly validate bonds which are issued for a public purpose. The Florida Legislature has specifically found that the construction of sports facilities serves a public purpose. The local governments of Tampa and Hillsborough County have determined that the construction of a sports facility - the community stadium - serves a public purpose. Did the trial court err when it refused to validate bonds to be issued for the construction of the community stadium?

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INTEREST OF AMICUS CURIAE

Buccaneers Limited Partnership holds the franchise for and does business as the Tampa Bay Buccaneers. Although the Buccaneers were not a party to the proceedings below, those proceedings focused extensively on the impact of the Buccaneers' presence on the Tampa Bay community and the substance of the lease agreement under which the Buccaneers agreed to exhibit professional NFL football games at the proposed community stadium. This amicus brief is presented to stress to the Court the dangerous precedent which would be created in permitting circuit court judges to second guess the business judgment of elected officials in the arms-length negotiation of complex, financial transactions. In addition, this amicus brief is submitted to illustrate the absurdity, in light of existing Supreme Court precedent, which would result should this Court affirm a decision refusing to validate bonds which are to be used to finance the construction of a publicly-owned sports facility, where there is a long-term lease in place with an existing professional sports franchise.

INTRODUCTION

After many months of negotiations with Hillsborough County, the City of Tampa, and the Tampa Sports Authority, the Buccaneers entered into a detailed and complex stadium agreement with the Tampa Sports Authority. Pursuant to the agreement, the Buccaneers agreed to exhibit professional NFL football games at the proposed community stadium to be constructed in Hillsborough County, for a

minimum term of 30 years. Without the community stadium, the Buccaneers would be forced to relocate from Hillsborough County. Thereafter, in the largest turnout in the history of a primary election in Hillsborough County, the voters of Hillsborough County approved the adoption of a community investment tax, the purpose of which, in part, was to fund the construction of the community stadium.

William F. Poe has challenged the validation of the revenue bonds being issued to finance construction of the stadium, arguing that the stadium project serves no paramount public purpose, and is unconstitutional. At trial, and in his initial brief, Poe argued that the proposed community stadium generally, and the existence of a National Football League franchise and one or more Super Bowl games specifically, are of no significant public benefit to the Tampa Bay community, and that the **"private interests"** of the Buccaneers predominate over any public purpose. Although rejecting a majority of Poe's arguments, the trial court concluded that the community stadium project would predominantly serve a private, rather than a public, purpose. The trial court therefore refused to validate the bonds which were to be issued to finance the construction of the community **stadium.**¹ The Buccaneers respectfully

¹ Appropriately read, the trial court's order grants Poe relief in his action for declaratory judgment only to the extent the relief mirrors the relief which was granted in the bond validation case. By implication, therefore, the trial court ruled against Poe on **any** other ground raised in his action for declaratory judgment. However, to the extent the trial court's order attempted to grant Poe a remedy broader than the remedy granted in the bond validation proceeding, the trial court had no
(continued...)

submit that Poe's argument and the trial court's conclusion (to the extent it adopted **Poe's** argument) is absolutely contradicted by the public's own determination as to its interests, as expressed by the legislature of the State of Florida, the local governments of Hillsborough County and the City of Tampa, and the voters of Hillsborough County themselves, and by the economic facts specifically recited by the trial court in its own order.

SUMMARY OF THE ARGUMENT

Florida courts uniformly validate bonds which are issued for a public purpose. The Florida Legislature has determined that the construction of sports facilities for the purpose of retaining professional sports franchises serves a public purpose. The Hillsborough County Commission, Tampa City Council and Tampa Sports Authority have determined that the construction of a sports facility - the community stadium - serves a public purpose. The trial court erred when it failed to properly defer to the determinations of these governing bodies and instead determined that the construction of the community stadium did not ultimately serve a public purpose.

¹(. . .continued)
jurisdiction to enter such an order. Under section 86.091, Florida Statutes, declaratory relief shall not be granted where a "declaration shall prejudice the rights of persons not parties to the proceeding." The Buccaneers were not parties to the bond validation proceeding or Poe's action for declaratory judgment; therefore, entering any kind of declaration adverse to the Buccaneers's interest would be improper.

In addition to the trial court's failure to defer to the legislative determinations of public purpose, the trial court's own findings of fact conclusively establish that the public interest in the community stadium project predominates over any private interest. Under a conservative forecast, the public would derive a \$3 billion economic benefit along with other immeasurable economic and intangible benefits from the community stadium. Basic reason and this Court's precedent make clear that such an overwhelming public benefit predominates over the incidental private benefits to the Buccaneers which the trial court isolated for comparison.

Finally, this Court should follow its own precedent regarding the construction of sports facilities. **This Court has previously** found that revenue bonds may be used for the construction of sports facilities in the hopes of attracting a professional sports franchise. It would be anomalous for this Court to now find that revenue bonds **cannot be used to finance the construction of a** sports facility when a community secures a lease with an existing professional sports franchise prior to constructing the new facility.

ARGUMENT

- I. THE TRIAL COURT'S DECISION TO INVALIDATE BONDS FOR THE CONSTRUCTION OF A COMMUNITY SPORTS STADIUM WAS IN ERROR BECAUSE THE TRIAL COURT FAILED TO DEFER TO THE DETERMINATION OF THE FLORIDA LEGISLATURE, HILLSBOROUGH COUNTY COMMISSION, TAMPA CITY COUNCIL AND TAMPA SPORTS AUTHORITY THAT THE CONSTRUCTION OF A SPORTS FACILITY SERVED A PUBLIC PURPOSE.

The scope of judicial review in bond validation cases is limited to the following considerations:

- (1) determining whether the public body has the authority to issue the bonds;
- (2) determining if the purpose of the bonds is legal; and
- (3) ensuring that the bond issuance complies with the requirements of law.

Rowe v. St. John's County, 668 So. 2d 196, 198 (Fla. 1996). In the instant case, the only issue for review is the second condition -- whether the bonds are legal under article VII, section 10 of the Florida Constitution.

When the State's taxing power is involved, a bond issue is legal if the project for which the bonds are being issued serves a public purpose. Northern Palm Beach County Water Control District v. State, 604 So. 2d 440, 441-2 (Fla. 1992). In determining whether a project serves a public purpose, a trial court is required to defer to a legislative determination of a project's public purpose, unless that determination is so clearly erroneous as to be beyond the power of the legislature. Nohrr v. Brevard County, 247 So. 2d 304, 309 (Fla. 1971). This Court has repeatedly refused to inquire further into the purpose of a **project in the** face of a legislative determination of a project's public purpose,

and has afforded such determinations great weight.' The trial court erred when it substituted its judgment for that of the

² See, e.g., Noble v. Martin County Health Facilities Auth., 682 So. 2d 1089 (Fla. 1996) (party challenging bond issue for improvements to a private, not-for-profit medical center had the burden of showing that statute, which deemed health facilities to serve "an essential public function," was clearly erroneous); Northern Palm Beach County Water Control Dist. 604 So. 2d at 441-442 (challenger of roadway improvement to a private country club was required to overcome legislative determination that empowered a water control district to finance roadway improvements for the "exclusive use and benefit of a unit of development and its landowners and residents," and to "construct and maintain security structures to control the use of said roads"); Zedeck v. Indian Trace Community Dev. Dist., 428 So. 2d 647, 648 (Fla. 1983) (legislative declaration set forth in Chapter 190 stating that the expansion of water and sewer systems serve a valid public purpose should be considered correct unless patently erroneous; bond issue therefore validated); State v. Osceola County Indus. Dev. Auth. 424 So. 2d 739, 742 (Fla. 1982) (State failed to demonstrate that the legislature's determination that a lodging facility and restaurant served a public purpose was so clearly wrong to be beyond the power of the legislature, and Court would not substitute its judgment for that of the legislature in determining "whether tourism is vital to the economy of the state and the welfare of the people"); State v. Leon County, 400 So. 2d 949, 951 (Fla. 1981) (financing construction of proposed nursing home facility with bonds serves a public purpose where the legislature specifically found in § 159.26 that health care industries are vital to the economy of the state and the welfare of the people); State v. Housing Finance Auth. of Polk County 376 So. 2d 1158, 1160 (Fla. 1979) (the court accorded great weigh; to the specific findings of the Florida Legislature set forth in § 159.602, the Board of County Commissioners, and the Housing Authority that the contemplated project was related to the health, safety, morals and welfare of the residents of Polk County); Wald v. Sarasota County Health Facilities Auth., 360 So. 2d 763, 770 (Fla. 1978) ("By virtue of the legislative determination, embodied in Section 154.203, Florida Statutes (1975), that facilities governed by Chapter 154 are in the public interest, no independent judicial inquiry will be made into the public nature of facilities properly falling within this chapter."); Nohrr, 247 So. 2d at 309 (findings of legislature in Chapter 243 are "determinative" of public purpose therefore, bonds issued for the financing of college dormitories and dining facilities, regardless of whether or not those facilities were furnished by a state or private institution are valid).

legislature and local officials and determined that the stadium project did not ultimately serve a public purpose.

The Florida Legislature has determined that the construction of a facility to retain a professional sports franchise serves a public purpose. Section 288.1162(7), Florida Statutes (Supp. 1996) provides:

[a]n applicant certified as a facility for a...retained professional sports franchise...may use funds provided pursuant to Section 212.20 only for the public purpose of paying for the construction...of a facility for a retained professional sports franchise.

See also Chapter 95 - 304, Legislative Preamble, at 2164, Laws of Fla., ("existing professional sports franchises provide Florida communities with a source of recreation and contribute to civic pride, and...such existing professional sports franchises provide jobs and enhance economic development and well-being for the citizens of Florida..."). The Tampa City Council, Hillsborough County Commission and Tampa Sports Authority each enacted resolutions finding that the community stadium project served a public purpose. (Appendix at 11, 12)" Although the trial court was aware of each of these legislative determinations of public purpose (Id. at 10-12), the trial court failed to defer to these determinations and failed to apply a clearly erroneous standard to them. Instead, the trial court acted beyond the scope of its authority when it substituted its judgment for the judgment of the

³ The trial court's order is set forth in the Appendix to this amicus brief.

Florida Legislature and the local governments of the City of Tampa and Hillsborough County.

This Court has repeatedly held that questions concerning a project's fiscal feasibility, economic potential and advisability must be resolved at the administrative or executive level. Noble, 682 So. 2d 1089; Murphy v. City of Port St. Lucie, 666 So. 2d 879 (Fla. 1995); State v. Manatee County Port Auth., 171 So. 2d 169, 171 (Fla. 1965); Town of Medley v. State, 162 So. 2d 257 (Fla. 1964). Questions of this nature are beyond the scope of judicial review in a validation proceeding, and are matters that must be "concluded by the business judgment of the issuing agency." Manatee County Port Auth., 171 So. 2d at 171.

The trial court erred in the present case when it isolated certain provisions of an arms-length negotiated lease agreement, not for the purpose of determining whether a public interest was present, but rather to question the business judgment of the elected officials who negotiated the lease and the fiscal feasibility of the stadium project. It was beyond the proper scope of the trial court's authority to second guess the business judgment of the elected officials in the City of Tampa and Hillsborough County.

The error in the trial **court's** decision is particularly highlighted by the fact that the citizens of Hillsborough County approved by referendum the community stadium project. This Court has long recognized the danger of a decision which makes an:

oligarchy of the courts giving them the power in matters such as this to determine what in their opinion was good

or bad for a city and its inhabitants thereby depriving the inhabitants of the right to make such decisions for themselves as is intended under our system of government.

~~Town of Medley, 162 Soc 2d sat 259~~ n o f t h e t r i a l court is affirmed, this Court will effectively give circuit court judges a line item veto, to be used to renegotiate transactions that have been agreed to by elected officials and approved of by the voters. Such a decision would be both nonsensical and contrary to this Court's long-standing precedent. Accordingly, the trial court's order invalidating the issuance of bonds should be reversed and this Court should enter an order validating the bonds for the construction of the community stadium project.

II. THE LOWER COURT MISAPPLIED THE PARAMOUNT PUBLIC PURPOSE TEST TO ITS FACTUAL FINDINGS WHICH CLEARLY ESTABLISH THE TEST WAS MET AS A MATTER OF LAW.

Because the legislature has determined that sports facilities constructed to retain professional sports franchises serve a public purpose and because the trial court did not find this determination to be clearly erroneous, the trial court should not have inquired further into the nature of the community stadium project to determine whether the public interest of the project is predominant. However, should this Court find such an inquiry appropriate, the trial court's findings of fact conclusively establish that the legislature's determination of public purpose was not clearly erroneous, and that, as a matter of law, the public interest in the community stadium project predominates over any private interest.

After the 1968 revisions to article VII, section 10 of the Florida Constitution, the Court acknowledged that the impact of the constitutional changes "was to recognize constitutionally that the public interest was served by facilitating private economic development." Linscott v. Orange County Indus. Dev. Auth., 443 So. 2d 97, 100 (Fla. 1983). The Court has also recognized that "the paramount public purpose test has lost much of its viability." State v. city of Panama City Beach, 529 So. 2d 250 (Fla. 1988) (citing, Linscott, 443 so. 2d at 101).

Since 1968, this Court has consistently affirmed the validation of bond issues for the construction or improvement of publicly owned facilities, regardless of whether the facility would be sold or leased to a private entity, as well as many privately owned facilities.⁴

⁴ See, e.g., Noble, 682 So. 2d 1089 (affirmed validation of revenue bonds for improvements to private not-for-profit hospital); Northern Palm Beach County Water Control Dist. 604 So. 2d 440 (reversed circuit court order that refused to 'validate revenue bonds to be used for roadway improvements in private country club); Rowe v. Pinellas Sports Auth. 461 So. 2d 72 (Fla. 1984) (affirmed revenue bonds for publicly owned domed baseball stadium); Linscott, 443 so. 2d 97 (affirmed revenue bond issue to construct regional headquarters for multistate insurance company); International Brotherhood of Electrical Workers, Local Union No. 177 v. Jacksonville Port Auth. 424 So. 2d 753 (Fla. 1982) (affirmed revenue bond issue for constructing floating dry-dock that would be sold to a private shipyard on an installment contract); Osceola County Indus. Dev. Auth., 424 So. 2d 739 (affirmed revenue bond issue for constructing a lodging facility in connection with a "tourism facility"); State v. Orange County Indust. Dev. Auth., 417 so. 2d 959 (Fla. 1982) (affirmed revenue bond issue to construct hotel in connection with convention/civic center); Leon County, 410 so. 2d 1346 (affirmed revenue bond issue to construct convention center hotel); State v. Volusia County Indus. Dev. Auth. 400 So. 2d 1222 (Fla. 1981) (affirmed revenue bond issue to acquire and expand nursing home which would then be sold to a private company); (continued...)

Absent a legislative determination of public purpose (and such a determination of public purpose is present here), a court presiding over a bond validation proceeding must simply examine the public interest and any incidental private interest in order to determine which interest predominates. See, e.g., City of Miami, 379 So. 2d at 653 (Court considered whether the private benefit was "so substantial as to tarnish the public character" of the project). There are only a few factors which this Court has repeatedly found dispositive in determining whether the public or private interest predominates. This Court has considered: (1) relative monetary benefits, (2) ownership and the amount of control the private entity would assert over the contemplated facility and (3) other intangible public benefits.

The trial court misapplied the paramount public purpose test to the community stadium project when it found that economic benefits to the Buccaneers predominated over the economic and intangible benefits which would be received by the Tampa Bay community.

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State v. Sunrise Lakes Phase II Special Recreation Dist., 383 So. 2d 631 (Fla. 1980) (affirming revenue bonds secured by ad valorem taxes to construct recreational facilities in single condominium development); State v. City of Miami, 379 So. 2d 651 (Fla. 1980) (affirmed revenue bond issue for construction of convention center/parking garage); Wald, 360 So. 2d 763 (affirmed revenue bond issue for constructing improvements to a private hospital); Nohrr, 247 So. 2d 304 (approved in principle revenue bond issue to construct a cafeteria/dormitory at Florida Institute of Technology)! receded from on other grounds, Wilson v. Palm Beach County Housing Authority, 503 So. 2d 893 (Fla. 1987).

A. Relative Monetary Benefits

The trial court found that **"the** Buccaneers provide an annual economic benefit to the Tampa Bay area ranging from a high of \$183 million to a low of \$83 million and that the Super Bowl scheduled to be held in the new stadium in the year 2001 can be expected to yield an economic benefit in excess of \$300 million." (Appendix at 7) Even more striking, the trial court found that **"over the 30-** year life of the stadium agreement these benefits are expected to total approximately \$3 billion before any adjustments for inflation." Id. The trial court concluded that the **"local** community will realize substantial economic benefits from the continued presence of the Buccaneers and **from hosting the 2001** Super Bowl and that over time these benefits can be expected to far exceed the costs of the new stadium." Id. Notwithstanding these findings, the trial court focused on a portion of the lease which would provide a maximum potential economic benefit of \$30 million to the Buccaneers spread over the 30 year term of the lease and, based upon that provision, concluded that the private economic interest of the Buccaneers predominated over the public interest.'

⁵ The trial court, on rehearing, clarified that it did not find fault with the provision that allowed a 50/50 split of revenues from non-Buccaneers events, but rather was troubled only by a provision which provided the Buccaneers the first \$2,000,000 from non-Buccaneers events. Without the latter provision, the Buccaneers would still **receive 50% of the first \$2,000,000 from** non-Buccaneers events.

It is misleading, of course, to isolate this single provision of a complex economic package and characterize it as a **"benefit"** to the Buccaneers. The Buccaneers will pay the Tampa Sports Authority \$105 million in rent over the 30 year term of the
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(Id. at 14-15) However, a simple comparison of the \$3 billion economic benefit to the public with the potential \$30 million economic benefit to the Buccaneers establishes, as a matter of law, that the public purpose of the community stadium project predominates over **any** private economic benefits which the Buccaneers might receive.

B. Ownership & Control

The trial court's findings with respect to ownership and control reflect that public interests predominate over any private interests. The community stadium will be owned and managed by the Tampa Sports Authority, not the Buccaneers. Compare Northern Palm Beach County Water Control Dist., 604 So. 2d at 443 (bonds validated for roadway improvements to private country club where public would retain ownership of roadways themselves) with Orange County Industrial Dev. Auth. v. State, 427 So. 2d 174, 179 (Fla. 1983) (Court refuses to validate bonds for the improvement of a privately owned television station). The Buccaneers' lease term at the community stadium will run for 30 years, during which time the Buccaneers will not have exclusive use of the facility. Compare State v. Jacksonville Port Auth., 204 So. 2d 881, 884 (Fla. 1967) (Court refuses to validate bonds where, under terms of proposed

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lease. If the Buccaneers were to receive no revenue from **non-Buccaneers** events, the parties might well have negotiated a different amount of rent. Under the provision in question, the amount received by the Buccaneers, if any, is dependent upon the success of non-Buccaneers events at the community stadium.

lease, private corporation would have exclusive use of the property for 75 years).

The community stadium will host approximately 40 major events each year, only 10 of which are Buccaneers games. (Appendix at 8) The events contemplated, including NFL football games, are open to the public, and are popular recreational and leisure activities for the community. As the trial court found, the community stadium will be the home of University of South Florida's football team, and will host high school football games, the annual Outback Bowl football game, equestrian events, tractor pulls, motorcross events and concerts. (Appendix at 8) Compare State v. Daytona Beach Racing and Recreational Facilities Dist., 89 So. 2d 34, 37 (Fla. 1956) (Court found compelling the fact that the community would have use of the speedway for six months out of each year for its own recreational and educational programs).

C. Intangible Benefits

The trial court found that the community stadium project would bring intangible benefits to the community, including "immeasurable economic benefits realized as a result of national media exposure in the newspapers and from televised Buccaneer games and Super Bowls, including the value of such exposure in helping to attract tourists and new business to the Tampa Bay area." (Appendix at 8) Further, the trial court found, "the Buccaneers instill civic pride and camaraderie into the community and the Buccaneers games and other stadium events also serve a commendable public purpose by enhancing the community's image on a nationwide basis and providing

recreation, entertainment and cultural activities to its **citizens.**" (Appendix at 8) Aside from the overwhelming monetary benefits the community would derive from stadium project, the intangible benefits the community will derive from the stadium project are themselves sufficient to establish that the paramount public purpose test was met. Daytona Reach, 89 So. 2d at 37 (despite failing to identify a direct economic benefit to the public, Court found public purpose due to speedway's ability to attract tourists and be used in the off season for civic, educational and recreational programs).

In sum, the trial court erred when it ignored the economic and intangible benefits to the community and instead focused upon certain isolated aspects of the lease agreement with the Buccaneers. Contrary to the trial court's ultimate conclusion, the overwhelming evidence set forth in the court's own order establishes that the public benefits to be derived by the community from the stadium project predominate over any economic benefits which the Buccaneers will derive from use of the stadium. Accordingly, the trial court's order should be reversed and this Court should enter an order validating the bonds for the construction of the community stadium project.

III. THIS COURT SHOULD FOLLOW ITS EXISTING PRECEDENT AND VALIDATE THE BONDS; OTHERWISE, AN ABSURD RULE OF LAW WILL RESULT.

This Court's precedent relating to the issuance of bonds for the construction of sports facilities mandates that the trial **court's** order be reversed and the bonds for the construction of the community stadium project be validated. This is not the first time

this Court has considered whether a governmental entity may legally issue bonds for the purpose of constructing a sports stadium for the use of a professional sports franchise. In Orange County Civic Facilities Auth. v. State, 286 So. 2d 193 (Fla. 1973), this Court reversed the final judgment of a circuit court denying validation of a bond issue for the purpose of enlarging and improving the Tangerine Bowl in the City of Orlando. The unquestioned purpose behind those bonds was "hopefully...to attract for the Orlando community a membership in or franchisement of a football team in one of the professional leagues of national football." Id. In a dissent based upon unrelated grounds, Chief Justice Carlton noted that there was no question that the proposed project was for a public purpose. Id. at 196.

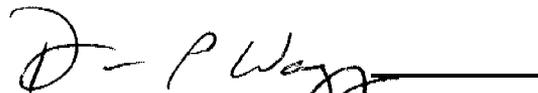
In 1984, this Court unanimously affirmed the validation of revenue bonds used to finance the construction of a domed baseball stadium in Pinellas County. Rowe v. Pinellas County Sports Auth., 461 So. 2d 72. Unlike the community stadium project at issue in this case, the Pinellas County stadium had no professional sports franchise as a tenant, and had no assurance that it would ever have such a tenant. Even though Pinellas County could not offer the guaranteed economic and intangible benefits which the community stadium project will provide to Hillsborough County residents, this Court had no difficulty in Rowe in rejecting any arguments that the bonds should not be validated. 461 So. 2d at 78.

If this Court rules in the instant case that bonds may not be issued to build the community stadium, an absurd rule of law will

result. On the one hand, the Rowe and Orange County Civic Facilities cases stand for the proposition that bonds may be issued for the construction of a sports stadium in the hopes of attracting a major sports franchise in the future. On the other hand, the present case will prohibit the issuance of bonds for the construction of a sports stadium when local governments follow a fiscally prudent policy of first securing a long-term lease agreement with a major professional sports franchise as a tenant prior to issuing the bonds and constructing the stadium. This court cannot possibly condone such an absurd result.

CONCLUSION

For the foregoing reasons, as well as those set forth in the brief of Hillsborough County, the City of Tampa and the Tampa Sports Authority, the trial court's order should be reversed and this Court should enter an order validating the bonds for the construction of the community stadium project.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this *25th* day of April, 1997, by Federal Express to Dianne Tremor and Chris H. Bentley, Rose, Sundstrom & Bentley, LLP, 2548 Blainstone Pines Drive, Tallahassee, Florida 32301; and by hand delivery to Emeline C. **Acton**, Office of the County Attorney, County Center, 601 E. Kennedy Boulevard, 27th Floor, Tampa, Florida 33602; James D. Palermo, City of Tampa, 315 East Kennedy Boulevard, Tampa, Florida 33602; Raymond Ehrlich, Holland & Knight, LLP, 400 N. Ashley Drive, Suite 2300, Tampa, Florida 33602; and Donald A. Gifford, shackelford , Farrior, Stallings & Evans, P.A., One **Mack** Center, Suite 1400, 501 E. Kennedy Boulevard, P.O. Box 3324, Tampa, Florida 33601-3324.



Attorney

Appendix

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

WILLIAM F. ("BILL") POE, SR.

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a political
subdivision of the State of Florida,
the CITY OF TAMPA, a municipal
corporation organized and existing
under the Laws of the State of Florida,
and the TAMPA SPORTS AUTHORITY, a
Public agency politic and corporate,

Case No. 96-6515
Consolidated with
Case No. 96-8748
Division C

Defendants.

TAMPA SPORTS AUTHORITY,
HILLSBOROUGH COUNTY, FLORIDA,
CITY OF TAMPA, FLORIDA,

Plaintiffs,

vs.

THE STATE OF FLORIDA,
THE TAXPAYERS, PROPERTY OWNERS AND
CITIZENS OF HILLSBOROUGH COUNTY,
FLORIDA, INCLUDING NONRESIDENTS OWNING
PROPERTY OR SUBJECT TO TAXATION THEREIN,
AND THE TAXPAYERS, PROPERTY OWNERS AND
CITIZENS OF THE CITY OF TAMPA, FLORIDA,
INCLUDING NONRESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND WILLIAM F. ("BILL") POE, SR.

Defendants.

FINAL JUDGMENT

Introduction.

Case No. 96-8748 is a bond validation proceeding pursuant to Chapter 75, Florida Statutes, initiated by the Tampa Sports Authority ("TSA"), Hillsborough County (the "County") and the City of Tampa (the "City") to validate a series of revenue bond issues intended to fund construction of a new community stadium. The bond validation proceeding has been consolidated with Case No. 96-6515, an action filed by William F. ("Bill") Poe, Sr., seeking injunctive relief and a declaration that the expenditure of funds and the incurrence of debt to construct the new stadium violate Article VII, Section 10 of the Florida Constitution. This Final Judgement sets forth the Court's findings of fact and legal analysis following the non-jury trial of the consolidated cases on March 3, 4, 5, 7 and 12, 1997. In summary, this Court finds that the new stadium project would serve a paramount public purpose, if not for the fact that the lease of the new stadium to the Tampa Bay Buccaneers grants the Buccaneers the first \$2 million in net annual revenues from non-Buccaneer events. Consequently, this Court finds the stadium project to serve a predominantly private purpose and consequently cannot validate the bonds sought to be issued by TSA.^{1/}

^{1/} Throughout this opinion the TSA, County and City are collectively referred to as the "Plaintiffs" and William F. ("Bill") Poe, Sr. is referred to as "Poe."

SUMMARY OF FACTS

The evidence presented at trial established the following facts:

Background.

1 . The Tampa Bay Buccaneers football team (the "Buccaneers" or "Bucs") of the National Football League ("NFL") has played its home games in a stadium owned and operated by TSA since 1976. The stadium, currently known as "Houlihan Stadium," was originally constructed by TSA in 1967. Additional seating and luxury boxes were added in 1975 after the National Football League awarded the Buccaneers franchise to Tampa. Due to its age, Houlihan Stadium is in need of significant repairs. Professional engineers engaged by TSA estimate that the required repairs will cost approximately \$52 million. This estimate does not include the cost of any upgrades or additional amenities that might be added to the stadium. Such repairs would be necessary even if the Buccaneers did not remain in Tampa so as to enable non-Buccaneer events to be conducted. Even with such repairs, though, some non-Buccaneer stadium users might relocate to competing venues, some of which are newer and more state-of-the-art than the existing stadium.

2. In 1995 the Buccaneers franchise was sold to a new owner for approximately \$192 million. Prior to the sale, the new owner and other prospective bidders advised local public officials that the team required additional stadium-related revenue sources (such as luxury suites, club seats and the like) in order to remain financially competitive with other NFL teams and that they intended to relocate the franchise to another city

unless the TSA constructed a new stadium incorporating such amenities. The new owner reiterated this position after he acquired the team. Based on the proposals received by the Buccaneers from other cities and the relocations of NFL teams from Los Angeles, Oakland, St. Louis, Houston and Cleveland, the Court finds that it is not unreasonable for local public officials to have concluded that the Buccaneers would in fact relocate if a new stadium is not constructed.”

The Stadium Agreement.

3. After determining that the existing stadium could not be economically rehabilitated to provide the required revenue enhancing amenities required by the Buccaneers, negotiations between the Plaintiffs and the new owner of the Buccaneers commenced in the fall of 1995 and continued into 1996, culminating in an agreement dated August 28, 1996 (the “Stadium Agreement”) under which the TSA agreed to construct (i) a new 65,000-seat stadium at a cost of approximately \$168.5 million to serve as the Buccaneers’ home field and (ii) a \$12 million training facility to be used by the Buccaneers. In general terms, the Stadium Agreement provides that the Buccaneers will utilize the stadium for 30 years and will pay the TSA a total of \$3.5 million annually, of which \$2 million is allocated to stadium rent, \$1 million to practice facility rent and \$500,000 as a fee for certain development rights granted to the Buccaneers

^{2/} The Buccaneers’ insistence on a new stadium is certainly not unique. Testimony established that there are currently 12 new **stadiums** that are either under construction or in the pre-construction stage in NFL cities throughout the nation.

with respect to stadium property.^{3/} The TSA will realize an additional \$1.93 million annually from a surcharge on tickets for Buccaneer games and other stadium events and will retain 50% of all revenue from non-Buccaneer events after the Buccaneers receive their first \$2 million, net of direct costs to be reimbursed to TSA. A summary of the material financial terms of the Stadium Agreement is set forth in Appendix A to this opinion. The General Manager of the Buccaneers testified that as a result of the club seats, club lounges, additional luxury boxes and other revenue enhancing facilities, the Buccaneers expect to realize an additional \$8 to \$16 million annually from the new stadium. Compared to the existing stadium, however, the new stadium will cost TSA approximately an additional \$2 million annually to operate and maintain.

The 2001 Super Bowl.

4. In light of the Plaintiffs' commitment to construct a new stadium, the NFL has selected Tampa to host the Super Bowl to be held in January, 2001. A Senior Vice President of the NFL testified that without a new stadium the staff of the NFL would not have recommended Tampa as a Super Bowl host. This witness also testified that with a new state-of-the-art stadium he would recommend that additional Super Bowls be held in Tampa.

^{3/} Testimony established that the TSA was constrained from demanding greater rent by the private activity bond provisions of the Internal Revenue Code, which negates the tax exempt status of bonds if, subject to certain adjustments, private revenues (such as rent) exceed 10% of debt service. See 26 U.S.C. §141.

The Community Investment Tax Referendum.

5. In order to finance construction of the new stadium, the TSA proposes to issue up to \$33 million in revenue bonds supported by state sales tax monies,^{4/} \$11.5 million in revenue bonds supported by the local option fourth cent tourist development tax and \$160 million in revenue bonds supported by approximately 11.7 percent of revenues to be realized from a county-wide local option half cent sales tax (the "Community Investment Tax"). The Community Investment Tax is designed to fund school construction, criminal justice projects and numerous other capital projects within Hillsborough County, the City of Tampa, Plant City and Temple Terrace as well as the new community stadium. The tax was approved by 53% of the voters in a referendum held in September, 1996.

Governmental Approvals.

6. The governing bodies of the Plaintiffs have each adopted resolutions authorizing the proposed bond issues and approving related interlocal agreements. As discussed infra, such resolutions include express findings that the new stadium serves a public purpose. In addition, legislation enacted by the Florida Legislature pertaining to funding of sports facilities for professional teams contains determinations that such facilities serve a public purpose.

^{4/} An application for the allocation of \$2 million annually from State sales tax collections to fund construction of the new stadium has been approved by the State pursuant to' §288.1162, Florida Statutes (1995).

Public Purpose - Economic Benefits.

7. With respect to the public purpose served by the new stadium and the retention of the Buccaneers, the court was presented with conflicting testimony regarding the economic impact on the local economy of the Buccaneers, a Super Bowl and the new stadium construction project itself. Expert witnesses employed by Plaintiffs testified that the Buccaneers provide an annual economic benefit to the Tampa Bay economy ranging from a high of \$183 million to a low of \$83 million and that the Super Bowl scheduled to be held in the new stadium in the year 2001 can-beexpected to yield an economic benefit in excess of \$300 million. Even using the more conservative forecasts, over the 30-year life of the stadium agreement these benefits are expected to total approximately \$3 billion before any adjustments for future inflation. In contrast, experts employed by Poe testified that in their opinion neither the Buccaneers nor a Super Bowl provide any measurable economic benefit to the local economy. However, none of Poe's experts were able to present financial data that directly contradicted the data relied on by Plaintiffs' experts in compiling their economic forecasts. After weighing the testimony, the Court finds that the forecasts presented by Plaintiffs' experts were more credible. Although economic forecasting is obviously not a precise science, the Court is of the opinion that the local community will realize substantial economic benefits from the continued presence of the Buccaneers and from hosting the 2001 Super Bowl and that over time these benefits can be expected to far exceed the cost of the new stadium.

Public Purpose - Intangible Benefits.

8. In addition to the quantifiable economic benefits described above, the Court heard credible testimony from the Mayor of Tampa, the Hillsborough County Administrator, the President of the Greater Tampa Chamber of Commerce and others regarding the immeasurable economic benefits realized as a result of national media exposure in newspapers and from televised Buccaneer games and Super Bowls, including the value of such exposure in helping to attract tourists and new businesses to the Tampa Bay area. Several witnesses testified that without an NFL team the community would find it more difficult to compete with other cities for new business.

9. The evidence also established that the new stadium will host more than 46 major events each year, including 10 Buccaneers games, Tampa Bay Mutiny professional soccer games, University of South Florida football games, high school football games, the annual Outback Bowl football game, equestrian events, tractor pulls, motor cross events and concerts. The Court finds that the Buccaneers instill civic pride and camaraderie into the community and that Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community's image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens.

LEGAL ANALYSIS

10. The role of this Court in the bond validation proceeding is to determine whether the governmental entity has the power to issue the bonds, and whether it exercised such power in accordance with the law. Noble v. Martin County Health Facilities Authority, 682 So.2d 1089 (Fla. 1996).

11. The central issue in this case is whether or not the bonds proposed to be issued by TSA to finance construction of the new stadium violate Article VII, Section 10 of the Florida Constitution by reason of the private benefit which will enure to the Buccaneers under the Stadium Agreement. Article VII, Section 10 provides in pertinent part as follows:

Neither the State nor any County, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend, or use its taxing power or credit to aid any corporation, association, partnership or person.....^{5/}

Because this case involves governmental use of taxing power and credit, this project is constitutional if, and only if, it serves a "paramount public purpose". Sea Northern Palm Beach County Water Control District v. State, 604 So. 2d 440, 441-42 (Fla. 1992).

It has long been held that the Constitution does not prohibit the use of public funds for projects that benefit private interest, as long as a paramount public purpose exists and

^{5/} Article VII, Section 10 provides for four exemptions not relevant here.

those interests are only incidentally benefited. See State v. Jacksonville Port Authority, 204 So.2d 881 (Fla. 1969); Panama City v. State, 93 So.2d 608 (Fla. 1957).

Standard of Review - The Clearly Erroneous Test

12. This Court takes judicial notice of the specifically expressed determinations made by the Florida Legislature and the governing bodies of the County, the City and the TSA, that the retention of a professional sports team, specifically the Buccaneers, serves a valid public purpose. The determination of what constitutes a valid public purpose is for the legislature to decide, and its decision is not subject to interference by the courts unless the court finds a clear or gross abuse of discretion, fraud, bad faith, or that the legislative finding was so clearly erroneous as to be beyond the power of the legislature. Nohrr v. Brevard County, 247 So.2d 304, 309 (Fla. 1 971); Raney v. City of Lakeland, 88 So.2d 148, 150 (Fla. 1.956); State-v. County of Brevard, 77 So.2d 767 (Fla. 1955). However, this Court finds that any finding by Plaintiffs that the Stadium Agreement serves a paramount public purpose was clearly erroneous, as is discussed more fully below.

Legislative Determinations of Public Purpose

13. The Florida Legislature has specifically found and determined that a sports stadium serves a public purpose. Section 288.1162, Florida Statutes, (Supp. 1996), provides that:

An applicant certified as a facility for a retained professional sports franchise . . . may use funds provided pursuant to Section 212.20 only for the public purpose of paying for the construction.... of a facility for a retained professional sports franchise.

14. A further declaration and determination of public purpose by the Florida Legislature is found in § 196.199(2)(a), Fla.Stat. (1995), which mandates a property tax exemption for leasehold interests in property owned by political subdivisions when the lessee serves or performs a governmental, municipal or public interest as defined in Section 196.012(6), Fla.Stat. (1995). Section 196.012(6), Fla. Stat. (1995), states:

The use by a lessee . . . of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park or beach is deemed a use that serves a governmental purpose or function when access to the property is open to the general public with or without a charge for admission. (Emphasis Supplied).

15. The Plaintiffs have also made legislative findings and determinations that the construction of the new stadium will serve a public purpose. These legislative findings and determinations are found in the following public records which were introduced into evidence:

Tampa City Council Resolution No. 1388, which was approved on August 1, 1996, expressly provides that the "construction...of the new stadium, which will serve as home of the Tampa Bay Buccaneers of the National Football League, will serve a valid public purpose by advancing the commerce and prosperity of the City of Tampa and its people...."

Tampa City Council Resolution No. 1554, which was approved on August 29, 1996, further states that "It is in the best interests of the citizens of Tampa to consent to and approve the Stadium Agreement." This resolution, moreover, attached and incorporated by reference the voluminous Stadium Agreement among the Tampa Sports Authority, the Buccaneer Stadium Limited Partnership, the City of Tampa and Hillsborough County.

The Interlocal Agreement Relating to the Distribution of Community Investment Tax Revenue by and among the County, the City, and other public bodies contains specific findings that the new stadium will fulfill a public purpose.

The TSA Resolution No. 96-121 provides: "it is necessary and serves a public purpose for the Authority to issue the Local Option Sales Tax Bonds to fund the construction of the community stadium and related facilities and improvements" and the form of the Interlocal Agreement For Stadium Financing states: " The acquisition and construction of the Stadium by the Authority complies with and has furthered the County's plan of tourist development and will promote the influx of tourists to the county and thereby benefit the local economy, and will be of substantial benefit to the entire county and thereby serves a public purpose."

16. This Court is also aware of the case law from other state in which stadiums used or intended to be used by professional sports teams were deemed to serve public purposes. See, e.g., CLEAN v. State, 928 P.2d 1054, 1060-61 (Wash. 1996); Libertarian Party v. State, 546 N.W.2d 424, 433 (Wis.1996); Rice v. Ashcroft, 831 S.W.2d 206, 209 (Mo. Ct. App. 1991); Kelly v. Marylanders for Sports Sanity, 530 A.2d 245, 257 (Md. 1987); County of Erie v. Kerr, 373 N.Y.S.2d 913, 919 (App. Div. 1975); Bzell v. City of Cincinnati, 233 N.E.2d 864, 869 (Ohio 1968). While these cases are not binding authority on this Court, they reflect the fact that, as far as this Court can determine, all but two of the jurisdictions to have considered this issue have found such stadiums to serve the public purposes.

17. However, one of the two courts to have found a stadium not to serve the public purpose is the Florida Supreme Court. Brandes v. City of Deerfield Beach, 186 So.2d 6 (Fla. 1966).^{6/} Consequently, this Court must carefully scrutinize Brandes to determine whether it is on point.

^{6/} The other court was the Supreme Judicial court of Massachusetts. Opinion of the Justices, 250 N.E.2d 547, 558 (Mass. 1969).

18. In Brandes the Florida Supreme Court held that the construction of a spring training facility for a professional baseball team, the Pittsburgh Pirates, did not serve a paramount public purpose. Certain aspects of Brandes are distinguishable from the present case. First, at the time the Brandes case was decided in 1966, there was no legislative declaration by the state that the construction of a sports facility served a public purpose. Indeed, Fla. Stat. §288.1162(7) which sets forth the public purpose associated with the construction of a sports facility, was not even enacted until 1988. Moreover, Chapter 95-304, Laws of Florida, which expanded the subsidization of sports facilities to also include a “facility for a retained professional sports franchise”; was not enacted until 1995, 29 years after Brandes was decided. Pursuant to Chapter 95-304, the Florida legislature has committed \$2 million per year to assist the Plaintiffs in retaining the Tampa Bay Buccaneers whereas the state legislature did not commit any money for the spring training facility in the Brandes case. Second, the sports facility in Brandes was merely to serve as a spring training facility for exhibition games, and if possible, minor league baseball games, whereas in the matter at hand the new stadium will serve as the home of the Buccaneers for both exhibition games as well as regular season games and serve as home to the Tampa Bay Mutiny soccer team, the University of South Florida football team, the 2001 Super Bowl, the Outback Bowl, high school football games, and a variety of non-athletic events including tractor pulls and concerts. Clearly the public purpose of a multi-purpose community stadium is much greater than the public purpose associated with the construction of a facility that is only to be utilized as a spring training and minor league baseball facility. Third, there is no

indication in Brandes of what the economic impact of the spring training team would have been. By contrast, as discussed earlier, there was testimony in this case that demonstrated that the Buccaneers provide a substantial economic benefit to the community and this Court so finds.

19. On the other hand, the facility in Brandes was to be paid for by rentals from the lessee, whereas the new Tampa Stadium will be financed primarily by sales taxes. Nevertheless, this factor by itself would not be enough to defeat a finding of paramount public purpose.

20. This Court finds most significant the fact that under the Stadium Agreement, the Buccaneers would receive the first \$2 million per year from non-Buccaneer events (such as college football games, soccer games, tractor pulls and concerts) at the new stadium, net of direct costs to be reimbursed to TSA. According to the testimony of TSA employee Henry Saavedra, the net annual revenue from non-Buccaneer events will not exceed \$2 million for three to five years. Consequently, during that period of time, TSA will receive none of the net revenue from non-Buccaneer events. Over the entire period of the Stadium Agreement, the majority of the net revenue from non-Buccaneer events at the new stadium will accrue, not to the TSA, the public body which owns the stadium, but to a private business, the Buccaneers, which does not even conduct those events. For this reason only, the paramount public purpose of the project is defeated.

21. The revenues TSA will receive from the new stadium will not be enough to cover the operation and maintenance expenses. Furthermore, this Court notes that the expenditures which TSA is required to make for operation and maintenance of the new

stadium will increase each year due to inflation. According to witness Saavedra, the total operations and maintenance deficit over the lease period is estimated at \$24 million. Such deficit would have to be paid for by the taxpayers - two-thirds by the County and one-third by the City. The fact that such a burden will be imposed upon the taxpayers further reduces the possibility that this project could be deemed to serve a paramount public purpose.

22. Although this Court recognizes that the sales tax increase which would partially finance the new stadium was approved by the voters of Hillsborough County in a referendum, there are three reasons why this Court does not believe this fact to be dispositive in favor of Plaintiffs. First, it is impossible to know to what extent voters cast their ballots on the tax issue based on their feelings about the stadium and to what extent they voted based on the other infrastructure projects to be financed by the sales tax. Second, the aspects of the project which prevent it from serving a paramount public purpose are distinct from the sales tax increase and were not submitted to the voters. Third, and most important, the Plaintiffs may not violate the Florida Constitution whether or not they conduct a referendum.

CONCLUSION

23. For the foregoing reasons, it is hereby adjudged that:

A. The Complaint of TSA, the County, and the City to validate the bonds to finance the cost of the acquisition, construction, operation and equipping of the new stadium and related facilities and improvements, including, but not limited to, the practice facility and the demolition of the existing stadium, is DENIED.

-- B. The Amended Complaint of Poe is GRANTED to the extent that this Court declares that the stadium project as currently constituted does not serve a paramount public purpose and violates Article VII, Section 10 of the Florida Constitution.

DONE AND ORDERED at Tampa, Florida this 21 st day of March, 1997.


S. PENDINO
CIRCUIT COURT JUDGE

Copies furnished to:

Emeline C. Acton, Esquire
James D. Palermo, Esquire
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J. Michael Hayes

SUMMARY OF MATERIAL FINANCIAL TERMS OF 1996 STADIUM AGREEMENT

CATEGORY	I. 1996 STADIUM AGREEMENT
Cost of New Stadium	\$168,561,522
Stadium License Fee	License fee of \$2 million per year or \$60 million total; see also "Ticket Surcharge."
Exclusive use of Luxury Suites	Yes, fee for exclusive use included in license fee.
Training Facility	TSA provides a training facility at a maximum cost of \$22 million, Bucs pay \$1 million rent per year or \$30 million total.
Bucs Ticket Revenue or Surcharge Revenue payable to TSA	Maximum 8 percent ticket surcharge to yield \$1,930,000 per year for TSA or \$57,900,000 total, Surcharge may not exceed \$2.50 per ticket. Surcharge may extend to concession sales and parking fees if estimated ticket surcharge revenue is less than \$1,930,000.
Responsibility for NFL game day expenses	TSA
Stadium Management	TSA
Parking and concession Revenue for Bucs games and other Bucs events	Bucs get 100 percent of parking and concession revenue; Bucs also entitled to upfront payment from concessionaire.
Revenue from other stadium events (license fees, parking, concessions)	Bucs get first \$2 million net of direct costs reimbursed to TSA; TSA and Bucs split remainder 50/50
Advertising	Bucs get all advertising revenue from scoreboard, video board and signage, etc. at Bucs games and other Bucs events, - with respect to other stadium events: (a) Licensees have the right to utilize one-half of the wall surrounding the playing field for sponsors' signage, to place temporary signs at entrance gates and landings and to display up to 2 inflatable signs on stadium property. (b) Bucs retain the right to display signage on the other one-half of the playing field wall (i.e., every other sign).
Novelties and Programs	Bucs have exclusive right to sell (or contract for sale) all novelties and programs at Bucs games or Bucs events and to retain all revenue generated therefrom. TSA controls right to sell all novelties and programs at other stadium events and revenue is shared 50/50 between TSA and Bucs after the Bucs receive the 1st \$2,000,000 per year of revenue from all "other stadium event" sources, net of direct costs reimbursed to TSA. See also "Team Stores" below.
Television and Broadcast Revenue	Bucs retain all TV and broadcast revenue from Bucs games
Number of Parking Spaces	TSA shall provide number of current parking spaces (i.e., 9,900 spaces).
Namania Rights	Bucs control.
Team Stores/Administrative Offices	Bucs have exclusive use of two retail stores and a TV/radio production studio at the stadium to be built out at Bucs expense. Bucs may sell any items they are licensed to sell except they may not sell "single-event" items in competition with a stadium licensee. No provision for Bucs administrative offices at stadium.
Club Lounge	TSA controls use of club lounges. Bucs have right to use club lounges for events sponsored by Bucs provided Bucs pay direct costs.

Ticket Offices'.	Bucs given exclusive use of ticket office at stadium, including 6 ticket windows. 30 additional ticket windows will be available for the joint use of TSA and the Bucs .
Capital Improvements	TSA agrees to establish a Capital Improvement Fund in the amount of \$2.5 million by 1/31/2007 , increasing thereafter at \$750,000 per year until fund reaches \$15 million. Monies in the Capital Improvement Fund may only be spent for Capital Repairs and Capital Improvements if agreed to by the TSA, the City, the County and the Bucs .
Development Rights on TSA Property	Bucs control development rights subject to City, County and TSA approval of any development. Bucs must replace parking spaces absorbed by development by building parking garage or by providing offsite parking acceptable to TSA. Bucs pay development fee of \$500,000 per year or \$15 million total, payable whether or not development takes place.
Responsibility for Maintenance and Repair	TSA
I I Responsibility for Funding any Deficit in TSA Debt Service or Operations and Maintenance Expense	Hillsborough County - 2/3, City of Tampa - 1/3.
Term	8/28/96 to 1/31/2028 with 4 additional 5-year renewal options. During renewal term, licensee fee, development rights fee and training facility rent increases from \$3,500,000 per year to \$7,000,000 per year in the aggregate.