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How Much Does That $8.00 Yankee Ticket Really Cost? An Analysis of Local Governments' Expenditure of Public Funds to Maintain, Improve or Acquire an Athletic Stadium For The Use of Professional Sports Teams

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HOW MUCH DOES THAT $8.00 YANKEE TICKET REALLY COST? AN ANALYSIS OF LOCAL GOVERNMENTS’ EXPENDITURE OF PUBLIC FUNDS TO MAINTAIN, IMPROVE OR ACQUIRE AN ATHLETIC STADIUM FOR THE USE OF PROFESSIONAL SPORTS TEAMS

I. Introduction

Since the beginning of the 20th century, social commentators have acknowledged professional sports as important to the economic and cultural life of American cities.1 The presence of a particular sports team has become interwoven with its host city; for example, the Yankee pinstripes are one of the elements that make New York "The Big Apple."2 Approximately fifty American cities host major league professional teams in sports such as baseball and football.3 Municipalities seek the economic and cultural benefits professional sports franchises can bring,4 and courts have long recognized the benefits professional sports teams have upon a locality.5 Many municipalities have faced the dilemma of attracting or keeping a professional baseball or foot-

   The Yankee pinstripes belong to New York like Central Park, like the Statue of Liberty, like the Metropolitan Museum of Art, like the Metropolitan Opera, like the Stock Exchange, like the lights of Broadway, etc. Collectively they are 'The Big Apple'. Any loss represents a diminution of the quality of life here, a blow to the city's standing at the top, however narcissistic that perception may be.
   Id.
4. Sport Franchise, supra note 1, at 519.
   The Legislature may reasonably determine that there are economic, civic, and social advantages to Boston, to eastern Massachusetts, and to the Commonwealth as a whole, from providing in the largest city in the [s]tate a stadium . . . to provide for audiences sufficient to support enterprises of interest to large numbers of people . . . .
   Id.; see also Wilson v. Board of Supervisors of Elections of Baltimore City, 273 Md. 296, 304-05, 328 A.2d 305, 310-11 (1974) (Murphy, C. J., dissenting) (Taxpayer action to enjoin the respondents from submitting a proposed charter amendment to the voters of the city was defeated. The amendment, which the voters of Baltimore ultimately adopted, was construed by the court to prevent the use of city funds in the construction of a new stadium in Baltimore).
ball team within the friendly confines of a city or county. Local governments have undertaken to acquire new stadiums or to upgrade existing facilities in order to entice teams to play in their communities. The acquisition, and subsequent retention, of professional sports franchises is a significant element in the economic development plans of many large cities. These efforts to acquire, maintain, or renovate sports stadiums have prompted taxpayer lawsuits to prevent the expenditure of government funds in these endeavors.

A local government's authority to borrow or use funds for these projects derives from appropriate enabling legislation. In all challenges to local governments' economic support for sports stadiums, the threshold question is whether the project complies or accords with enabling legislation, starting with the specific language of the applicable enabling legislation.

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7. Hereinafter, "local government" will be used to denote either a state, county or municipal government.

In addition to Maryland's financial support for the Baltimore's Memorial Stadium and public ownership of the Cleveland and New Jersey Meadowlands stadiums, the Pittsburgh Stadium Authority owns Three Rivers Stadium; the Metropolitan Council Sports Facilities Commission owns the Metrodome; the Louisiana Stadium & Exposition District owns the Louisiana Superdome; the Tampa Sports Authority owns Tampa Stadium; the City of Irving owns Texas Stadium; the Pontiac Stadium Authority owns Pontiac Silverdome; the Jackson County (Mo.) Sports Complex Authority owns both Royals Stadium and Arrowhead Stadium; the City of Philadelphia owns Veterans Stadium; King County (Wash.) owns the Kingdome; the City of Atlanta and the Fulton County Recreation Authority own The Omni; and the City of Philadelphia owns the Spectrum.

Id. at 462-63, 530 A.2d at 257-58.
9. Id. at 462, 530 A.2d at 257.
10. See Ginsberg v. City and County of Denver, 164 Colo. 572, 576, 436 P.2d 685, 686-87 (1968) (the city's acquisition of a sports stadium allowed); Brandes v. City of Deerfield Beach, 186 So. 2d 6 (Fla. 1966) (proposed municipal bond issue to finance project in which local officials agreed to purchase land, construct stadium buildings, and lease facility to a baseball team for spring training was invalidated as not being for a public purpose and an unconstitutional lending of public credit to a private corporation); Hertel v. Racing Comm'r, 68 Mich. App. 191, 194, 242 N.W.2d 526, 527 (1976) (challenge to continued public funding of Pontiac Stadium defeated); Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 64, 233 N.E.2d 864, 866 cert. denied, 391 U.S. 601 (1968) (municipality may construct stadium and rent it to private persons who will derive profits from stadium); Martin v. City of Philadelphia, 420 Pa. 14, 15, 215 A.2d 894, 895 (1966) (city had the authority to construct a stadium and lease it to a professional sports team).

Against the background of statutory construction, courts have considered a number of constitutional objections to these projects. In those cases where the project complied with the enabling legislation, courts have tended to uphold governmental borrowing and spending for the acquisition, maintenance, and improvement of sports stadiums on constitutional grounds. Lack of compliance with enabling legislation is fatal to a project. However, compliance with such legislation does not assure the project's legal viability. Even if a project complies with the legislation a court may, nonetheless, rule the project, or the enabling legislation itself, unconstitutional.

Part II of this Note reviews the background of the controversy surrounding the expenditure of public funds for athletic stadiums for use primarily by professional sports teams and discusses the analyses courts have developed to determine a project's legality and constitutionality. Part III addresses the economic and policy issues involved in the expenditure of public funds in stadium projects, and suggests methods local authorities may use to prevent court challenges of these projects. Finally, this Note concludes that state governments, or their political subdivisions, should expend funds to acquire and maintain sports stadiums as long as they: (1) weigh certain intangible factors, in addition to the direct monetary expenses and revenues when developing the cost/benefit analysis of a stadium; (2) provide stadium authorities with proper guidelines for managing the stadium in an effort to protect the public's interests in the stadium; and (3) require substantial private financing.

II. To Spend or Not to Spend, That is the Question

Many local governments view hosting professional sports teams as a significant part of their economic development programs. Before agreeing to locate their teams in a given community, franchise owners have demanded public subsidies. Owners have gravitated toward

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11. A discussion of specific enabling legislation is beyond the scope of this Note, except where the language of the legislation is explicitly addressed in court opinions and is material to the holding.
12. See Meyer v. City of Cleveland, 35 Ohio App. 20, 27, 171 N.E. 606, 607-08 (1930); Bazell, 13 Ohio St. 2d at 72, 233 N.E.2d at 871; Ginsberg, 164 Colo. at 580-81, 436 P.2d at 688-89; Martin, 420 Pa. at 23, 215 A.2d at 898-99.
13. Brandes, 186 So. 2d at 12.
14. The projects discussed herein involve the use of either existing funds or bond proceeds. The term “public funds” will be used to mean either of these sources unless otherwise indicated.
15. See Lessons from Baltimore, supra note 3, at 411.
16. Id.; see also infra notes 43-54, 61-86 and accompanying text.
those cities with relatively new, modern and, in many cases, domed stadiums. To make their cities more attractive to team owners, many local governments have gambled and constructed stadiums without first securing a tenant. Taxpayer suits challenging such stadium projects have become a significant factor to be considered by local governments when designing their economic development plans.

A. Stadium Acquisition: The Houses that John Q. Public Builds

A majority of sports stadiums and arenas in which professional sports teams play are publicly owned. The first step in many local business development plans is the construction of a stadium. In the late 1970s and early 1980s local governments spent approximately $850 million to construct new sports facilities and renovate existing stadiums and arenas.

There are strong policy arguments on both sides of the question of whether public funds should be used to finance stadium projects. On one hand, professional sports play a major role in the cultural life of modern society and there is a great public desire for sports facilities. Watching baseball and football games is a national pastime in the United States; these spectator sports provide public relaxation and entertainment. Local government officials argue that there are sound economic reasons for subsidizing sports stadiums. These reasons include increased economic activity directly and tangentially related to the presence of a stadium and the events held in the stadium.

On the other hand, there are indications that the goal of increased economic activity is not achieved by investment in sports stadiums. In

17. See infra note 41 and accompanying text.
18. See infra notes 39-42 and accompanying text.
19. See generally infra notes 93-244 and accompanying text.
22. Id.
25. Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 69, 233 N.E.2d 864, 869 (1968), quoting Cleveland v. Board of Tax Appeals, 153 Ohio St. 97, 91 N.E.2d 480 (1951) (Chief Justice Taft quoted his opinion in a prior case in which the court held that the use of the Cleveland stadium represented a use for public purpose, although the use was not exclusively for public purposes).
26. See Baade, supra note 20, at 1.
27. Id. at 12; see also infra notes 244-50 and accompanying text.
a recent study, one economist found no correlation between the presence of a sports stadium or arena and local long-term economic growth.\textsuperscript{28} The author of the study concluded that: (1) spending at professional sports events "diverts dollars from other leisure activities" and (2) stadium construction adds income to a local economy only in the short term.\textsuperscript{29} In the long run, the presence of sports stadiums encourages a switch in economic activity from the manufacturing sector to the service sector.\textsuperscript{30}

Comparing the construction costs of publicly owned stadiums with those of privately owned stadiums, a second economist concluded that privately owned facilities were built more economically and efficiently.\textsuperscript{31} Privately owned stadiums were also more efficiently operated than publicly owned stadiums.\textsuperscript{32} Examples of publicly owned stadium projects that have lost money include the New Orleans Superdome and the Pontiac Silverdome.\textsuperscript{33}

Stadiums are expensive to construct and to operate; those that are not the home of a professional sports team may host major events infrequently,\textsuperscript{34} thereby making it difficult for the stadium to generate enough revenue to cover its maintenance costs. When a government-owned stadium cannot cover operating expenses from its revenues, the taxpayers must foot the bill.\textsuperscript{35} Several major stadiums have generated large losses in the past and continue to do so. These losses must be covered by the public treasury: the Oakland Coliseum lost $30 million between 1964 and 1984; the Metrodome in Minnesota lost $1.8 million every year during the early 1980s; the New Orleans Superdome incurred deficits of between $3 million and $5 million dollars per year for the first nine years of its existence.\textsuperscript{37} Taxpayers in California, Minnesota and Louisiana have had to cover the operating losses of local stadiums.\textsuperscript{38}

Despite these warning signs, local governments have gone forward

\textsuperscript{28} Baade, \textit{supra} note 20, at 12-18. The author analyzed income and population data of areas with professional football and baseball teams against general economic factors.

\textit{See id.}

\textsuperscript{29} \textit{Id.} at 12-18.

\textsuperscript{30} \textit{Id.}

\textsuperscript{31} Baim, \textit{supra} note 21, at 3.

\textsuperscript{32} \textit{See} Baade, \textit{supra} note 20, at 5-8.

\textsuperscript{33} \textit{Id.} at 5.

\textsuperscript{34} \textit{See} Alm, \textit{Sports Stadiums: Is the U.S. Overdoing It?}, 96 U.S. \textit{NEWS} \& \textit{WORLD REP.}, May 21, 1984, at 51, 52 [hereinafter Alm].

\textsuperscript{35} \textit{Id.}

\textsuperscript{36} \textit{Id.}

\textsuperscript{37} \textit{Id.}

\textsuperscript{38} \textit{Id.; see infra} notes 50-51 and accompanying text. The Pontiac Silverdome also has experienced losses. \textit{Id.}
and built stadiums without having a signed tenant, hoping that they would attract one. Occasionally the gamble pays dividends. For example, Charlotte, NC, Minneapolis, MN, Miami, FL, and Orlando, FL, all were finalists for National Basketball Association franchises because stadiums were being erected. The Hoosier Dome in Indiana was built before Robert Irsay, owner of the Colts, agreed to relocate there from Baltimore. Also, major league baseball franchises have been granted to Miami and Denver after these cities undertook construction of stadiums.

B. Sports Franchise Acquisition: If You Build It, We Shall Come

Despite franchise instability and escalating demands by team owners for increased subsidies such as stadium improvements, lower rents, and tax incentives, many cities continue to pursue sports franchises. During the 1980s, Los Angeles, Phoenix and Indianapolis successfully induced team owners to shift their National Football League franchises from long-standing host cities. Los Angeles acquired the Raiders from Oakland, Phoenix acquired the Cardinals from St. Louis and, after a bidding war, Indianapolis captured the Colts from Baltimore. The City of Anaheim made a gratuitous transfer of a parcel of land valued at $25 million to the Los Angeles Rams to persuade the team to move from downtown Los Angeles to Anaheim.

On the other hand, several host cities have faced the loss of major league sports teams. In order to keep franchises in their cities, local officials have granted a number of taxpayer subsidies to team owners. These subsidies include below market rent, tax exemptions and

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40. Id. A review of any daily general circulation newspaper will show that all four cities hosted NBA franchises at the time of this writing.
42. See Recio, supra note 39, at 90.
43. Lessons from Baltimore, supra note 3, at 411-12.
44. During the past several years there were discussions about the Raider franchise returning to Oakland early in the 1990s. Ostler, Jilted by Raiders, Irwindale's Life is the Pits, The National Sports Daily, Feb. 23, 1990, at 19; see also infra notes 61-81 and accompanying text.
46. See Alm, supra note 34, at 51.
47. Ross, Monopoly Sports Leagues, 73 MINN. L. REV. 643, 650 n.28 (1989) [hereinafter Monopoly].
48. See id. at 649.
tax rebates. The State of Louisiana agreed to remit to the team all revenue the Saints generate by playing in the Superdome. This action, combined with the state's abolition of an amusement tax on tickets, transfers $2.5 million per year from the state's taxpayers to the Saints. Philadelphia spent $30 million to construct skyboxes for the Eagles with the agreement that the Eagles would retain the revenue from the boxes. The City of Philadelphia provided the Phillies with $1 million dollars for a new scoreboard, allowed the team to construct special baseball suites, and assumed annual loan payments of $745,000 on behalf of the team. The agreement also permitted the team to retain most of the revenue earned by the suites.

There is little concrete, readily available information about the actual, bottom-line effects on an individual city of hosting a sports team. Much of the debate on the issue of municipalities hosting sports franchises centers on considerations that are difficult to measure, such as indirect economic benefits and intangible social goods such as civic pride.

Citizens and municipal leaders favoring the presence of a sports team in their city, despite the related public costs, base their position on the expected economic benefits, improved civic pride, and increased prestige for the city that result from a team's presence. The expected economic benefits include new business activity with the resultant increase in jobs and concomitant income tax revenue. It is arguable that the relocation of the Dodgers from New York to Los Angeles had no major effect on either city; however, many smaller cities have been willing to invest money in building stadiums with the

49. Id.
50. Id. at 650 n.28. The Saints lease the Superdome at a rental price tied to ticket sales. Id.
51. Id.
52. Id.
53. Id.
54. Id. In March 1990 the Phillies announced negotiations with Philadelphia for the team's purchase of Veteran's Stadium for an estimated sales price of $50 million - $70 million. The National Sports Daily, Mar. 30, 1990 at 39, col. 2. The team expressed a desire to make major capital improvements to the stadium; however, they were concerned that the city could not afford to finance the project. Id.
55. Lessons from Baltimore, supra note 3, at 412. Economists have begun to analyze the information collected from a number of cities and have tried to develop models that other cities can use. See generally id.; Baim, supra note 21; Sport Franchise, supra note 1; Baade, supra note 22.
56. Lessons from Baltimore, supra note 3, at 412.
57. Id.
58. Id.
hope that there would be a significant impact upon the local economy.\footnote{60} Obviously, there is no guarantee that a city will successfully lure a professional team. The relocation of the Raiders illustrates the pitfalls local governments face when pursuing sports franchises. The Raiders moved from Oakland, CA to Los Angeles in 1982.\footnote{61} In 1987, the team announced that they might leave Los Angeles and relocate to Irwindale, CA, a town of 1,080 people.\footnote{62} Irwindale gave the Raiders a $10 million deposit to induce the move,\footnote{63} which the Raiders were to

\footnote{60. See generally Recio, supra note 40, at 90.}

Baseball's spring training season illustrates the relationship between professional sports and local economies. In a 1987 study, the Florida Department of Commerce prepared a study quantifying the economic impact of baseball on the state's economy. The National Sports Daily, Feb. 13, 1990, at 8 (chart). The study indicated several sources of income the state received during the Major League Baseball spring training season. Fans were estimated to spend $3.4 million at ballparks during the 30-day season, which translated into $189,000 per team. \textit{Id.} The 18 baseball teams which play in Florida during spring training accounted for $11.9 million or $661,000 per team. \textit{Id.} Non-resident travel parties in which at least one member attended one game contributed $282.6 million. \textit{Id.} The study attributed spring training with providing 378,000 full-time and part-time employment positions with concomitant income of $3.1 billion. \textit{Id.}

This should be contrasted with the public costs associated with spring training. Dunedin, the Florida city that hosts the Toronto Blue Jays during the spring, floated bonds to finance a 6,300-seat stadium which cost $2.25 million to build. The National Sports Daily, Feb. 13, 1990, at 8, col. 2. Debt service on the bonds was to come from the city's receipt of a percentage of ticket sales, parking revenue and concessions sales over a 10 -11 year period. \textit{Id.} The major league baseball labor dispute during the 1990 spring training season clouded the prospect for the city to reach the projected revenue level. \textit{Id.}

The spring training facility the New York Mets built in Port St. Lucie, Fla. was the catalyst for the town's phenomenal growth. \textit{Id.} at 9. The population of the town grew from 14,000 to 55,000 in ten years. \textit{Id.} In a three year period 30 restaurants and three hotels opened. \textit{Id.} But the infrastructure of the town suffered because of this growth. The existing roads could not handle the increased traffic and had to be expanded. \textit{Id.} To accomplish the expansion of a major thoroughfare the town planned, as of March 1990, to use eminent domain to acquire portions of residential land. \textit{Id.} As a consequence, most houses along this roadway were for sale. \textit{Id.} The town's schools were ill-equipped for the rapid increase in students and portable schools had to be added to reduce the student-teacher ratio to an acceptable level. \textit{Id.}

The economy of Port St. Lucie is very dependent on the Mets; the aforementioned labor dispute was predicted to cause the town to lose $1.5 million for every week lost during spring training. \textit{Id.} The dispute caused the spring training season to be reduced from six weeks to three weeks. The National Sports Daily, Apr. 10, 1990 at 22, col. 1.


\footnote{63. \textit{Id.}}
keep if the town could not construct a stadium.\textsuperscript{64} Irwindale could not arrange financing to build the stadium by the deadline set in the agreement and Al Davis, the Raiders' owner, kept the $10 million.\textsuperscript{65} In addition to the deposit, the town expended another $10 million in appraisals, reports and legal fees.\textsuperscript{66} The town's actions were in part based on a financial report that the Raiders would bring $200 million into the area each year.\textsuperscript{67} Including Oakland, four cities had entered the competition for the team;\textsuperscript{68} Irwindale's offer was $155 million.\textsuperscript{69} Irwindale ultimately lost because Davis was concerned about the town's ability to construct a stadium.\textsuperscript{70} Irwindale has little to show for its $20 million plus "investment" in the Raiders.

In 1989, Sacramento, CA voters approved a bond issue to build a stadium for the Raiders.\textsuperscript{71} The bond approval expired in February 1990 when Al Davis did not accept the offer.\textsuperscript{72} On March 12, 1990, Al Davis announced that the team would return to Oakland.\textsuperscript{73}

In an attempt to recapture the Raiders, officials from the City of Oakland and Alameda County agreed to guarantee the team a package valued in excess of $600 million.\textsuperscript{74} The package included $146 million in guaranteed ticket sales revenue for the first five years of the fifteen-year contract, a $55 million franchise fee, and $53 million in stadium renovations.\textsuperscript{75} The funding sources for this package included revenues on luxury boxes and certain well-situated seats, and annual fees on certain other seats.\textsuperscript{76} In addition, local officials announced the intent to sell the stadium's name for at least $10 million\textsuperscript{77} and, using a more traditional funding source, Oakland planned to issue $127 million in bonds.\textsuperscript{78} However, the Raiders balked at submitting the con-

\begin{itemize}
\item \textsuperscript{64} Id.
\item \textsuperscript{65} Id.
\item \textsuperscript{66} Id.
\item \textsuperscript{67} Id.
\item \textsuperscript{68} Id. In August 1990, it was announced that the City of Fontana, Calif. had submitted a bid to host the Raiders franchise. The National Sports Daily, Aug. 19, 1990, at 35, col. 1.
\item \textsuperscript{69} The National Sports Daily, Mar. 13, 1990, at 4 (chart).
\item \textsuperscript{70} See Ostler, Jilted by the Raiders, Irwindale's Life is the Pits, The National Sports Daily, Feb. 23, 1990, at 19.
\item \textsuperscript{71} The National Sports Daily, Mar. 13, 1990, at 4 (chart).
\item \textsuperscript{72} Id.
\item \textsuperscript{73} The National Sports Daily, Mar. 13, 1990, at 4.
\item \textsuperscript{74} The National Sports Daily, Mar. 14, 1990, at 6.
\item \textsuperscript{75} Id.
\item \textsuperscript{76} Id.
\item \textsuperscript{77} Id.
\item \textsuperscript{78} The National Sports Daily, Mar. 3, 1990, at 5, col. 6.
\end{itemize}
tract to a public referendum demanded by opponents of the project.\textsuperscript{79} In September, 1990, Al Davis announced his intention to allow the Raiders to remain in Los Angeles for twenty additional years.\textsuperscript{80} The agreement between the Raiders and the Los Angeles Coliseum authorities, and subject to the approval of governmental agencies, calls for the owners to make renovations to the Los Angeles Coliseum at an estimated total cost of $145 million.\textsuperscript{81}

Critics of the trend for cities to accede to the demands of franchise owners for increased subsidies argue that the only beneficiaries of such subsidies are wealthy team owners.\textsuperscript{82} One method by which a local community can maintain a sports franchise without a large outlay of public funds is to have the team or the team's owner have a financial stake in the stadium.\textsuperscript{83} In the twenty-two franchise moves

\textsuperscript{79} The National Sports Daily, Apr. 17, 1990, at 33, col. 3. A group of 33,000 Oakland voters signed a petition calling for a referendum on the proposed Raider project. Id.
\textsuperscript{80} N.Y. Times, Sept. 12, 1990, at D30, col. 1.
\textsuperscript{81} Id. The Coliseum is publicly owned but managed by a private firm. Id. In addition, the Coliseum Commission dropped a $58 million suit against the Raiders. Id. The suit, alleging a breach of contract by the Raiders, was brought in 1987 as a response to the announcement that the Raiders intended to move to Irwindale. Id.; see supra notes 63-65 and accompanying text.

The subsidies a given team will receive from a municipality will vary from city to city and from contract to contract. In addition to the Raiders example, the opinion in Brandes v. City of Deerfield Beach, 186 So. 2d 6, 8-9 (Fla. 1966) provides another illustration of subsidies sports teams can obtain from local governments. Under the lease in Brandes, the city was to furnish peripheral athletic facilities and an infrastructure to support the stadium, as well as the stadium. Id. at 8. These other facilities included four additional baseball fields, lighting, a sliding pit, a running track, and an observation tower. In addition, the city was to provide space for parking, all maintenance, and utilities. Id. Because the stadium in Brandes was to be used by a baseball team for spring training, the City of Deerfield Beach was also to provide housing for 274 people, dining facilities for 180 people and a kitchen. Id. at 8. The court's decision that the project did not meet public purpose criteria was affected by the level of benefits the city was called upon to provide. See id.

Another example of the concessions sought and received by team owners involves the move of the Baltimore Colts. To acquire the NFL Colts, Indianapolis had to guarantee minimum annual ticket sales of 45,000 for 12 years, contribute $4 million for a team training facility, and provide a ten-year, $12.5 million loan at a below market interest rate. Aim, supra note 34, at 51. In fact, the offer Baltimore made to keep the Colts was greater than that of Indianapolis. Lessons from Baltimore, supra note 3, at 424. Had the Colts remained in Baltimore, the team owner would have received a ten-year, $15 million loan at 6.5% interest, with local business leaders pledging more than $500,000 annually to fill the gap between the below market rate and the prime rate. Id. at 414. In addition, the Colts would have received guaranteed average ticket sales of at least 43,000 tickets per game from local business leaders. Id. The team also would have received an additional $4.4 million in cash from a sale-leaseback arrangement for the Colts' training facility. Id. at 414. Benefits packages such as these face increased public scrutiny.

\textsuperscript{82} Sport Franchise, supra note 1, at 412.
\textsuperscript{83} Baim, supra note 21, at 8-9.
between 1970 and 1985 only two involved a move from a privately owned stadium. Critics also question the magnitude of projected economic benefits in light of the subsidies that must be expended to attract a team. There is no solid measurement of the benefits of a sports stadium; however, as illustrated by the Raiders’ deal, many government officials are willing to invest large sums of public money on the assumption that the investment has a multiplier effect on the local economy.

C. Challenges to the Validity of Governmental Expenditures to Acquire Sports Stadiums

A number of local governments or sports authorities own stadiums that are used primarily by professional baseball and football teams. Some of the funding mechanisms for these stadium projects survived constitutional challenges. The challenges to these sports stadiums can be grouped into four broad categories: (1) the project lacked a public purpose justifying the use of government financing; (2) the project involved the illegal application of a government’s credit support to a private entity; (3) the government subdivision exceeded its statutory borrowing limits with the proposed bond issue; and (4) the project violated zoning limitations.

I. Public Purpose

One issue courts consider is whether the acquisition of a stadium to be used for professional sporting events is a public purpose for which

84. Id. See supra notes 32-33 and accompanying text.
85. Id.
86. See Salisbury, supra note 59, at 327. The theory is that every $1 spent in acquiring a sports stadium will bring more than $1 of revenue into the community. Id. at 330.
87. See supra note 8.
89. See infra notes 98-172 and accompanying text.
90. See infra notes 173-210 and accompanying text.
91. See infra notes 211-27 and accompanying text.
the government can legally exercise its fiscal powers.\textsuperscript{93} Many states restrict government spending to public projects.\textsuperscript{94} Generally, courts have allowed legislative arms of local governments wide discretion to determine how best to promote public welfare and enjoyment.\textsuperscript{95} These courts have recognized the right of municipalities to borrow or expend funds in connection with projects relating to public recreational and amusement facilities, such as sports stadiums.\textsuperscript{96} Judicial construction of “public purpose” has been liberal and has caused an expansion of what constitutes a public purpose.\textsuperscript{97} In keeping with this trend, several state legislatures have expressly proclaimed that proposed stadium projects represent a public purpose in an attempt to foreclose constitutional challenges on public purpose grounds.\textsuperscript{98}

The provision of multipurpose sports stadiums or arenas is not as clearly a public purpose as supplying housing, mass transportation, highways, educational facilities and other necessities.\textsuperscript{99} Providing football and baseball stadiums, designed not only for public recreation but also for substantial private profit, is not a primary or necessary government function because the private sector could be a substitute provider.\textsuperscript{100} The potential for a substantial profit separates sports stadiums from other public facilities such as parks and beaches that exist primarily for the use and enjoyment of the public as a whole. For example, Miami residents rejected a bond referendum to finance reno-


\textsuperscript{94} \textit{See generally id.}

\textsuperscript{95} \textit{See Lifteau v. Metro. Sports Facilities Comm'n,} 270 N.W.2d 749, 753-54 (Minn. 1978).

\textsuperscript{96} \textit{Ginsberg,} 164 Colo. 572, 436 P.2d 685; \textit{Lifteau,} 270 N.W.2d 749; \textit{Bazell,} 13 Ohio St. 2d 63, 233 N.E.2d 864. \textit{But see Brandes v. City of Deerfield Beach,} 186 So. 2d 6 (Fla. 1966); \textit{Opinions of the Justices to the House of Representatives,} 356 Mass. 775, 250 N.E.2d 547 (1969).

\textsuperscript{97} \textit{Ginsberg,} 164 Colo. at 580, 436 P.2d at 688.

\textsuperscript{98} \textit{See, e.g. Opinions of the Justices,} 356 Mass. 775, 250 N.E.2d 547; Reyes v. Prince George's County, 281 Md. 279, 303, 380 A.2d 12, 25 (1977) (challenge by taxpayer to county revenue bond issuance where the proceeds were to be lent to a partnership to finance acquisition of an arena defeated); Alan v. Wayne County, 388 Mich. 210, 200 N.W.2d 628, \textit{reh'g denied}, 388 Mich. 626, 202 N.W.2d 277 (1972); In re County of Erie v. Kerr, 49 App. Div.2d 174, 177-78, 373 N.Y.S.2d 913, 917 (4th Dept. 1975) (attempt by town to tax Rich Stadium as private property defeated on grounds that the stadium, owned by the County of Erie, was still being used for the public purpose for which the stadium was created).


vations to the Orange Bowl three times in twelve years. Joe Robbie, owner of the Miami Dolphins team which played its home games in the Orange Bowl, ultimately financed the construction of a new stadium without the direct allocation of public funds. The opportunity for economic gain from owning the stadium was likely a greater incentive than the desire to benefit Miami citizens.

Sports arenas do not represent a public purpose if private organizations operate the facilities for profit. The public nature of a stadium is diluted when private parties earn substantial revenues from operating the facility. The Massachusetts Supreme Court, in Opinions of the Justices, decided that a proposed stadium is not a valid public purpose despite a declaration in the proposed legislation to the contrary. In Opinions of the Justices, the Massachusetts House of Representatives referred fourteen questions to the Justices of the Supreme Judicial Court of Massachusetts. These questions related to a proposed statute which would provide for the financing, construction and operation of a multipurpose stadium near Boston. The House of Representatives voted to resolve concerns about the constitutionality of the bill, if enacted, by having the court provide an advisory opinion. Among the questions the justices answered was whether the legislation could contain provisions for bond issuance to finance the cost of the stadium. A provision of the Massachusetts Constitution required that public funds be expended only for public purposes pursuant to a legitimate governmental function. The legislature questioned whether a proper public purpose would be served by the stadium thereby justifying the use of public funds or other govern-

102. See infra note 237 and accompanying text; see also Short Yardage, supra note 105.
104. 356 Mass. 775, 250 N.E.2d 547.
105. Id. at 796-99, 250 N.E.2d at 558-60. The statute declared that the purposes of the project were public ones. Id.
106. Id. at 775, 250 N.E.2d 547.
107. Id. at 755-77, 250 N.E.2d at 547-49.
108. Id. at 778, 250 N.E.2d at 549.
109. Id.
110. Id. at 810, 250 N.E.2d at 564.
mental benefits such as tax incentives.\textsuperscript{111} The court was unwilling to find that the project satisfied a governmental objective in the absence of adequate standards and principles set forth by the local legislature.\textsuperscript{112} The justices sought standards to govern the operation of a stadium to ensure the protection of all the varied public interests - including the use of the stadium for activities other than professional sports events - that the stadium was built to accommodate.\textsuperscript{113}

In answering the legislature's questions, the Supreme Judicial Court of Massachusetts found that a large multipurpose stadium could represent a public purpose if the legislation set forth adequate standards for the expenditure of public funds and the operation of the facility.\textsuperscript{114} The justices reviewed the proposed legislation for the presence of provisions which assured the availability of the facility for civic, educational and other cultural events in addition to the use by professional sports teams.\textsuperscript{115} After this review, the justices concluded that the proposed statute did not provide adequate safeguards to protect the general public's interest in the project.\textsuperscript{116} The court also looked for statutory guidance for stadium authorities with respect to acceptable events to be held in the stadium and to appropriate rental guidelines.\textsuperscript{117} The court found a lack of such standards in the proposed statute.\textsuperscript{118}

Similarly, a Florida state court held that the negligible advantage to the community resulting from public support of a private enterprise's sporting event is not a public or municipal purpose.\textsuperscript{119} The court in \textit{Brandes v. City of Deerfield Beach} \textsuperscript{120} found that the value of the benefits the municipality was to provide to the professional baseball team outweighed the advantages of the stadium to the city.\textsuperscript{121} The bond proceeds were to be employed to acquire land and construct a facility for the use of the Pittsburgh Pirates during spring training.\textsuperscript{122} Essentially, the \textit{Brandes} court found that the transaction represented an

\begin{footnotes}
\item[111] \textit{Id.} at 795, 250 N.E.2d at 558.
\item[112] \textit{Id.} at 796-99, 250 N.E.2d at 559-60.
\item[113] \textit{Id.} at 797, 250 N.E.2d at 559.
\item[114] \textit{Id.} at 795, 250 N.E.2d at 558.
\item[115] \textit{Id.} at 797-98, 250 N.E.2d at 559.
\item[116] \textit{Id.} at 798, 250 N.E.2d at 559.
\item[117] \textit{Id.} at 797, 250 N.E.2d at 559.
\item[118] \textit{Id.} at 798, 250 N.E.2d at 559.
\item[119] Brandes v. City of Deerfield Beach, 186 So. 2d 6, 12 (Fla. 1966).
\item[120] 186 So. 2d 6.
\item[121] \textit{Id.}
\item[122] \textit{Id.} at 7.
\end{footnotes}
illegal lending of the city's credit to a private corporation.\textsuperscript{123} In \textit{Bran-des}, a taxpayer successfully challenged a municipal bond issue for the purpose of financing an athletic stadium.\textsuperscript{124} The dispute involved the validity of the proposed municipal bond which state law required to be issued only for a public purpose.\textsuperscript{125} The court held that the project did not serve a public purpose because no governmental function was being financed.\textsuperscript{126}

A contrary result was reached in \textit{Alan v. County of Wayne}.\textsuperscript{127} The court found that a public purpose requirement could be met under the state's constitution if the stadium's revenues were sufficient to cover the debt service payments on the bonds.\textsuperscript{128} The plaintiffs brought suit to test the validity of a stadium bond issuance. Among the plaintiffs' allegations was that the project did not constitute a public purpose.\textsuperscript{129} This argument contained three major points: (1) the stadium was not a public purpose as defined by the Michigan Constitution; (2) cases construing state law required a showing that the stadium was an "absolute necessity" prior to construction; and (3) before the stadium could be built, state law required that competent proof exist that the stadium would have a positive impact on the local economy - - specifically, an increase in business activity and employment.\textsuperscript{130} The court rejected the lack of public purpose argument on all three points.\textsuperscript{131}

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\item[123.] \textit{Id.} at 12.
\item[124.] \textit{Id.}
\item[125.] \textit{Id.}
\item[126.] \textit{Id.}
\item[128.] \textit{Id.} at 356-57, 200 N.W.2d at 699.
\item[129.] \textit{Id.} at 317, 200 N.W.2d at 680.
\item[130.] \textit{Id.}
\item[131.] \textit{Id.} at 317-23, 200 N.W.2d at 681-83. The justices found that a stadium used solely by a professional sports team could meet the public purpose requirements of the Michigan constitution if the stadium generated sufficient revenue to cover the principal and interest payments on the bonds. \textit{Id.} " 'The requirement of public purpose has been most rigid when public money or property is involved . . . . The requirement has been less rigid when there was no chance the general taxing power could be reached.' " 388 Mich. at 321, 200 N.W.2d at 682 (quoting City of Gaylord v. Gaylord City Clerk, 378 Mich. 273, 295 n.8, 144 N.W.2d 460, 468 (1966)). The court went on to find that the absolute necessity rule did not apply to the instant case, construing the rule to relate only to a government user of a government-owned facility rather than a private user. The absolute necessity rule governed the construction of facilities by the government when financed by floating revenue bonds. Only buildings which were to be used for a government purpose were allowed under the rule. \textit{See id.} at 321-22, 200 N.W.2d at 682-83. The basis for this conclusion was that the private user would pay rent to cover the debt service of any revenue bonds issued. \textit{Id.} at 321, 200 N.W.2d at 682. The court rejected the plaintiffs' interpretation that state law required proof of increased business activity as a condition precedent to stadium construction, but held that, in any event, there was adequate sup-
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Ginsberg v. City and County of Denver\(^{132}\) is typical of the line of cases in which courts deferred to legislative determinations regarding the public purpose within a stadium project. In Ginsberg, a taxpayer challenged the legality of a bond issue used to finance the acquisition of a stadium by the City of Denver.\(^ {133}\) The complaint alleged that there was no public purpose in the acquisition of the stadium.\(^ {134}\) The court in Ginsberg adopted a position of extreme deference to the legislative determination that the project could be completed as it served a public purpose.\(^ {135}\) There was no independent analysis of the transaction,\(^ {136}\) and thus, the court permitted the completion of the project as well.\(^ {137}\)

The Alan and Ginsberg courts were concerned about the separation of powers and did not want to usurp the constitutional role of the legislative branch.\(^ {138}\) These courts concluded that deciding what constitutes a public purpose is a legislative function.\(^ {139}\) The position adopted by the Supreme Judicial Court of Massachusetts in the Opinions of the Justices\(^ {140}\) provides a better balancing of competing interests than does a position of extreme deference to a legislative determination of what constitutes a public purpose. The court in Opinions acknowledged that weight is to be given to legislative determinations.\(^ {141}\) The justices concluded, however, that the determination is not dispositive in the absence of specific standards set forth by the legislature.\(^ {142}\) Guidelines must be instituted to ensure that the public interests the legislature considered when making its determination will be served throughout the life of the project.\(^ {143}\)

\(^ {132}\) 164 Colo. 572, 436 P.2d 685 (1968).
\(^ {133}\) Id.
\(^ {134}\) Id. at 578, 436 P.2d at 688.
\(^ {135}\) Id. at 579-80, 436 P.2d at 688.
\(^ {136}\) Id.
\(^ {137}\) Id. at 579-81, 436 P.2d at 688-89.
\(^ {138}\) See Alan, 388 Mich. at 317-18, 200 N.W.2d at 681; Ginsberg, 164 Colo. at 579-81, 436 P.2d at 688-89.
\(^ {139}\) Id.
\(^ {140}\) 356 Mass. 775, 250 N.E.2d 547.
\(^ {141}\) Id. at 795, 250 N.E.2d at 558.
\(^ {142}\) Id. at 796-97, 250 N.E.2d at 558-59.
\(^ {143}\) Id. at 796-97, 250 N.E.2d at 558-59. Three other cases illustrate the deferential line in which the legislative determination was dispositive. In Meyer v. City of Cleveland,
2. Lending Government Credit to Private Persons or Organizations

Provisions in state constitutions prohibit the lending of governmen-

35 Ohio App. 20, 171 N.E. 606 (1930), a taxpayer sought to enjoin the construction of a sports stadium. After tracing the history of expenditures by governments for sports stadiums back to Classical Greece and Rome, the court found that providing facilities for the enjoyment of the public was a traditional governmental function. Id. at 26-27, 171 N.E. at 607. The court held that Cleveland had the right to construct and maintain "public buildings," and there should not be a legal distinction between a stadium and any other public facility. Id. at 26-27, 171 N.E. at 608. The holding of the court was that providing stadiums for public entertainment was a valid public purpose. Id. at 27, 171 N.E. at 608.

Prior to Meyer, Los Angeles County v. Dodge, 51 Cal. App. 492, 197 P. 403 (1921), was the only American case which addressed a local government's authority to construct and maintain a stadium. Meyer v. City of Cleveland, 35 Ohio App. 20, 24, 171 N.E. 606, 607. The plaintiff in Dodge had sought an order on behalf of the City and County of Los Angeles to compel the execution of a lease for land where a stadium was to be built. Dodge, 51 Cal. App. at 493, 197 P. at 405. There was a dispute among officials of the city and county governments whether the city, the county, or both, had the ability to undertake the project. This conflict caused individual officials of the city and county to challenge their governments' authority to enter the lease on the ground that the money spent by the city and county to construct the stadium did not constitute an expenditure for a public purpose. Id. at 497-98, 197 P. at 406. In holding that the city and county had the authority to undertake the project, the court adopted a position of extreme deference to the policy-making function of the legislature. See id. at 498, 197 P. at 406. A legislative determination that a project had a public purpose would be conclusive upon the court unless it was apparent, to the court, that the determination was without foundation. Id.

When the Legislature . . . proceeds upon the assumption that a matter concerning which it acts is one affecting the public interest or designed to promote the general welfare, the assumption is conclusive upon the courts, unless it is plainly apparent to them that the view entertained by the legislative body is without just foundation. Id. at 498, 197 P. at 406. In light of its deferential posture, the Dodge court agreed with the legislative determination that the project was one that affected the public interest. Id. at 500, 197 P. at 406.

The dissident officials opposed to the lease also argued that the lease did not have a public purpose because a development association responsible for operating the stadium could derive a profit from the stadium when it was not in the possession of the city or county; that is, when no government sponsored events were occurring in the stadium. Id. at 501, 197 P. at 407. The court, after construing the lease to require revenue derived from admission charges to be used to maintain the property, found that neither the association nor its members could make a profit under the lease and therefore the use of public funds in constructing the stadium was not for a private purpose. Id.

In Martin v. City of Philadelphia, 420 Pa. 14, 215 A.2d 894 (1966), a taxpayer sought to enjoin local officials from enforcing a local ordinance which authorized a loan to build a sports stadium. The ordinance was upheld by the court, which determined that the project had a public purpose. Id. at 22-23, 215 A.2d at 898-99. The court found that construction of a sports stadium was a valid public purpose. Id. at 17, 215 A.2d at 896. In dicta, the court stated that the use of the stadium by a private enterprise would not negate the public nature of the stadium. Id. at 18, 215 A.2d at 896. "[T]he ordinance refers not at all to private enterprise; any objection to the use of the stadium by private enterprise is therefore premature." Id. This begs the question however, of whether a stadium to be used primarily by a private enterprise, or the generation of profit from the use of a stadium by a major league team, would change the public nature of the stadium.
ental credit to private persons to prevent a state or municipality from becoming enmeshed in private enterprise.\textsuperscript{144} Since a government's credit-worthiness is supported by its ability to raise taxes to pay its debts, there is legitimate concern about using tax dollars for nongovernmental purposes.\textsuperscript{145} Although there is a split of authority, courts have generally found that the issuance of bonds for the acquisition, maintenance or improvement of sports stadiums does not violate these provisions.\textsuperscript{146} The courts in\textit{Bazell v. City of Cincinnati},\textsuperscript{147}\textit{Ginsberg v. City and County of Denver}\textsuperscript{148} and\textit{Alan v. County of Wayne}\textsuperscript{149} addressed the issue of the proscribed lending of public credit.\textsuperscript{150} In\textit{Bazell}, the plaintiff raised a claim under the state constitution that Cincinnati was illegally lending its credit to the county in order to enable the county to borrow.\textsuperscript{151} The court construed the constitutional provision as permitting the city to lend its credit to other public entities, such as the county.\textsuperscript{152} The provision did not address one government subdivision lending to another and therefore the court had the ability to grant broad discretion to the legislature. However, the principal beneficiary of the financing was the professional baseball team that was to occupy the stadium. Therefore, the court did not reach the question of whether this transaction represented an indirect lending to a private organization.

Where the bonds are self-liquidating revenue bonds, i.e. the income generated by the underlying project is adequate to cover the debt service on the bond issue, the full faith and credit of the government does not support the bonds.\textsuperscript{153} Consequently there is no lending of public credit.\textsuperscript{154} The court in\textit{Ginsberg v. City and County of Denver}\textsuperscript{155} looked at the anticipated sources of revenue for the debt service in

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\textsuperscript{144} See Brandes v. City of Deerfield Beach, 186 So. 2d 6, 12 (Fla. 1966).
\textsuperscript{145} See, e.g., id.
\textsuperscript{147} 13 Ohio St. 2d 63, 233 N.E.2d 864.
\textsuperscript{148} 164 Colo. 572, 436 P.2d 685; see also supra notes 142-48 and accompanying text.
\textsuperscript{149} 388 Mich. 210, 200 N.W.2d 628; see supra notes 132-42 and accompanying text.
\textsuperscript{150}\textit{Bazell}, 13 Ohio St. 2d at 65, 233 N.E.2d at 867;\textit{Ginsberg}, 164 Colo. at 576, 436 P.2d at 686;\textit{Alan}, 388 Mich. at 233, 200 N.W.2d at 639.
\textsuperscript{151}\textit{Bazell}, 13 Ohio St. 2d at 71, 233 N.E.2d at 870.
\textsuperscript{152} Id. at 73, 233 N.E.2d at 871.
\textsuperscript{153} See Ginsberg, 164 Colo. at 581-84, 436 P.2d at 689-91;\textit{Alan}, 388 Mich. at 324-25, 200 N.W.2d at 683-84.
\textsuperscript{154}\textit{Ginsberg}, 164 Colo. at 582-83, 436 P.2d at 689-90;\textit{Alan}, 388 Mich. at 323-24, 200 N.W.2d at 683-84.
\textsuperscript{155} 164 Colo. 572, 436 P.2d 685.
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reviewing the proposed bond issue.\textsuperscript{156} After declining to review the legislation's declaration that a stadium project was a public purpose,\textsuperscript{157} the court in \textit{Ginsberg} reviewed the repayment sources anticipated under the ordinance authorizing the bond issue.\textsuperscript{158} The city ordinance authorizing the project stipulated that the principal and interest were payable solely out of the net revenue produced by the stadium, after subtracting related operating and maintenance expenses.\textsuperscript{159} The ordinance further stated that the city was not to be held liable for payments of the principal or interest on the bonds; these payments were to be made solely from the net revenue derived from the operation of the stadium.\textsuperscript{160} The court upheld the project,\textsuperscript{161} finding that debt service payments were to come solely from the operation of the stadium; therefore, the local government was not illegally lending its credit.\textsuperscript{162}

\textsuperscript{156} Id. at 577, 436 P.2d at 687.
\textsuperscript{157} See supra notes 142-48 and accompanying text.
\textsuperscript{158} \textit{Ginsberg}, 164 Colo. at 577, 436 P.2d at 687.
\textsuperscript{159} Id. at 577-78, 436 P.2d at 687.
\textsuperscript{160} Id. at 578, 436 P.2d at 687.
\textsuperscript{161} Id. at 587, 436 P.2d at 692.
\textsuperscript{162} Id. at 585, 436 P.2d at 691.

In \textit{Brandes v. City of Deerfield Beach}, 186 So. 2d 6 ( Fla. 1966), the court found that the City, by providing the proposed services, would be lending its credit in violation of the provisions of the state constitution. \textit{Id.} at 12. The city was committed to the repayment of the bonds even in the event of the default of the other parties in the transaction. \textit{Id.} at 8, 9. The court correctly held that the plan would have resulted in the City assuming the obligations of a major league baseball team in the case of the team's default under the stadium lease.

The Supreme Court of Michigan addressed but did not decide the question whether the bond issue in \textit{Alan v. County of Wayne} violated a provision in the state constitution which proscribed the granting of public credit. \textit{200 N.W.2d} at 683-87; \textit{Mich. Const.} of 1963, art. 9, § 18: "The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution." \textit{200 N.W.2d} at 683. The court concluded that public credit could be granted by the executive or legislative branches in return for adequate consideration. \textit{Id.} at 684-85. The executive or legislative branch granting the credit would determine the adequate level of compensation. \textit{Id.} at 685. However, the court did not identify any provision in the state constitution that creates an exception to the general prohibition permitting the exchange of public credit for "adequate consideration." The court therefore sanctioned the sale of state credit for a price.


The funds, credit, property or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, associations or corporations, public or private; nor shall the State, nor any political corporation, purchase or subscribe to the capital stock or stock
3. Exceeding Statutory Borrowing Limitations

In order to protect taxpayers from fiscal overreaching by government officials, state constitutions place restrictions upon the power of state, county, and municipal governments in the amount of indebtedness they can incur. If the debt service on bonds issued for stadium

of any corporation or association whatever, or for any private enterprise. Nor shall the State, nor any political corporation thereof, assume the liabilities of any political, municipal, parochial, private or other corporation or association whatsoever, except as otherwise provided in this Constitution; nor shall the State undertake to carry on the business of any such corporation or association, or become a part owner therein . . . .

Id. at 598, 225 So. 2d at 368. The court decided that the bonds were not backed by the full faith and credit of the State of Louisiana and therefore were not debts of the state. Id. at 599-600, 225 So. 2d at 369. The justices also rejected the argument that the lease agreement was merely a security agreement to indirectly collateralize the bond issue. Id. at 601, 225 So. 2d at 369. However, the bonds did create a financial obligation for the state to finance the Superdome. The language of the state constitution evinces the framer’s intent to restrict government involvement with, and investment in, private enterprises. The lease agreement was a strong indication that the finances of the state were to be directly intertwined with the New Orleans Saints successes in the Superdome. This relationship would extend beyond the influence of local enterprises on a state’s tax revenues.

An issue related to illegal lending of public credit is whether a transaction, effectively if not formally, is a gift of public property to a private enterprise. This issue was raised in City of Tempe v. Pilot Properties, Inc., 22 Ariz. App. 356, 527 P.2d 515, reh’g denied, (1974), rev. denied, (1975). The court considered whether the city’s lease of real property was a donation of public property, and as such violated a provision of the Arizona constitution which prohibits a city from subsidizing a private corporation. Id. at 358, 527 P.2d at 517.

ARIZ. CONST. art. 9, § 7 provides: “Neither the State, nor any county, city, town, municipality, nor any other subdivision of the State, shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation . . . .”

Id. at 360, 527 P.2d at 519. The lessee constructed a major league baseball spring training facility upon the land, which was leased at an annual rent of $1 per year. Id. at 360, 527 P.2d at 518. The court rejected the position that a project having a public purpose is automatically exempt from the provision in the constitution prohibiting a loan or donation to a private party. Id. at 361, 527 P.2d at 519-20. The unanimous opinion of the court was that the provision could prohibit a donation of public property to a private corporation even for a purpose that is deemed by the city officials to be for the public good. Id. at 362, 527 P.2d at 521. This leaves the door slightly ajar for opponents of stadium projects to overcome the strong presumption of constitutionality.

In Rolling Oaks v. Dade County, 492 So. 2d 686 (Fla. 1986), the plaintiffs alleged that transactions culminating in a ninety-nine year lease of land from Dade County to the Dolphin Stadium Corporation constituted an unlawful gift of public property. Id. at 688. The court, holding that the use of public property as a sports stadium was a valid public purpose, dismissed that count of the complaint. Id. Rolling Oaks was one of a number of cases that unsuccessfully sought to prevent the construction of Joe Robbie Stadium. The finding of a public purpose was sufficient to legitimate a lending of government credit that would be otherwise illegal.

projects is to be repaid from the revenue produced by the stadium, courts have refused to invalidate the bond issuance on the basis of the government exceeding its fiscal authority. The theory behind these holdings is that the government is not incurring a debt which it must honor. A person challenging a stadium project bears the burden of showing that a statutory debt limitation will be exceeded.

4. Zoning Challenges

Because of the difficulty in successfully challenging stadium projects once the legislature has proclaimed that the stadium is a public purpose, and statutory restrictions on public credit are not at issue, recent challenges to these projects have been based on different theories. Causes of action that have been brought to prevent government involvement in stadium projects can be grouped into two categories: (1) zoning violations and (2) other violations of state or local legislation.

In Norwood-Norland Homeowners’ Assn., Inc. v. Dade County, the plaintiffs challenged the rezoning of the property used for the stadium. Norwood-Norland was one of a number of challenges to the

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In Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968), the court refused to consider the question of whether the city would exceed its authorized debt limitation in guaranteeing rent payments for the stadium. Id. at 63, 233 N.E.2d at 864. The plaintiffs alleged that the city would loan credit to the county beyond the city's constitutional credit limit by proceeding with the project. Id. at 74, 233 N.E.2d at 872. The court's refusal was based on procedural reasons. The court decided that there was inadequate information in the record to determine whether the revenue from the stadium would be sufficient to cover rental payments due on the stadium. Id. at 67, 233 N.E.2d at 868. If the income stream from the stadium was sufficient to handle the debt service payments on the bonds, the rent payments would not be considered debts of the city. The court found that none of the parties raised the issue of whether the obligation of the city to pay rent on the stadium to the county should be included in calculations of the city's indebtedness. Id. at 74-75, 233 N.E.2d at 872. These calculations would be done to determine whether the city would exceed constitutional debt limits. Id. This finding disregards the fact that in a reply memorandum of law the county suggested that the city would indeed exceed its statutory debt limitation if the rent obligations were included in the calculation. Id. at 75, 233 N.E.2d at 872. As a principle of jurisprudence the judges decided that, as a court of last resort, it was inappropriate for it to decide an issue that was not specifically raised by the parties in the proceedings below and by brief in the case at bar. Id. Therefore, the project was allowed to proceed in spite of indications that the city might exceed its statutory debt limitations.
167. 511 So. 2d at 1010.
construction of a stadium for the Miami Dolphins football team. The Florida Circuit Court upheld the rezoning as proper under Florida state law. The Florida District Court of Appeal, in affirming the lower court's opinion, explained that the role of the court in reviewing zoning determinations was to decide whether the zoning changes were reasonable, not to substitute its own views for that of the zoning authority. In Lake Lucerne Civic Association, Inc. v. Dolphin Stadium Corp., a case related to Norwood-Norland Homeowners' Assn., Florida property owners challenged the rezoning of county land to be used for the sports stadium complex alleging federal civil rights violations. The Eleventh Circuit held that changes in the zoning relations may violate the federal constitutional rights of local property owners but remanded the case to the district court for determination of the constitutional issues.

III. Factors that Influence Stadium Project Policies

A local government may decide to proceed with a stadium project despite potential challenges by taxpayers, property owners or other citizens. The legislative branch is primarily responsible for determining what constitutes a public municipal purpose, although the determination is subject to review by the courts. The courts will not overrule a legislative determination unless the determination is unmis-

168. See infra note 266 and accompanying text.
169. Id.
170. Id. at 1012.
172. 511 So. 2d 1009.
173. Lucerne, 878 F.2d at 1360.
174. There have also been localized challenges to government involvements in stadium projects. In Hertel v. Racing Commissioner, Department of Agriculture, 68 Mich. App. 191, 242 N.W.2d 526 (1976), the plaintiffs attacked the constitutionality of the funding source for construction and maintenance of Pontiac Stadium in Pontiac, Michigan. State legislation provided that cities or counties in which licensed racetracks were located were to be given a percentage of racetrack revenues as contributions toward the payment of annual rentals on sports stadiums. The plaintiffs argued that the legislation discriminated against some Michigan communities in favor of others in that only the Pontiac and Detroit stadiums were eligible for funding under the statute. The judge agreed with the plaintiffs' view that the section of the legislation drawing the classifications was unconstitutional. Id. at 199, 242 N.W.2d at 529. However, the court found that section to be severable from the rest of the statute, which was constitutional. Id. at 200, 242 N.W.2d at 530. Therefore the stadium financing project could proceed as planned if expanded to cover all members of the class that was created by the act. Id. at 199, 242 N.W.2d at 529. The court approved revenues from one source being diverted from the state coffers to support stadiums used primarily by major league sports teams. Id.
takably arbitrary or unreasonable.\textsuperscript{176} On the other hand, by including concrete guidelines for stadium management in enabling statutes, the legislature can address specific concerns raised in such decisions as \textit{Opinions of the Justices} and \textit{Brandes v. City of Deerfield Beach}.\textsuperscript{177} These courts expressed the concern that some public interests in publicly-owned stadiums would be ignored to satisfy the needs of professional sports teams.\textsuperscript{178} There are several factors that government officials should consider when structuring a stadium project to address the concerns that have been expressed by courts and citizens.

\section{A. Perceived Public Benefits}

A local government may decide that there are advantages to the municipality, county or state in having a stadium located within the local area.\textsuperscript{179} The majority in \textit{Kelly v. Marylanders for Sports Sanity, Inc.}\textsuperscript{180} cited a Maryland Legislature committee report indicating that the proposed baseball stadium would produce $132 million annually in revenue to the state and the proposed football stadium would produce $59.8 million if a National Football League franchise was obtained.\textsuperscript{181} In \textit{Lifteau v. Metropolitan Sports Facilities Commission},\textsuperscript{182} the court found that a stadium would provide temporary and permanent jobs as well as increased economic activity in the area.\textsuperscript{183} As the discussion in Part II indicated, these government reports may be overly optimistic.\textsuperscript{184} The possible variations in lease agreements, tax rebates, and other details affecting the cost structure of the projects

\begin{footnotes}
\textsuperscript{176} \textit{Id.} at 68, 233 N.E.2d at 868-69.
\textsuperscript{177} \textit{See supra} notes 107-22, 124-30 and accompanying text.
\textsuperscript{178} \textit{Id.} During negotiations with team owners, local governmental bodies should educate the public regarding the negotiations and, to the extent possible, seek more public input before finalizing lease agreements with team owners. \textit{See Sport Franchise, supra} note 1, at 526-27. Local governments can use team owners' desire for good public relations to offset the imbalance of negotiating power. \textit{Id.} at 526. By explaining to the public the necessity for limiting the concessions the municipality is willing to give to the team, the local officials can accomplish several objectives. First, the public will be prepared in case the team leaves, or decides not to enter a lease agreement with stadium authorities. \textit{Id.} Second, the team owner, in an endeavor to maintain good public relations, may reduce the team's demands. The owner does not want to alienate the public, especially if the team decides to play in the local stadium. \textit{Id.} at 527. Third, the team owner is preempts from using public pressure to coerce public officials into acceding to the team's demands. \textit{Id.}
\textsuperscript{180} 310 Md. 437, 530 A.2d 245 (1987).
\textsuperscript{181} \textit{Id.} at 445-46, 530 A.2d at 249. Revenue figures are stated in 1990 dollars. \textit{Id.}
\textsuperscript{182} 270 N.W.2d 749 (Minn. 1978).
\textsuperscript{183} \textit{Id.} at 755.
\textsuperscript{184} \textit{See supra} text accompanying notes 20-42.
\end{footnotes}
further complicate comparisons from city to city of the economic impact of hosting sports stadiums.\footnote{185}

Traditional analysis of the economic justification for building a stadium centers on the tangible, readily ascertainable direct dollar outlay and income from the stadium.\footnote{186} The major expenditures by municipal stadium owners are personnel costs and other services provided under contractual arrangements.\footnote{187} Cities may be called upon to provide ground crews, clean-up crews, electricians, plumbers and maintenance personnel, in addition to expanded police protection.\footnote{188} Moreover, the stadium owner is expected to make capital improvements to the facility.\footnote{189} If a bond issue is floated to pay for the acquisition or renovation of the stadium, the local government must make debt service payments whether or not the revenue from the stadium is sufficient to cover these payments.\footnote{190}

Local governments may receive stadium-related revenue from four sources: rental payments, fees from peripheral activities such as parking and concession sales, other payments related to the stadium, and amusement and admission taxes.\footnote{191} The sources of revenue tend to vary more, in relation to attendance levels, than the required expenditures; stadium costs tend to be less variable.\footnote{192} In a time of declining attendance, or when attendance does not increase as quickly as the local government’s fixed expenses, intangible factors assume a more significant role in determining whether hosting a sports team is a net revenue producer for a city.\footnote{193}

B. The New “Robber Barons”?\footnote{194}

The result of the benefits granted to sports teams by local governments is that millions of dollars in public funds are used to support private enterprises.\footnote{195} The consequence of subsidizing these private enterprises is in many cases higher taxes or reductions in services for local residents.\footnote{196} Voter and taxpayer opposition to the practice of using public funds to subsidize private baseball and football clubs,
which are frequently owned by millionaires who do not need public subsidies to undertake the project,\textsuperscript{196} appears to be increasing.\textsuperscript{197} This opposition is illustrated by the taxpayer suits brought in Maryland\textsuperscript{198} and Florida\textsuperscript{199} challenging stadium projects mentioned supra.

1. Relative Bargaining Power

Local owners of stadiums, usually public stadium authorities, are disadvantaged in negotiating with team owners. Professional football and baseball teams have monopolistic power in negotiating with stadium authorities.\textsuperscript{200} Because of the limited number of sports franchises, local officials lack bargaining power when dealing with team owners.\textsuperscript{201} These officials must lobby for expansion franchises\textsuperscript{202} or attract existing teams by offering substantial subsidies to team owners.\textsuperscript{203}

2. Public and Political Pressure

Local officials might reduce the amount of litigation surrounding stadium projects. This is particularly important if there is a groundswell of public support in favor of keeping, or acquiring, a professional sports team regardless of the public costs. One way to circumvent lawsuits is by disclosing more information to the public during the negotiation process. Public hearings are a method for in-

\begin{footnotesize}
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\item \textsuperscript{196} \textit{Id.}
\item \textsuperscript{197} \textit{See id.}
\item \textsuperscript{198} \textit{See Kelly v. Marylanders for Sports Sanity, Inc., 310 Md. 437, 530 A.2d 245 (1987); Wilson v. Board of Supervisors of Elections of Baltimore City, 273 Md. 296, 328 A.2d 305 (1974).}
\item \textsuperscript{199} \textit{Prior to the privately-financed construction of Joe Robbie Stadium in Miami, voters defeated proposals to remodel the Orange Bowl. \textit{Short Yardage, supra note 105, at 247. The construction of the stadium survived several suits. See Lake Lucerne Civic Association, Inc. v. Dolphin Stadium Corp., 878 F.2d 1360 (11th Cir. 1989) (rezoning challenge brought in federal court on constitutional claims remanded in part to district court); Rolling Oaks Homeowner's Ass'n, Inc. v. Dade County, 492 So. 2d 686 (Fla. Dist. Ct. App. 1986) (nine count complaint challenging the construction of stadium on several grounds dismissed), rev. denied, 503 So. 2d 328 (1987); Norwood-Norland Homeowners' Assn., Inc. v. Dade County, 511 So. 2d 1009 (Fla. Dist. Ct. App. 1987) (challenge to district rezoning defeated), rev. denied, 520 So. 2d 585 (1988).}
\item \textsuperscript{200} \textit{See Monopoly, supra note 47, at 656.}
\item \textsuperscript{201} \textit{Id. at 648.}
\item \textsuperscript{203} \textit{See Monopoly, supra note 47, at 649.}
\end{itemize}
\end{footnotesize}
creasing public discourse.\textsuperscript{204} An announcement, followed by legislative action, that a limit will be placed on the time period in which suits may be brought after a stadium deal has been approved, would generate early debate over the projects.\textsuperscript{205} The more pressing concerns raised about the project could be addressed before negotiations are finalized. Although there will always be a faction of the populace which opposes the project, intangible factors become very important when a project has a high expense to low revenue ratio. Such factors include the boost to civic pride that accompanies the presence of professional sports teams and local public identification with the team. These intangible factors are strong when the team is winning, but may be difficult to sustain in the face of apparent team owner indifference or a lack of commitment to a city.\textsuperscript{206}

C. Proposed Stadium Management Strategy

An important factor for local governments to consider is the stadium management strategy to be used in the project. For years, Baltimore elected to forego fees from peripheral activities and accepted reduced rental payments in lieu of incurring significant levels of debt by floating bonds to construct a new stadium.\textsuperscript{207} This strategy gave the city a low break-even point in calculating the profitability of hosting the Orioles and the Colts.\textsuperscript{208} The city also experimented with the Orioles baseball team by signing a series of short-term leases which called for sharing of the team’s profits as opposed to traditional rental and concession fee payments.\textsuperscript{209} In order to keep the Colts, Maryland officials agreed to issue $22 million in bonds to finance stadium improvements if the team would enter a fifteen year lease.\textsuperscript{210} The Colts’ owner failed to sign a lease within the three-year deadline imposed by state officials and the team subsequently moved to Indiana.\textsuperscript{211}

Local officials should ensure that lease provisions are sufficient to protect the public interest. In most cases this can be accomplished

\textsuperscript{204} See generally id.

\textsuperscript{205} See generally Abbott v. Parker, 259 La. 279, 249 So. 2d 908 (1971) (thirty-day constitutional preemption placed on challenges of a bond issue was upheld).

\textsuperscript{206} See Lessons from Baltimore, supra note 3, at 412, 423-25.

\textsuperscript{207} Id. at 413-15.

\textsuperscript{208} Id. at 416.

\textsuperscript{209} Sport Franchise, supra note 1, at 526.

\textsuperscript{210} Id.

\textsuperscript{211} Id. As of this writing, the state is constructing a new stadium in downtown Baltimore at a price of $105 million. The National Sports Daily, March 26, 1990, at 14. For background information concerning the project see Kelly v. Marylanders for Sports Sanity, Inc., 310 Md. 437, 530 A.2d 245 (1987) (rejecting a challenge to the statutory authority for funding the stadium).
only by relatively long-term leases of fifteen years or longer.\footnote{212} Team owners are reluctant to surrender their option to relocate and enter long-term leases, partially because of short-term profit motives and the benefits that teams can receive from relocating.\footnote{213} However, in order to obtain immediate profits, team officials may be willing to extend the lease period. Therefore, local officials should structure projects that maximize the short-term profit for the team in return for long-term commitment.\footnote{214} For example, the lease may be structured to be more favorable to the team in the early years of the project, with the balance swinging to the municipality in later years.\footnote{215} In order to avoid a breach of contract by the team as the lease term progresses, substantial penalties should be built into the lease agreement.

Local officials should also try to increase the financial and other ties team owners have with the city.\footnote{216} This would (1) impose upon the team owner costs related to leaving the host city and (2) instill a greater degree of loyalty.\footnote{217} For example, Al Davis, the Raiders' principal owner, never sold his Oakland home.\footnote{218} The owner of the Detroit Tigers reportedly refused to relocate the team because of the impact the move would have on downtown Detroit.\footnote{219} As few franchise shifts have involved a team moving from a privately owned facility,\footnote{220} this personal financial stake may represent the ultimate financial tie to the host city.

IV. Conclusion

Local governments have economic, political and cultural incentives to provide sports facilities for major league professional teams. On the other hand, taxpayers may resent the investment of public funds in essentially private enterprises that bestow large profits on already wealthy team owners. Individuals have sued to prevent government financing of stadiums for professional sports teams. For the most part, judicial deference to legislative determinations has resulted in court approval of the projects. Although principles of federalism may dissuade courts from vigorously reviewing legislative fiscal decisions, these same principles impose upon the judiciary the role of determin-
ing the constitutionality of the actions of the other branches of government and ensuring that these actions are otherwise in compliance with existing law. Courts should avoid extreme deference that erodes the judiciary's "checks and balances" function. To overcome the judicial deference courts have shown towards legislative decisions with respect to public investment in stadium projects, an opponent of such a project must generally (1) identify a state constitutional or statutory provision that may restrict government financing of the project or (2) show that the project violates local zoning laws. State constitutions frequently restrict governmental financing or involvement in projects other than those serving a "public purpose" and prevent the lending of government credit to private parties. Before initiating a judicial challenge, a person who opposes a stadium project should review the state's constitution, laws and the charters of local government subdivisions for restrictive provisions.

Taxpayer resistance to public financing of sports stadiums that will be used primarily by major league sports teams is supported by studies that show that privately owned stadiums are more economical and efficient than publicly owned facilities. Also, private ownership reduces the risks local communities face hosting sports franchises. In addition to sharing the economic risks involved in stadium management, there is less risk of a team relocating if the team owner has an interest in the stadium. Because of unequal bargaining power, and the presence of more stadiums than professional sports teams can occupy, any specific local government may not be able to negotiate private ownership with a team owner. Public ownership of sports stadiums is therefore unlikely to end in the near future.

There are several steps local officials may take to forestall court challenges to public investment in stadiums. Municipalities and other local governments should only borrow funds or expend existing funds for outdoor stadium projects, assuming compliance with the other provisions in enabling legislation, if sufficient safeguards are implemented to protect the public's economic and civic interests. These safeguards may include sharing the revenue of the stadium in partnerships with team owners or more traditional lease agreements. These agreements should ensure repayment of the investment, in both dollar amounts and public relations, the municipality and its citizens have made in hosting a professional team. The presence of private capital investment in the project will improve team loyalty and reduce the risk of franchise relocation.

In entering lease negotiations, local officials should define the nature of the relationship between the municipality and the team. Gov-
ernment officials can accomplish this by keeping the public informed about the negotiations and the limits of the concessions the government is willing to make.

The stadium management strategy selected by local officials, such as avoiding long-term debt by sharing ballpark parking and concession fees, has an effect on the amount of subsidies the official can give to the team without placing the local government or its taxpayers at a financial disadvantage. Before agreeing to assume long-term debt, local officials should either seek to extend the lease period to match the maturity of the bonds, or find other ways to minimize the time needed for the project to break even. A thorough review of all pertinent factors can make the acquisition and maintenance of sports stadiums a winning proposition for cities.

_Pamela Edwards_