

ARTICLE

PUBLIC FUNDING OF SPORTS STADIUMS AND OTHER RECREATIONAL FACILITIES: CAN THE DEAL BE “TOO SWEET”?

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I. INTRODUCTION

In recent years the professional sports franchise business has grown to astronomical proportions.¹ Concomitant with the growth in this business is the need for sports facilities to accommodate the ever-increasing demands of the teams and the sports fans for state of the art sports facilities. In Florida, the City of Jacksonville participated in the renovation of the Gator Bowl to house the Jacksonville Jaguars of the National Football League,² the City of Miami will be building a new arena for the Miami Heat of the National

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1. See generally *Antitrust Implications of Sports Franchise Relocation: Hearings Before the House Comm. on the Judiciary*, 104th Cong. (1996) (statement of Paul Tagliabue, Commissioner of the National Football League, available in 1996 WL 7135436).

2. See Erik Brady, *Gator Bowl to Undergo Total, \$121M Remake for Jaguars*, USA TODAY, Dec. 1, 1993, at 3C.

Basketball Association,³ and a new arena will be constructed for the Florida Panthers of the National Hockey League.⁴ St. Petersburg is currently renovating Tropicana Field (formerly known as the ThunderDome) to house the Tampa Bay Devil Rays Major League Baseball team.⁵ The Tampa Sports Authority ("TSA"), the City of Tampa, and Hillsborough County have participated in the finance and construction of Legends Field for the New York Yankees Major League Baseball team and the Ice Palace for the Tampa Bay Lightning National Hockey League team.⁶ Cities in other states have also expended public funds to finance the construction or renovation of sports facilities to attract and retain professional sports teams.⁷ The competition among cities to obtain or retain their professional sports teams has motivated them to assist in the funding of state of the art stadiums.

Although Florida's Constitution prohibits the lending of public credit to aid a private corporation,⁸ many local governments in Florida have constructed or renovated athletic facilities at least in part with public funds.⁹ In 1996, former Tampa Mayor William F.

3. See *Dade County, Fla. Approves Heat Arena Deal*, REUTERS FIN. SERVICE, Apr. 11, 1997, available in LEXIS, News Library, Reufin File. In a 9-2 vote, Florida's Dade County Commission approved a 30-year lease with the Miami Heat. The agreement requires the county to pay \$6.5 million per year for arena operating costs over the life of the lease. See *id.*; see also Larry Lebowitz, *Arena Financing Wins Tentative OK: Miami Heat's New Home Still a Long Way from Reality*, SUN-SENTINEL (Fort Lauderdale), Apr. 9, 1997, at 3B.

4. See *Florida Approves Panthers Arena Financing*, UPI, Jan. 31, 1996, available in LEXIS, News Library, UPI File. As part of the plan, the Broward County Commission approved a \$182 million financing plan for the arena. See *id.*

5. See Kevin Wells, *Stealing the Thunder: Tropicana Field Squeezes Out ThunderDome*, TAMPA TRIB., Oct. 4, 1996, at 1. On October 3, 1996, the arena that will house the Tampa Bay Devil Rays Major League Baseball team was renamed from the ThunderDome to Tropicana Field as part of a naming rights agreement with Tropicana Dole Beverages North America. See Stephen Nohlgren, *Beyond Thunderdome: It's Now Tropicana Field*, ST. PETERSBURG TIMES, Oct. 4, 1996, at 1A.

6. See, e.g., Charles T. Bowen, *Pasco Asks: Are We a Team Player?*, TAMPA TRIB., Apr. 27, 1997, at 1; Mary Jo Melone, *Official Entertains an Odd View of Reality*, ST. PETERSBURG TIMES, Mar. 4, 1997, at 1B.

7. See Transcript of Testimony and Proceedings at 373-74, *Poe v. Hillsborough County*, No. 96-6515 (Fla. 13th Cir. Ct. Mar. 21, 1997) [hereinafter *Poe I*], *rev'd*, 695 So. 2d 672 (Fla. 1997) [hereinafter *Poe II*]. According to Tampa Bay Buccaneers General Manager Richard J. McKay, other cities that have recently negotiated deals with NFL teams include Baltimore, Nashville, Oakland, and St. Louis. See *id.*

8. See FLA. CONST. art. VII, § 10(c).

9. See, e.g., cases cited *infra* notes 91-110.

Poe filed suit seeking to enjoin the construction of a new community stadium to serve as the new home of the Tampa Bay Buccaneers (as well as other users) financed by a bond issuance secured with various tax revenues.¹⁰ On May 22, 1997, the Florida Supreme Court unanimously upheld the use of public funds to finance the new stadium in Tampa, ruling that such use of public funds did not violate the constitutional prohibition against lending public credit.¹¹

On its face, the *Poe v. Hillsborough County* decision is hard to reconcile with the plain language in Florida's constitutional prohibition against the lending of public credit.¹² While this opinion does weaken the public purpose requirement, a review of cases over the last few decades shows that the Florida Supreme Court has nearly always allowed public funding of projects that serve recreational, entertainment, and tourism needs of the community.¹³

10. See *Poe v. Hillsborough County*, 695 So. 2d 672, 674–75 (Fla. 1997).

11. See *id.* at 675–79. Pursuant to an extremely aggressive time schedule, the Florida Supreme Court decision was rendered within five months of the filing of the bond validation proceeding. See *id.* at 675.

12. See FLA. CONST. art. VII, § 10(c) (discussed *infra* note 50 and accompanying text).

13. See, e.g., *Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72 (Fla. 1984) (upholding bonds issued to construct a sports facility and stating that under the tourist development tax statutes, a sports complex can be included in the term “tourist advertising and promotion”); *State v. Osceola County Indus. Dev. Auth.*, 424 So. 2d 739 (Fla. 1982) (validating industrial development revenue bonds issued to finance a lodging facility in connection with Walt Disney World); *State v. Orange County Indus. Dev. Auth.*, 417 So. 2d 959 (Fla. 1982) (validating the issuance of industrial development revenue bonds to construct a hotel in connection with a convention/civic center); *State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d 631 (Fla. 1980) (upholding bonds secured by ad valorem taxes for the purchase of condominium recreation facilities that could be used by the condominium owners and the public); *State v. City of Miami*, 379 So. 2d 651 (Fla. 1980) (holding that issuance of revenue bonds for the construction of a convention center and parking garage served a valid public purpose as it served educational, civic, and commercial activities); *State v. City of Miami Beach*, 234 So. 2d 103 (Fla. 1970) (validating excise tax bonds to fund improvements to a convention hall and noting that the tourist industry is one of Florida's greatest assets); *State v. City of Tampa*, 146 So. 2d 100 (Fla. 1962) (upholding bonds payable from proceeds of utility service tax for the construction of a convention center); *State v. Daytona Beach Racing & Recreational Facilities Dist.*, 89 So. 2d 34 (Fla. 1956) (stating that development of recreational facilities funded with revenue bonds is a public purpose despite incidental benefit to private interests); *Sunny Isles Fishing Pier v. Dade County*, 79 So. 2d 667 (Fla. 1955) (upholding the lease of a public fishing pier to private enterprise for development by private entity); *State v. City of Miami*, 41 So. 2d 545 (Fla. 1949) (validating the financing of additional seats in Orange Bowl Stadium with revenue certificates of indebtedness). *But see Brandes v. City of Deerfield Beach*, 186 So. 2d 6 (Fla. 1966) (invalidating revenue bond issuance to construct a spring-training facility to be used only by a baseball team for

The first part of this Article will outline the factual background of the *Poe* litigation, from the purchase of the Buccaneers by the Glazer family to the ruling by the Florida Supreme Court. The second part will explain and analyze the Florida Supreme Court's interpretation of the constitutional provision against the lending of public credit, focusing on projects that serve recreational, tourism, and entertainment interests. The evolution of economic factors that have influenced the court's application of the constitutional provisions will also be explored. The third part will set out the various arguments in the *Poe* case, regarding the extent of private interests and the degree of public benefit in the stadium bond issue. The fourth part will analyze the supreme court's decision in the *Poe* case, and discuss the future application of the case in the area of public financing in general, and sports stadium financing specifically. Finally, the conclusion will outline suggestions for local governments in structuring public bond financing issues with respect to projects promoting recreation and tourism.

II. FACTUAL AND PROCEDURAL BACKGROUND

In January 1995, the Tampa Bay Buccaneers, a National Football League ("NFL") team, was purchased by Malcolm Glazer.¹⁴ Prior to the sale, the new owner and other prospective bidders advised local public officials that the team needed new stadium-related revenue sources (such as luxury suites and club seats) to remain financially competitive with other NFL teams.¹⁵ Glazer also said he intended to move the franchise elsewhere unless the TSA built a new stadium incorporating these amenities.¹⁶

The TSA explored various options to fund the construction of a

spring training games).

14. See *Buccaneers Are Sold to Florida Financier; NFL: Estimated \$192 Million Is Most Ever Paid for Pro Franchise. Team Will Stay in Tampa*, L.A. TIMES, Jan. 17, 1995, at C4. Malcolm Glazer, a Palm Beach financier, reportedly purchased the Buccaneers for \$192 million, \$7 million higher than Jeff Lurie paid for the Philadelphia Eagles in 1994, making it the highest purchase price ever paid for a sports franchise. See *id.* Hugh Culverhouse, the initial owner of the Tampa Bay Buccaneers, originally paid a reported \$16 million for the franchise in 1974. See *id.*

15. See *Poe II*, 695 So. 2d at 673; see also Transcript of Proceedings Vol. III at 370, *Poe I*, *supra* note 7.

16. See *Poe II*, 695 So. 2d at 673.

new stadium.¹⁷ The options included a restaurant tax,¹⁸ a rental car tax,¹⁹ and a seat deposit campaign.²⁰ Finally, the City and County agreed to schedule a referendum proposing a half-cent sales tax to be held September 3, 1996.²¹ If approved, the tax would fund the stadium construction, numerous criminal justice projects, public schools, and various other public works projects.²²

Studies showed that the existing stadium could not be economically rehabilitated to provide the required revenue-enhancing amenities required by the Buccaneers.²³ Negotiations between the TSA and the Buccaneers' new owner began in the fall of 1995 and continued into 1996, culminating in an agreement dated August 28,

17. The stadium, currently known as "Houlihan's Stadium," was originally constructed by the TSA in 1967 and renovated in 1975. See Jeff Gordon, *Rush for New Stadiums Leaves NFL on Hot Seat*, ST. LOUIS POST-DISPATCH, Dec. 19, 1995, at 1C. Due to its age, Houlihan's Stadium needs significant repairs. See Joe Henderson, *Package of Small Taxes Eyed for Stadium Funds*, TAMPA TRIB., Nov. 23, 1995, at 1; Jeff Testerman, *Bucs or No Bucs, Stadium Still Costly, Study Says*, ST. PETERSBURG TIMES, Oct. 27, 1995, at 1B. The TSA engaged professional engineers who estimated that the required repairs would cost approximately \$52 million. See Joe Henderson, *Big Sombrero Repairs: \$52 Million*, TAMPA TRIB., Oct. 26, 1995, at 1. This estimate did not include the cost of any upgrades or additional amenities that might be added to the stadium. See Testerman, *supra*, at 1B. The construction cost of a new stadium was estimated at \$168 million. See *id.*

18. See Joe Henderson, *Meal Tax Proposed for Stadium, Arts: Legislature Would Have Final Say*, TAMPA TRIB., Nov. 9, 1995, at 1 (discussing Hillsborough County Commissioner Ed Turanchik's proposed one percent tax on restaurant meals).

19. See Charean Williams, *Tampa Officials OK Stadium Plan; Hillsborough Now Needs Legislative Approval for a Voter Referendum on a Local Tax to Fund a New Stadium for the Bucs*, ORLANDO SENTINEL, Apr. 2, 1996, at D1 (discussing proposed five percent car rental tax).

20. See Joe Henderson, *Stadium Plans Plentiful; Money Isn't*, TAMPA TRIB., Sept. 27, 1995, at 1 (discussing Greater Tampa Chamber of Commerce Stadium Task Force's seat deposit plan).

21. See Charean Williams, *Voters Will Get a Say on Bucs: Tampa Bay Lawmakers Want Input from Voters on a Proposed Sales Tax Referendum for a New Stadium*, ORLANDO SENTINEL, May 9, 1996, at D1; Patrick Zier, *Tampa Voters to Protect 'Other' Stadium Tenants*, THE LEDGER (Lakeland, Fla.), May 21, 1996, at C1.

22. See Richard Danielson, *Council Splits Wide on Sales Tax Plans*, ST. PETERSBURG TIMES, June 18, 1996, at 1B (noting that revenue from a sales tax would be used for a new stadium, new schools, and a variety of municipal projects); Williams, *supra* note 21, at D1 (noting that revenue from a sales tax would be used to fund schools, law enforcement, and the stadium). A referendum seeking approval of a local option half-cent sales tax solely for the purpose of funding school construction and public safety projects was defeated by a wide margin in 1995. See Danielson, *supra*; Hannah Kamenetsky, *Florida County to Seek State's Nod on Football Stadium Funding*, BOND BUYER, Jan. 5, 1996, at 3.

23. See Testerman, *supra* note 17, at 1B.

1996 (the "Stadium Agreement").²⁴ The TSA agreed to construct a new 65,000-seat community stadium to serve as the Buccaneers' home field and a twelve million dollar training facility to be used solely by the Buccaneers.²⁵ The Stadium Agreement provided that the Buccaneers would use the stadium for thirty years and would pay the Tampa Sports Authority a total of three and one-half million dollars annually,²⁶ allocated as follows: two million to stadium rent, one million to practice facility rent, and five hundred thousand dollars as a fee for "certain development rights granted to the Buccaneers with respect to stadium property."²⁷ Further, the TSA would realize an additional \$1.93 million annually from a surcharge on tickets for Buccaneer games and other stadium events and would retain fifty percent of all revenue from non-Buccaneer events after the Buccaneers received their first two million, net of direct costs to be reimbursed to Tampa Sports Authority.²⁸ According to the Buccaneers' general manager, the new stadium's club seats, club lounges, additional luxury boxes, and other amenities were expected to generate an additional eight to sixteen million dollars every year.²⁹

Two weeks before the vote, former Tampa Mayor William F. Poe filed a lawsuit seeking to enjoin the holding of the referendum.³⁰ He raised two issues. First, whether the wording on the ballot was "clear and unambiguous" as required by section 101.161 of the Florida Statutes.³¹ Second, whether using public tax dollars violated the constitutional prohibition against lending public credit to aid a private corporation.³² The Hillsborough County circuit judge ruled in favor of the County on both issues.³³ On September 3, 1996, the referendum passed.³⁴

24. See *Poe II*, 695 So. 2d at 673-74.

25. See *id.* at 674.

26. See *id.*

27. *Id.*

28. See *id.*

29. See *Poe I*, *supra* note 7, slip op. at 5.

30. See *Poe v. Iorio*, No. 96-5537 (Fla. 13th Cir. Ct. Aug. 26, 1996) (order denying complaint for injunctive relief, at 1) (copy on file with the Authors).

31. See *id.* at 1, 4.

32. See *id.*

33. See *id.*

34. See Larry Dougherty, *Bucs Win One with Tax Vote*, ST. PETERSBURG TIMES, Sept. 4, 1996, at 1A. "The vote, which passed by a few percentage points, stunned even

In September 1996, Poe again filed suit, asking for a permanent injunction against collection of the approved tax, and seeking a declaration that the proposed use of the tax, the Stadium Agreement, and various other documents were unconstitutional.³⁵ The complaint centered on the argument that the use of public funds to construct a community stadium violated the prohibition in article VII, section 10 of the Florida Constitution, which prohibits the lending of public credit to private entities.³⁶ Hillsborough County and the City of Tampa filed motions to dismiss based on the doctrine of res judicata, arguing that the issues raised in the second lawsuit were identical to those raised in the first suit. Hillsborough County Circuit Judge Sam Pendino ruled that the suit was barred by res judicata.³⁷ Poe appealed the dismissal of his complaint to the Second District Court of Appeal.³⁸ Two months later, Hillsborough County and the City, joined by the TSA, filed a complaint for bond validation pursuant to chapter 75 of the Florida Statutes.³⁹ This complaint sought validation of a series of revenue bond issues to be funded from three different tax sources.⁴⁰ After appellate briefs were filed regarding the dismissal of Poe's complaint, the parties agreed to the consolidation of Poe's declaratory judgment/injunction action with the TSA's bond validation action.⁴¹ The stipulation agreement further relinquished jurisdiction from the Second District Court of Appeal to allow for the most expeditious resolution of the issues raised in the litigation.⁴²

some supporters of the proposal and [name] almost exactly a year after voters soundly rejected two similar half-cent sales tax measures that did not include a controversial stadium." *Id.* Tampa Mayor Dick Greco stated that "[i]t appears that the community won I am absolutely certain without any doubt that we have done for our children and our children's children what's right." *Id.* In addition to the referendum passed by the voters of Tampa, "[d]uring this decade voters have approved the use of tax dollars to build new stadiums in . . . Cleveland, Denver, Cincinnati, Detroit, Nashville and San Francisco." *See The Public Preference for Stadiums*, TAMPA TRIB., June 15, 1997, at 2.

35. *See Poe II*, 695 So. 2d at 674-75.

36. *See id.*

37. *See Poe v. Hillsborough County*, No. 96-6515 (Fla. 13th Cir. Ct. Oct. 7, 1996) (order dismissing complaint, at 3) (copy on file with the Authors).

38. *See Poe v. Hillsborough County*, 687 So. 2d 245 (Fla. 1997).

39. *See Poe II*, 695 So. 2d at 675.

40. *See id.* The TSA sought financing for approximately \$204.5 million in bonds through state sales tax monies, a local option four-cent tourist development tax, and a county-wide local option half-cent sales tax. *See id.*

41. *See id.*

42. The bond validation action was filed pursuant to chapter 75 of the Florida Stat-

The trial court found that the community stadium did serve a public purpose, and that the economic, tourism, and social benefits accruing to the Tampa Bay community outweighed the cost of the stadium.⁴³ However, the court found one provision in the Stadium Agreement unconstitutional, and ruled that the project did not serve a public purpose.⁴⁴ For this reason alone, the court refused to validate the bonds, and granted Poe's prayer for declaratory judgment and injunctive relief.⁴⁵ Although he prevailed at trial, Poe filed an appeal with the Florida Supreme Court. The Florida Supreme Court held that the project did serve a public purpose and was therefore not violative of the Florida Constitution.⁴⁶

III. THE PUBLIC PURPOSE DOCTRINE

The critical issue in *Poe v. Hillsborough County* was whether the expenditure of public funds to construct a sports stadium violated the constitutional prohibition against lending public credit to a private entity. As set out below, courts over the years established a "public purpose" doctrine.⁴⁷ Under this doctrine, if a project serves a paramount or primary public purpose, the Florida Constitution allows an incidental benefit to accrue to a private entity.⁴⁸ However, with respect to publicly funded projects that promote tourism, recreation, or entertainment, the "benefit" may be more than merely incidental.⁴⁹

utes, which provides for an expeditious judgment review and direct appeal to the Supreme Court of Florida. See FLA. STAT. § 75.08 (1995). This was critical, because the Stadium Agreement would substantially penalize the TSA if it failed to build the stadium on time. See Stadium Agreement by and Between the Tampa Sports Authority and Buccaneers Stadium Limited Partnership ¶ 50(d) (dated Aug. 28, 1996) (copy on file with the Authors).

43. See *Poe I*, *supra* note 7, slip op. at 13–14.

44. See *Poe II*, 695 So. 2d at 675. This provision allowed the Buccaneers to keep the first \$2 million of revenue generated by uses of the stadium other than the Buccaneer football games, such as University of South Florida collegiate football games, professional soccer games, concerts, and various other events. The Stadium Agreement further provided that the Buccaneers would split half of any revenue after the first \$2 million with the Tampa Sports Authority. See *id.* at 674.

45. See *id.*

46. The Florida Supreme Court's opinion is discussed at *infra* notes 147–57 and accompanying text.

47. See discussion *infra* notes 50–110 and accompanying text.

48. See *infra* note 55 and accompanying text.

49. See cases discussed *infra* notes 58–70.

Article IX, section 10 of the 1885 Florida Constitution provided as follows:

The credit of the State shall not be pledged or loaned to any individual, company, corporation or association; nor shall the State become a joint owner or stock-holder in any company, association or corporation. The Legislature shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate any money for, or loan its credit to, any corporation, association, institution or individual.⁵⁰

Under this provision, the spending of public funds must be done for only public purposes.⁵¹ The “public purpose” doctrine is not a static one; it has evolved over the years as the economy, scientific knowledge, and society have changed.⁵²

In early cases, the Florida Supreme Court strictly applied the “paramount public purpose” doctrine.⁵³ In part, this strict applica-

50. In 1968, the constitutional provision dealing with the lending of public credit was revised, and is now article VII, section 10 of the Florida Constitution.

This revision specifically allowed for the issuance of certain types of revenue bonds, and led to a broader definition of “paramount public purpose” with respect to those types of bonds. Proposed bond revenue projects that do not fall within the class of projects listed in section 10(c) must be analyzed using prior case law to determine whether the required public purpose exists. *See Nohrr v. Brevard County Educ. Facilities Auth.*, 247 So. 2d 304, 308–09 (Fla. 1971). Because the Tampa stadium project did not fall within the parameters of those listed in section 10(c), the project was analyzed under the paramount public purpose doctrine. *See Poe II*, 695 So. 2d at 675.

51. *See Answer Brief for Appellees at 17, Poe II*, 695 So. 2d 672 (citing *Northern Palm Beach County Water Control Dist. v. State*, 604 So. 2d 440, 441–42 (Fla. 1992); *Wald v. Sarasota County Health Facilities Auth.*, 360 So. 2d 763 (Fla. 1978)).

52. In *O'Neill v. Burns*, Justice Ervin, in his dissenting opinion, stated that “[t]he verbal context of a particular law or constitutional provision may remain unchanged, but it is inherent in some cases that application of such law be meted in accord with the concepts of the time.” 198 So. 2d 1, 8 (Fla. 1967) (Ervin, J., dissenting). Justice Ervin then cited myriad cases where the found public purpose was a benefit of recreation or tourism and also stated that “[t]he determining factor is simply whether the service or facility itself amounts to a public purpose.” *Id.*

53. *See Adams v. Housing Auth. of Daytona Beach*, 60 So. 2d 663, 670–71 (Fla. 1952) (holding that the expenditure, appropriation, or loaning of public funds or the assessment of taxes for a non-public purpose violates the Florida Constitution); *State v. Town of North Miami*, 59 So. 2d 779, 785 (Fla. 1952) (stating that “[o]ur organic law prohibits the expenditure of public money for a private purpose. It does not matter whether the money is derived by ad valorem taxes, by gift, or otherwise. It is public money and under our organic law public money cannot be appropriated for a private purpose or used for the purpose of acquiring property for the benefit of a private con-

tion of the doctrine stemmed from fears that the association of government with private enterprises would "lead inevitably to the ultimate destruction of the private enterprise system."⁵⁴ The Supreme Court, however, began to allow the use of public funds for projects that did benefit private interests, as long as those interests were only "incidentally benefitted."⁵⁵ Through these and other related cases, the court allowed public projects to go forward in spite of an incidental benefit to a private interest.

In 1952, the Florida Supreme Court reviewed a proposal for a bond issuance to construct a manufacturing plant for the exclusive use and gain of a private corporation.⁵⁶ The court found this use of public funds invalid, distinguishing several cases where the proposed bond issuance was accomplished pursuant to express legislative authority and findings of public purpose.⁵⁷ The strict requirement of a correlation between public and private benefits applied by the court in that case should be compared to the court's more lenient reasoning in *Panama City v. State*.⁵⁸ In that case, the court acknowledged the importance of recreational and tourism projects and the leniency the court gives to the public funding of these projects.⁵⁹ In *Panama City*, the city proposed to issue bonds for the construction of two large waterfront developments, which would include a city hall, a civic auditorium, concession and administration buildings, and a large marina.⁶⁰ The court stated that "[T]he development of the law in this State on this question and particularly a study of the legislative history with relation to public projects of a recreational and entertainment nature reveals the allowance to the public bodies of an extremely wide latitude in this field."⁶¹

For instance, in 1956 the Florida Supreme Court held that

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54. *State v. Town of North Miami*, 59 So. 2d 779, 785 (Fla. 1952).

55. *See, e.g., Panama City v. State*, 93 So. 2d 608 (Fla. 1957) (stating that waterfront improvement revenue bonds were constitutional although a small percent of the project would be leased to private owners, as the private benefit here was merely incidental); *Gate City Garage v. City of Jacksonville*, 66 So. 2d 653 (Fla. 1953) (upholding the acquisition of an off-street parking garage despite incidental benefits to a private developer).

56. *See State v. Town of North Miami*, 59 So. 2d 779 (Fla. 1952).

57. *See id.* at 783.

58. 93 So. 2d 608 (Fla. 1957).

59. *See id.* at 613.

60. *See id.* at 610.

61. *Id.* at 613 (emphasis added).

bonds could validly be issued to construct a racing and recreational facility.⁶² The court stressed that although a private corporation would be able to utilize private gain from the facility, it could do so for only six months per year.⁶³ Accordingly, the facilities district would have the use of the facilities to house other events for at least the remaining six months of each year, and at all other times when the corporation had no events scheduled.⁶⁴ The court, in this case, emphasized the importance of tourism, and stated “[t]he sand and the sun and the water are not sufficient to attract those seeking a vacation and recreation. Entertainment must be offered.”⁶⁵ In its ruling, the court relied on several prior cases where it had found that the development of recreational facilities served a public purpose.⁶⁶

In *State v. City of Tampa*,⁶⁷ the city obtained a judgment validating bonds to be used to build a convention center, where the bonds would be repaid by proceeds received from a utilities service tax.⁶⁸ The court cited several cases wherein the court found a public purpose in the construction of such facilities as auditoriums, stadiums, and cultural trade centers.⁶⁹ The court ruled that, although the convention center was to be constructed in part on lands leased from a private enterprise, the convention center served a public purpose.⁷⁰

In 1966, the court deviated from this line of cases, and refused to validate the issuance of municipal bonds, secured by certain tax revenues, to finance the construction of a spring training facility for a professional baseball team.⁷¹ The City of Deerfield Beach proposed

62. *See State v. Daytona Beach Racing & Recreational Facilities Dist.*, 89 So. 2d 34 (Fla. 1956). The *Poe II* court relied on this decision extensively for the basis of its ruling. *See Poe II*, 695 So. 2d at 675.

63. *See Daytona Beach Racing*, 89 So. 2d at 36.

64. *See id.* at 36–37.

65. *Id.* at 37.

66. *See id.* (citing *State v. City of Jacksonville*, 53 So. 2d 306 (Fla. 1951); *State v. City of Pensacola*, 43 So. 2d 340 (Fla. 1949); *State v. City of Miami*, 41 So. 2d 545 (Fla. 1949); *State v. City of Daytona Beach*, 33 So. 2d 218 (Fla. 1948)).

67. 146 So. 2d 100 (Fla. 1962).

68. *See id.* at 101–02.

69. *See id.* at 103 (citing *State v. Inter-American Ctr. Auth.*, 84 So. 2d 9 (Fla. 1955); *State v. City of Miami*, 76 So. 2d 294 (Fla. 1954); *Starlight Corp. v. City of Miami Beach*, 57 So. 2d 6 (Fla. 1952); *State v. City of Miami*, 43 So. 2d 457 (Fla. 1949); *State v. City of Daytona Beach*, 33 So. 2d 218 (Fla. 1948)).

70. *See id.* at 104.

71. *See Brandes v. City of Deerfield Beach*, 186 So. 2d 6 (Fla. 1966).

to construct a 5000-seat stadium and acquire several other facilities to be used by the team during the summer as a training facility.⁷² The city agreed to lease the training facility to a private corporation, which would then lease the facilities to the team.⁷³ In return for rent from the private corporation, the city agreed to operate and maintain the playing fields and related areas, to provide all utilities, and to provide adequate police protection.⁷⁴ Although the city was obligated to perform these services to the team by virtue of a third-party beneficiary clause in the lease between the city and the private corporation, the team was responsible only to its corporate lessor.⁷⁵ Thus, the city had no right to enforce any of the duties imposed on the team under the lease.⁷⁶

In its analysis, the court pointed out that the facilities to be constructed by the city included the stadium, dormitory and dining facilities, and many other amenities.⁷⁷ Further, had the city later desired to take over the corporation's obligations to the team, the city would then have had to "provide, pay and be responsible for all necessary ticket sellers, ticket takers, ushers, police, public address announcers, parking lot attendants and other necessary personnel [and] all necessary personnel to operate the concession stands, parking areas, and all other activities,' including the corporation's obligation to sell \$18,000 in preseason tickets."⁷⁸ The corporation was required "to pay an amount equal to the debt service on the . . . bonds . . . and [f]ifty percent of the net profits in excess of prior years' losses."⁷⁹ The corporation was entitled to keep "all rentals on the project and all concessions and other income-producing rights, [e]xcept those reserved by the [team]."⁸⁰

In a 4-3 decision, the *Deerfield Beach* court held that the bond's purpose was not public or municipal, because only a mere incidental advantage of watching ten baseball games flowed to the public,

72. *See id.* at 8.

73. *See id.*

74. *See id.*

75. *See id.* at 11.

76. *See id.*

77. *See City of Deerfield Beach*, 186 So. 2d at 8.

78. *Id.* at 9 (alteration in original) (quoting from the lease between the city and the private corporation).

79. *Id.*

80. *Id.*

while the private enterprise was primarily benefited.⁸¹

In his dissenting opinion, with which Justices Roberts and Ervin concurred, Chief Justice Thornal stated:

I am deeply concerned that the Court has today drawn too tight a line around public financing for the accomplishment of legitimate public objectives. It is my view that the impact of the majority decision will have far-reaching adverse results upon Florida's admitted ambitions to develop its recreational facilities as essential aspects of our vital tourist industry.⁸²

The dissent noted that major league baseball had become a twenty-five-million-dollar-a-year industry in Florida, and pointed out that most of the sixteen major league teams and seventy-nine minor league teams probably leased and occupied publicly owned facilities in the same manner as that proposed by Deerfield Beach.⁸³ The dissent stressed that Deerfield Beach was merely trying to accomplish the same thing that the court had repeatedly approved in the past.⁸⁴

The facts in *Deerfield Beach* were distinguishable from those in *Poe*, and *Deerfield Beach* also arose in a different historical context. Justice Shaw, in *Linscott v. Orange County Industrial Development Authority*,⁸⁵ described the cases decided in the mid-sixties as “[having] a significant effect on Florida's economic development in the 1960s”⁸⁶ due to the Internal Revenue Service's exemption of the interest on industrial bonds from federal income tax.⁸⁷ Florida was placed at an economic disadvantage with other states, because the

81. *See id.* at 12.

82. *Id.* at 12 (Thornal, C.J., dissenting).

83. *See City of Deerfield Beach*, 186 So. 2d at 12–13 (Thornal, C.J., dissenting).

84. *See id.* at 13 (citing *State v. Daytona Beach Racing & Recreational Facilities Dist.*, 89 So. 2d 34 (Fla. 1956) (approving construction of a speedway); *Sunny Isles Fishing Pier, Inc. v. Dade County*, 79 So. 2d 667 (Fla. 1950) (upholding lease of a public fishing pier to private enterprise for development by the private entity); *State v. City of Miami*, 41 So. 2d 545 (Fla. 1949) (holding that financing of additional seats for the Orange Bowl Stadium served a public purpose)).

85. 443 So. 2d 97 (Fla. 1983).

86. *Id.* at 99.

87. *See id.* at 100. For a stadium bond to be tax exempt, no greater than 10% of the use of the facility may be controlled by a private entity, and no greater than 10% of the revenues to pay the bonds may be derived from a private entity. *See* I.R.C.

§§ 103(b)(1), 141(b) (1994). Thus, there were tax code constraints on the terms of the lease with the Buccaneers.

court, during this time, refused to validate bonds that might have benefited private entities for capital projects.⁸⁸ In part to reverse this trend in case law, the Florida Legislature proposed a change to the Florida Constitution, which was submitted to and approved by the voters in 1968.⁸⁹ This constitutional amendment became article VII, subsection 10(c), which had a resulting impact on the evolving case law.⁹⁰

Since the *Deerfield Beach* decision, the Florida Supreme Court has upheld the expenditure of public dollars and the donation of public land for the purpose of improving and constructing sports stadiums.⁹¹ Three months after the *Deerfield Beach* decision, the court validated the bonds to be issued to construct Tampa Stadium.⁹² The bonds to be issued to construct the stadium would be repaid from sources other than ad valorem taxes, although the City and County agreed to fund for capital improvements or otherwise carry out the purposes of the TSA's enabling act.⁹³ In 1977, a trial court validated the TSA's issuance of special refunding bonds to retire the 1966 bonds issued to construct Tampa Stadium.⁹⁴ The court held that the refunding of these bonds constituted a "proper, legal and corporate public purpose and [was] fully authorized by law."⁹⁵

The Florida Supreme Court has continued to find that the construction of facilities that promote tourism and recreation serves a paramount public purpose. In *State v. City of Miami Beach*,⁹⁶ the court reviewed the trial court's validation of excise tax bonds for the

88. See *Linscott*, 443 So. 2d at 100.

89. See *id.*

90. See *id.* (stating that the "impact of . . . section 10(c) . . . was to recognize . . . that the public interest was served by facilitating private economic development" and to overturn cases holding that "non-recourse revenue bonds were pledges of the public credit"); see also *Nohr v. Brevard County Educ. Facilities Auth.*, 247 So. 2d 304, 309 (Fla. 1971) (stating that under section 10(c), "[n]either the full faith and credit nor the taxing power of the State of Florida or of any political subdivision thereof is pledged to the payment of . . . these revenue bonds").

91. See, e.g., *State v. Tampa Sports Auth.*, 188 So. 2d 795 (Fla. 1966) (upholding bond issuance to build Tampa Stadium).

92. See *id.*

93. See *id.* at 796.

94. See *Tampa Sports Auth. v. State*, No. 77-6456 (Fla. 13th Cir. Ct. July 5, 1977).

95. See *id.*, slip op. at 7.

96. 234 So. 2d 103 (Fla. 1970).

purpose of constructing a convention hall.⁹⁷ The Court took judicial notice of the fact that the tourist industry is one of Florida's greatest assets.⁹⁸ The Court, quoting *State v. City of Tampa*,⁹⁹ which upheld the construction of a convention center with public funds as a valid public purpose,¹⁰⁰ stated that the Court frequently found the construction of an auditorium, stadium or similar structure to be a proper public purpose.¹⁰¹

The Court also held that publicly funded stadium projects serve a valid public purpose. The Court approved the issuance of publicly backed bonds for the original construction of Tampa Stadium,¹⁰² the enlargement of the Orange Bowl,¹⁰³ the enlargement of the Tangerine Bowl,¹⁰⁴ and the modernization of the Miami Dolphins' stadium.¹⁰⁵

In *Rowe v. Pinellas Sports Authority*,¹⁰⁶ the Pinellas County Board of County Commissioners agreed to the issuance of revenue bonds by the Pinellas Sports Authority to build a sports stadium, to be secured by the city's excise taxes (consisting of guaranteed entitlement funds and sales taxes).¹⁰⁷ The county's Tourist Development Plan required funds "to be used exclusively for tourist advertising and promotion."¹⁰⁸ The court found that the construction of a sports stadium could be included in the term "tourist advertising and promotion."¹⁰⁹ The court affirmed the trial court's validation order, which found that the issuance of the agreements and collection of the tax was for a proper, legal, public purpose and was fully autho-

97. *See id.* at 104.

98. *See id.* at 105.

99. 146 So. 2d 100 (Fla. 1962).

100. *See id.* at 104.

101. *See City of Miami Beach*, 234 So. 2d at 106; *City of Tampa*, 146 So. 2d at 103.

102. *See State v. Tampa Sports Auth.*, 188 So. 2d 795 (Fla. 1966).

103. *See State v. City of Miami*, 41 So. 2d 545 (Fla. 1949).

104. *See Orange County Civic Facilities Auth. v. State*, 286 So. 2d 193 (Fla. 1973).

105. *See Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So. 2d 981 (Fla. 1981); *see also Lake Lucerne Civic Ass'n v. Dolphin Stadium Corp.*, 878 F.2d 1360 (11th Cir. 1989) (recognizing that "construction of a sports stadium was a legitimate public purpose under Florida law"); *Rolling Oaks Homeowner's Ass'n v. Dade County*, 492 So. 2d 686, 688 (Fla. 3d Dist. Ct. App. 1986) (stating that "the use of public property as a sports stadium also has been approved as [a] use for a public purpose").

106. 461 So. 2d 72 (Fla. 1984).

107. *Id.* at 74.

108. *Id.* (quoting PINELLAS COUNTY, FLA., ORDINANCE 78-20, § 2 (1978)).

109. *Id.* at 76.

rized by law.¹¹⁰

IV. CONSTITUTIONAL ISSUES PRESENTED IN THE POE LITIGATION

In bond validation cases, courts will look to declarations made by the Legislature that a project serves a public purpose.¹¹¹ 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,¹¹² or that the legislative finding was so clearly erroneous as to be beyond the power of the Legislature.¹¹³

The Florida Legislature has specifically determined that a sports stadium serves a public purpose.¹¹⁴ A declaration and determination of public purpose by the Florida Legislature is found in section 196.199(2)(a) of the Florida Statutes, 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 purpose.¹¹⁵ "Governmental, municipal or public purpose" is defined in section 196.012(6) of the Florida Statutes.¹¹⁶ In the various interlocal agreements, resolutions, and ordinances authorizing the issuance of the bonds, the TSA also made legislative findings and determinations that the construction of the

110. *See id.* at 78.

111. *See* Nohrr v. Brevard County Educ. Facilities Auth., 247 So. 2d 304, 309 (Fla. 1971); *Raney v. City of Lakeland*, 88 So. 2d 148, 150 (Fla. 1956).

112. *See Raney*, 88 So. 2d at 150.

113. *See Nohrr*, 247 So. 2d at 309.

114. Section 288.1162(7) of the Florida Statutes 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.

FLA. STAT. § 288.1162(7) (Supp. 1996).

115. *See* FLA. STAT. § 196.199(2)(a) (1995).

116. Section 196.012(6) of the Florida Statutes 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, municipal or public purpose or function when access to the property is open to the general public with or without a charge for admission.

FLA. STAT. § 196.012(6) (1995) (emphasis added).

new stadium would serve a valid public purpose.¹¹⁷

Poe argued that the sole purpose of demolishing the existing stadium and constructing a new one was to ensure greater profits to a private entity.¹¹⁸ He argued that the Stadium Agreement was unconstitutional because its terms were so beneficial to the Buccaneers.¹¹⁹ During the trial, Poe called several economists to testify as expert witnesses regarding the economic impact of a professional sports franchise on a local economy.¹²⁰ His experts testified that the existence of a sports team has no measurable economic impact.¹²¹ Poe's experts further testified that hosting a Super Bowl does not have any measurable economic benefit to a local economy.¹²² Poe also argued that *Deerfield Beach* controlled, and mandated that the court refuse to validate the bonds.¹²³

The TSA argued that the primary purpose of the project was to benefit the local economy, provide recreation, and to promote tourism, and that any private benefits stemming from the project were merely incidental.¹²⁴ The TSA's experts testified that the impact of a sports team on the local economy ranged from a high of one hundred eighty-three million dollars to a low of eighty-three million dollars per year, and that over a thirty-year term the impact could be expected to be in excess of three billion dollars.¹²⁵ Further, the Super Bowl would yield an economic benefit of three hundred million.¹²⁶

Poe also argued that when private interests are involved, the

117. See *Poe I*, *supra* note 7, slip op. at 12.

118. See Initial Brief of Appellant/Cross-Appellee at 26–27, *Poe II*, 695 So. 2d 672 (copy on file with the Authors).

119. See *id.* at 27.

120. See, e.g., Transcript of Proceedings Vol. VIII at 1184, *Poe I*, *supra* note 7 (expert testimony of Phillip Porter, Ph.D.) (copy on file with the Authors); Transcript of Proceedings Vol. IX at 1324, *Poe I*, *supra* note 7 (expert testimony of Robert Baade) (copy on file with the Authors).

121. See Transcript of Proceedings Vol. VIII at 1184–88, *Poe I*, *supra* note 7. Mr. Poe's experts testified that this is due to the fact that citizens merely realign their recreational dollars from other activities to the sports activity, and therefore do not add dollars to the economy. See Transcript of Proceedings Vol. IX at 1317, *Poe I*, *supra* note 7.

122. See Transcript of Proceedings Vol. VIII at 1186, *Poe I*, *supra* note 7.

123. See Initial Brief of Appellant/Cross-Appellee at 34–35, *Poe II*, 695 So. 2d 672.

124. See Answer Brief of Appellees/Cross-Appellants Hillsborough County, City of Tampa, Florida, and Tampa Sports Authority at 15 [hereinafter Appellee's Brief], *Poe II*, 695 So. 2d 672 (copy on file with the Authors).

125. See Transcript of Testimony and Proceedings Vol. I at 197–201, *Poe I*, *supra* note 7 (copy on file with the Authors); Appellee's Brief at 11, *Poe II*, 695 So. 2d 672.

126. See Appellee's Brief at 11, *Poe II*, 695 So. 2d 672.

court has upheld the use of public funds only when the sole source of repayment of the public funds is the revenues derived from the project.¹²⁷ He argued that the court should use a two-prong test. First, the court must find a paramount or predominant public purpose, and then the public monies advanced for the project must be repaid from project revenues.¹²⁸

The TSA cited several cases where the Florida Supreme Court upheld publicly-funded projects that benefitted private entities, where the project revenues were not the sole source of revenue to pay the bonds. For instance, in 1957 the court approved the issuance of bonds to build a large waterfront development, where a portion of the development consisted of concession buildings to be leased to private owners.¹²⁹ The bonds were to be repaid from revenue derived by rent payments, utilities services, excise taxes, licenses, and additional sources other than ad valorem taxes.¹³⁰ The court upheld bonds secured by ad valorem taxes, issued for the purpose of purchasing recreational facilities that would be located within a private condominium development.¹³¹ The court noted that although the facilities would be available to the general public, the condominium residents would “receive the primary benefits because of their close proximity to the recreational facilities.”¹³² The court upheld bonds secured by net revenues derived from the project *as well as other revenues of the City*, exclusive of ad valorem taxes, issued for the purpose of constructing a convention center, a hotel, and a retail area.¹³³

V. THE TRIAL AND SUPREME COURT RULINGS

In the *Poe* case, the trial court found that the forecasts presented by the government experts were more credible than those of Poe's experts.¹³⁴ While acknowledging that economic forecasting is not an exact science, the trial court found that over time the economic bene-

127. See Initial Brief of Appellant/Cross-Appellee at 31, *Poe II*, 695 So. 2d 672.

128. See *id.* at 23.

129. See *Panama City v. State*, 93 So. 2d 608 (Fla. 1957).

130. See *id.* at 610.

131. See *State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d 631, 632–33 (Fla. 1980).

132. See *id.* at 633.

133. See *State v. City of Miami*, 379 So. 2d 651, 652 (Fla. 1980).

134. See *Poe I*, *supra* note 7, slip op. at 7.

fits of the team and the hosting of Super Bowls “can be expected to far exceed the cost of the new stadium.”¹³⁵ The trial court also found that there were substantial “intangible benefits” associated with the stadium project.¹³⁶ These include tourism, recreation, media exposure, civic pride, camaraderie, and community image.¹³⁷ The trial court also acknowledged the various legislative findings of a public purpose.¹³⁸

In spite of these findings, the trial court refused to validate the bonds because of one provision in the Stadium Agreement. This provision granted to the Buccaneers the first two million dollars of revenue from non-Buccaneer events, such as University of South Florida football games, the Tampa Bay Mutiny soccer games, horse shows, concerts, and tractor pulls.¹³⁹ The trial court granted Poe's request for injunctive relief, and declared the stadium project unconstitutional.¹⁴⁰ The TSA requested a rehearing, which the trial court denied.¹⁴¹ In its order denying the rehearing, the trial court noted that it would validate the bonds if the offending provision were revised.¹⁴²

Although he prevailed at trial, Poe filed an appeal to the Florida Supreme Court.¹⁴³ Poe argued that the trial court did not go far enough, and failed to address the constitutionality of the remaining terms of the Stadium Agreement.¹⁴⁴ Poe argued that if the trial court found that one clause unconstitutional, other clauses (such as building a twelve million dollar practice facility for the exclusive use of the Buccaneers) should likewise be deemed unconstitutional.¹⁴⁵ The TSA filed a cross-appeal, arguing that the project did serve a paramount public purpose, and that the trial court incorrectly “micro-managed” the negotiated stadium agreement.¹⁴⁶

135. *Id.*

136. *See id.* at 8.

137. *See id.*

138. *See id.* at 6.

139. *See Poe I, supra* note 7, slip op. at 8.

140. *See id.* at 15–16.

141. *See Appellees' Brief* at 13, *Poe II*, 695 So. 2d 672.

142. *See id.*

143. Under article V, section 3(b)(2) of the Florida Constitution and section 75.08 of the Florida Statutes, appeals in bond validation proceedings go directly to the Florida Supreme Court.

144. *See Initial Brief of Appellant/Cross-Appellee* at 26, *Poe II*, 695 So. 2d 672.

145. *See id.* at 26–27.

146. *See Appellees' Brief* at 15, *Poe II*, 695 So. 2d 672.

The Florida Supreme Court issued its opinion on May 22, 1997.¹⁴⁷ The court relied heavily on two related cases that approved the use of public funds to construct a racing facility, and found that the bonds in *Poe* were valid for the same reasons.¹⁴⁸

In the first of these cases, the Daytona Beach Racing and Recreational Facilities District sought to validate \$2.9 million in bonds to construct and operate a racing and recreational facility.¹⁴⁹ A lease agreement between the district and a private corporation allowed the corporation to possess the racing facility for at least six months per year for forty years.¹⁵⁰ Although the district could only use the facility for a portion of the year, the court held that the issuance of the bonds was valid.¹⁵¹ The court stated that tourism is a “competitive business” and that the sand and sun were insufficient “to attract those seeking a vacation and recreation. Entertainment must be offered.”¹⁵² The court found that the predominant purpose of the raceway facility was to promote and provide tourism, recreation, and entertainment.¹⁵³

Nearly ten years later, the district sought an amendment to the lease, which in essence would grant the private corporation exclusive use of the facility.¹⁵⁴ In rejecting a taxpayer's challenge, the court held that revising the lease did not diminish the predominantly public purpose of the project, which was the operation of the facility as a tourist and business attraction.¹⁵⁵

Applying the rationale of the Daytona Beach cases, the *Poe* court found that the trial court's refusal to validate the bonds was not because the project itself did not serve a predominate public

147. See *Poe II*, 695 So. 2d at 672. Although the stipulated motion filed by the parties contained an expedited briefing schedule, the Florida Supreme Court issued a briefing schedule that demanded even shorter time frames. See *id.* Oral argument was held on May 7, 1997, and the opinion was rendered on May 22, 1997. See *id.*

148. See *id.* at 675–79 (citing *Daytona Beach Racing & Recreational Facilities Dist. v. Paul*, 179 So. 2d 349 (Fla. 1965); *State v. Daytona Beach Racing & Recreational Facilities Dist.*, 89 So. 2d 34 (Fla. 1956)).

149. See *State v. Daytona Beach Racing & Recreational Facilities Dist.*, 89 So. 2d 34, 35 (Fla. 1956).

150. See *id.*

151. See *id.* at 38.

152. *Id.* at 37.

153. See *id.*

154. See *Daytona Beach Racing & Recreational Facilities Dist. v. Paul*, 179 So. 2d 349 (Fla. 1965).

155. See *id.* at 355.

purpose, but because the terms of the Stadium Agreement were too favorable to the Buccaneers.¹⁵⁶ The court expressed sympathy to Poe's argument that the Buccaneers got "too sweet" a deal, but pointed out that the remedy for this is the ballot box.¹⁵⁷

VI. CONCLUSION

Although the Buccaneers will realize a direct benefit of \$1.2 billion in revenues over the life of the lease, primarily due to the enhanced revenue generating amenities in the new stadium, the Florida Supreme Court found this benefit to be incidental to the primary economic, recreational, and tourism benefits accruing to the public.¹⁵⁸ The court stated that the trial court refused to validate the bonds not due to lack of a primary public purpose, but because the Buccaneers received "too sweet a deal."¹⁵⁹

One important point the court made was that once a paramount public purpose is found, a court cannot micro-manage arms-length business negotiations by striking discrete portions of a negotiated business deal.¹⁶⁰ Under the court's reasoning, and its reliance on the Daytona Beach cases, if the primary purpose of a project is to promote recreation, tourism, and entertainment, it will be constitutional — even when a private entity receives a substantial economic benefit. Therefore, the public purpose doctrine has become somewhat diluted when applied to projects funded by local governments that can be shown to promote recreation and tourism. The court also appeared to reject the idea of comparing the profits made by a private entity with those realized by the public in order to determine the questions of a public purpose and an incidental private benefit. Instead, the court looked at a bigger picture, and focused on intangible benefits that accrue to the public, such as media exposure, recreation, and increased tourism.

156. *See Poe II*, 695 So. 2d at 679.

157. *See id.*

158. *See id.*

159. *Id.*

160. *See id.* Interestingly, the court did not mention *Brandes v. City of Deerfield Beach*, 186 So. 2d 6 (Fla. 1966), which Poe strenuously argued controlled the case. *See Appellee's Brief* at 34–36, *Poe II*, 695 So. 2d 672. Nor did the court address the legislative findings of fact, which in the past were an important part of a bond validation proceeding. This may be due to the extreme time pressures on the court. *See supra* note 147.

Although the *Poe* court did not address the importance of legislative findings of a public purpose, which are entitled to “great weight, and are not to be disturbed unless clearly erroneous,”¹⁶¹ a governmental entity seeking approval of a publicly financed project should have a clear record of specific legislative findings of a public purpose. These declarations should contain express findings that the project will serve the public by promoting tourism, recreation, and entertainment.

The question now becomes whether a project that does promote recreation, tourism, and entertainment could ever be “too sweet,” providing too much in economic or other benefits to a private entity to pass constitutional muster.

161. The question 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. *See Nohrr v. Brevard County Educ. Facilities Auth.*, 247 So. 2d 304, 309 (Fla. 1971); *Raney v. City of Lakeland*, 88 So. 2d 148, 150 (Fla. 1956).