Building New Stadiums with Your Money Whether You Like It or Not: The Pennsylvania Constitution Does Not Prohibit the Use of Public Funds to Construct New Stadiums

Michael J. Cremonese
Comments

Building New Stadiums with Your Money Whether You Like It or Not: The Pennsylvania Constitution Does Not Prohibit the Use of Public Funds to Construct New Stadiums

The Pittsburgh Pirates baseball team and the Pittsburgh Steelers football team have called upon Allegheny County and the City of Pittsburgh to build, with public money, new stadiums for baseball and football. The local governments, fearing economic disaster for the region if either or both franchises would leave, have answered the call.¹

The city and county received assistance from the commonwealth in the form of the Southwestern Pennsylvania Regional Renaissance Initiative ("RRI"), which was passed by the state legislature.² The RRI included an increase in the amount of sales tax by one-half of one percent for counties in Southwestern Pennsylvania.³ The RRI was submitted to a voter referendum in November, 1997;⁴ the

1. PITTSBURGH POST-GAZETTE, July 10, 1998, at A1. On July 1, 1998, the City of Pittsburgh and County of Allegheny Regional Destination Financing Plan Proposal was submitted to the Allegheny Regional Asset District. Id. The proposal was approved by the Allegheny Regional Asset District on July 9, 1998. Id. Tom Barnes & Robert Dvorchak, Plan B Approved: Play Ball.

4. The Ballot Referendum read as follows:
Do you favor supporting job creation projects in this county by temporarily increasing the sales tax by 0.5% for seven years, with 75% of the revenues used to fund not more than ½ the cost of expanding the Lawrence Convention Center, and constructing facilities in the cultural district, a baseball park and a football stadium; and with the remaining 25% of the revenues used for other economic development projects in Allegheny County?
voters rejected it.

Allegheny County, the City of Pittsburgh, and the Public Auditorium Authority of the City of Pittsburgh and Allegheny County ("PAA") then devised the Regional Destination Financing Plan.\(^5\) This new plan was designed to provide funds for the two new stadiums, expansion of the David L. Lawrence Convention Center, demolition of the existing Three Rivers Stadium, and construction of a Pittsburgh Destination Center.\(^6\) The plan proposes that $809 million in funds be obtained from public and private sources.

The public funds are targeted for the construction of the two new stadiums as well as the other capital improvements contemplated in the new plan.\(^7\) The use of public money will likely result in legal challenges to invalidate several of the proposed sources of funds. The intent of this comment is to explore legal claims that may arise in Pennsylvania from the use of public money to construct sports stadiums in Pittsburgh in light of recent legal challenges on the same issue in other states.

Neither nationally nor locally is the use of public funds to construct stadiums a new concept. In 1930, the Court of Appeals of Ohio addressed the issue of whether public funds could be used to erect and maintain a stadium in Cleveland, Ohio.\(^8\) The Ohio court ruled that public funds could be used to construct a stadium.\(^9\)

This issue arose when the city of Cleveland determined that it was necessary to build a "fireproof stadium on the lakefront."\(^10\) The citizens of Cleveland voted in favor of issuing $2.5 million in bonds for the construction of the stadium.\(^11\) Accordingly, the city issued bonds and arranged to build the stadium.\(^12\) Less than one month after a construction contract was awarded, a taxpayer sought to enjoin the project.\(^13\)

In deciding the issue, the court explained that construction of a

\[^{16}\text{Pa. Cons. Stat.} \S 3000.3054(b) (Supp. 1998).}\n\[^{5}\text{See infra note 1.}\n\[^{6}\text{City of Pittsburgh and County of Allegheny, Regional Destination Financing Plan 1-2 (July 1, 1998) (on file with author).}\n\[^{7}\text{See City of Pittsburgh and County of Allegheny, Regional Destination Financing Plan (July 1, 1998) (on file with author).}\n\[^{8}\text{Meyer v. City of Cleveland, 171 N.E. 2d 606 (Ohio Ct. App. 1930).}\n\[^{9}\text{Meyer, 171 N.E.2d at 608.}\n\[^{10}\text{Id. at 606.}\n\[^{11}\text{Id.}\n\[^{12}\text{Id.}\n\[^{13}\text{Id.}\]
Constructing Stadiums with Public Funds

sports stadium did indeed constitute a proper public purpose. The court noted that both the Greek and Roman empires constructed and maintained stadiums. Furthermore, the court identified several cities in the United States that had built municipal stadiums without facing legal challenges.

The court identified numerous events that could take place in a public stadium. Then, the court found that "[i]t is obvious these purposes promote the public welfare and afford recreation, entertainment and education to the public." The court concluded that the proposed Cleveland stadium was "a public building within the power of a chartered municipality like Cleveland to construct."

The taxpayer argued that the stadium was being constructed to benefit the Cleveland baseball team, not the public. The court addressed this argument by noting that a contract for the use of the stadium did not exist. In refusing to decide explicitly whether the stadium could be used for the baseball team, the court explained that once constructed, the stadium must be used for lawful purposes.

The Meyer Court made the proper decision. The citizens of

14. Meyer, 171 N.E.2d at 606. The court stated:
The powers of a municipal corporation are not limited to providing for police, pavements, water, light, sewers, docks and markets, but it has been held that a municipality may minister to the comfort and health of its citizens, and may educate, instruct, please and amuse its inhabitants; maintain public libraries, parks and botanical and zoological gardens; provide exhibits for fair or exposition; construct memorial halls, monuments, statues; conduct public concerts; establish a public golf course, and construct and maintain any building calculated to promote education, recreation or pleasure of the public.

15. Id. at 607. It may seem peculiar to some that the court points with favor to two ancient empires that eventually failed.

16. Id. These cities include New York City, Chicago, Philadelphia, San Francisco, and Baltimore. Id. The court noted that Los Angeles also had a municipal stadium but that it, too, had to deal with a legal challenge in County of Los Angeles v. Dodge, 197 P. 403 (Cal. 1921). Id.

17. Id at 608. These events include "historical pageants, patriotic celebrations, playground festivals, all-nations carnivals, civic demonstrations, school pageants, mass dramas and dramatic and folk festivals, outdoor opera, band concerts, musical festivals, saengerfests, receptions to famous visitors, mass meetings, community Christmas celebrations, Americanization ceremonies, expositions and baseball, football, boxing, wrestling." Id.

18. Id. at 608.


20. Id.

21. Id.

22. Id.
Cleveland had authorized the public funding.\footnote{Id. at 606.} Furthermore, a stadium is a place where the public gathers for recreation, entertainment, and education.\footnote{Meyer, 171 N.E.2d at 608.}

Nearly two generations later, the issue of using public funds for stadiums resurfaced in courts across the nation.\footnote{See Martin v. City of Philadelphia, 215 A.2d 894 (Pa. 1966); Conrad v. City of Pittsburgh, 278 A.2d 906 (Pa. 1966); Brandes v. City of Deerfield Beach, 186 So. 2d 6 (Fla. 1966); Ginsberg v. City and County of Denver, 436 P.2d 684 (Colo. 1968); Bozell v. City of Cincinnati, 233 N.E.2d 864 (Ohio 1968); In Re Opinion of the Justices, 250 N.E.2d 547 (Mass. 1969); Alan v. County of Wayne, 200 N.W.2d 628 (Mich. 1972).} The overwhelming majority of the courts ruled that public funding of stadium construction was lawful.\footnote{See Annotation, Validity of Governmental Borrowing or Expenditure for Purposes of Acquiring, Maintaining, or Improving Stadium for Use of Professional Athletic Team, 67 A.L.R. 3d 1186 (1975).} However, two courts rejected the use of public funds for stadium construction.\footnote{See Brandes, 186 So. 2d 6 (Fla 1966); see also In Re Opinion of the Justices, 250 N.E.2d 547 (Mass. 1969).}

In 1966 in \textit{Brandes v. City of Deerfield Beach}, the Supreme Court of Florida ruled in favor of taxpayers who challenged the use of public funds to build a spring training campus for the Pittsburgh Pirates.\footnote{Brandes, 186 So. 2d at 12.} The City of Deerfield Beach had authorized the issuance of $1.5 million in bonds for the construction of the training facility.\footnote{Id. at 7. The proposed training facility included a stadium, a dormitory, and dining facilities. Id. at 8.} Deerfield Beach planned to lease the facility to Deerstad, Inc.\footnote{Id.} Deerstad, Inc., in turn, would lease the facility to the Pittsburgh Athletic Company, Inc.\footnote{Id.} The court ruled that this plan violated two provisions of the Florida Constitution.\footnote{Id. at 12.}

First, the Florida Constitution prohibits cities from imposing taxes for non-municipal purposes.\footnote{Id. at 11.} The court acknowledged that an incidental benefit to a private entity does not destroy the public purpose of a given project.\footnote{Id. at 12.} However, the court reasoned that the

\footnote{Brandes, 186 So. 2d at 11 (citing FLA. CONST. of 1885, art. IX, § 5).}
The proposed spring training campus served a private purpose with an incidental public benefit.\textsuperscript{35}

In addition, the Florida Constitution prohibits the extension of public credit to any private entity.\textsuperscript{36} The court summarily pronounced that the plan to use public funds for the spring training facility was an invalid extension of Deerfield Beach’s credit.\textsuperscript{37}

In 1969, the Supreme Judicial Court of Massachusetts also issued an opinion advising against the use of public funds to build a stadium in Boston.\textsuperscript{38} The court determined that a stadium may be constructed with public funds if the stadium served a public purpose.\textsuperscript{39}

The court placed the burden on the legislature to demonstrate a public purpose for the stadium.\textsuperscript{40} In doing so, the court acknowledged that the legislature could, in fact, find that construction of a stadium provided Massachusetts with “economic, civic and social advantages.”\textsuperscript{41} However, the court warned against “vague and fragmentary” legislative declarations.\textsuperscript{42} The bottom line was that for-profit private entities were not to be subsidized by the public.\textsuperscript{43}

The decisions in Brandes and In Opinion of the Justices provide little, if any, support for present-day claims against public funding for stadiums. As the dissent in Brandes points out, the majority ignored a past ruling of the Florida Supreme Court that held that public funds for improvements to the Orange Bowl Stadium were valid.\textsuperscript{44} Furthermore, the Massachusetts court provided a “road map” for the legislature to follow in issuing bonds for stadium construction.\textsuperscript{45}

\textsuperscript{35} Id.
\textsuperscript{36} Id. at 11 (citing FLA. CONST. of 1885, art. IX § 10). Deerstad, Inc. was a private corporation. Id. at 7.
\textsuperscript{37} Id. at 12.
\textsuperscript{38} Opinion of the Justices, 250 N.E.2d at 560. In Massachusetts, the House of Representatives sought an Advisory Opinion on the issue of whether public funds could be used to construct a multi-use stadium facility. Id. at 558.
\textsuperscript{39} Id.
\textsuperscript{40} Id. at 558-59.
\textsuperscript{41} Id. at 558.
\textsuperscript{42} Id. at 559.
\textsuperscript{43} Opinion of the Justices, 250 N.E.2d at 558. The court stated:
If the stadium complex and arena under the proposed legislation can be operated, and if they should in fact be operated, so as in effect to subsidize private organizations operated for profit, then the facilities could not be said to exist for a public purpose. Id.
\textsuperscript{44} Brandes, 186 So. 2d at 13 (Thomas, C.J., dissenting) (citing State v. City of Miami, 41 So. 2d 545).
\textsuperscript{45} Opinion of the Justices, 250 N.E.2d at 559-60.
At the time of the decisions in Brandes and In re Opinion of the Justices, other jurisdictions were upholding the public funding of stadiums. In 1966, the Supreme Court of Pennsylvania issued two opinions upholding the use of public funds for stadium construction.

In Martin v. City of Philadelphia, a taxpayer sought to enjoin the city from carrying out an ordinance that, subject to voter approval, permitted the city to loan $25 million toward the construction of a new stadium. The taxpayer contended, inter alia, that the proposed loan violated the state constitution. The court determined that the lower court was correct when it stated that "[a] sports stadium is for the recreation of the public and is hence for a public purpose." The Martin Court relied on Bernstein v. City of Pittsburgh and Cohen v. Samuel to support its decision to uphold the proposed extension of public credit. In Bernstein, the Pennsylvania Supreme Court upheld the use of public funds to construct an auditorium in a public park. The city leased the auditorium to a private, non-profit corporation, which charged admission for the entertainment that it provided. The court determined that admission charges at a public park did not destroy the public purpose of the park. The court explained that the city did not pledge its credit to a private organization; it merely leased the property at a nominal rent. Therefore, the court held that construction of the auditorium complied with the Pennsylvania Constitution.

In Cohen v. Samuel, the Pennsylvania Supreme Court faced a taxpayer challenge to the City of Philadelphia's decision to lease a portion of a public park to a private, for-profit corporation that

---

46. Id. at n.7.
49. Id.
50. Id. at 896.
53. Martin, 215 A.2d at 897-98.
54. Bernstein, 77 A.2d at 452.
55. Id.
56. Id. at 454.
57. Id. at 457.
58. Id.
intended to build a golf course on the property. The court determined that a public park maintains its public purpose regardless of whether a private, for-profit, or non-profit organization charged admission for recreation, entertainment, etc. Therefore, the private corporation was entitled to charge reasonable fees for a round of golf.

Next up was Conrad v. City of Pittsburgh. In Conrad, a taxpayer sought a ruling to restrain the City of Pittsburgh and the Stadium Authority of the City of Pittsburgh ("Stadium Authority") from constructing a new stadium. The plan for construction of the stadium called for the city to loan funds to the Stadium Authority. The city then agreed to guarantee the Stadium Authority's $28 million debt.

Conrad alleged that the city's deal with the Stadium Authority violated Article IX, sections 8 and 10, of the Pennsylvania Constitution. He argued that, by guaranteeing the Stadium Authority's debt, the City of Pittsburgh incurred debt that exceeded constitutional limits. Noting that the city's liability was limited to its revenues, the court explained that "obligations not exceeding current revenues do not constitute debts within the contemplation of the constitution."

In a concurring opinion, Chief Justice Bell opined that the city's
agreement to guarantee the Stadium Authority's $28 million obligation violated both the letter and the spirit of the constitution.\(^6\) Nevertheless, he agreed with the decision based on the court's precedent.\(^7\)

By the mid-1970s, it had become apparent that courts would uphold plans to use public funds for the construction of stadiums. In 1978, the Supreme Court of Minnesota continued the trend in deciding *Lifteau v. Metropolitan Sports Facilities Commission*.\(^7\)\(^1\) In *Lifteau*, the owner of a tavern challenged the constitutionality of the Metropolitan Sports Facilities Act.\(^7\)\(^2\) The act represented a building block for the use of public bonds to finance construction of new sports facilities.\(^7\)\(^3\) The bonds, if issued, were to be paid off from the commission's revenues, admission taxes, and a sin tax on liquor sales.\(^7\)\(^4\)

The highest court of Minnesota took judicial notice of the fact that sports are an important part of American social life.\(^7\)\(^5\) As a result, it ruled that stadium construction served a public purpose.\(^7\)\(^6\) However, this decision conflicted directly with a 1923 decision, which held that public funds could not be used for a city's financing of a hockey rink because the rink did not serve a public purpose.\(^7\)\(^7\) The *Lifteau* Court addressed this problem by noting that, since that 1923 decision, most jurisdictions have found that stadium construction serves a public purpose.\(^7\)\(^8\) In further support, the court cited a 1922 case for the proposition that the concept of "public

\(^{69}\) *Id.* at 913 (Bell, C.J., concurring).

\(^{70}\) *Id.*

\(^{71}\) *Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749 (Minn. 1978).

\(^{72}\) *Lifteau*, 270 N.W. 2d at 751. The court summarized the Act as follows:

The Act established the Metropolitan Sports Facilities Commission (Commission) consisting of seven members. Four of the members, including the chairman, come from outside the metropolitan area. The primary duties of the Commission are operation of sports facilities and selection of site, design, and construction of new or remodeled sports facilities, Minn.St. 473.556. The Act further transferred ownership of the metropolitan sports area to the Commission. The Commission has taken over operation of these facilities. As a part of the transfer the Commission assumed the payment of general obligation and revenue bonds of the city of Minneapolis, originally issued to finance Metropolitan Stadium. The employees of the metropolitan sports area commission became Commission employees upon transfer of ownership, Minn.St. 473.564.

\(^{73}\) *Id.*

\(^{74}\) *Id.*

\(^{75}\) *Id.* at 754.

\(^{76}\) *Id.* at 753-55.

\(^{77}\) *Lifteau*, 270 N.W.2d at 753 (discussing *Burns v. Essling*, 194 N.W. 404 (1923)).

\(^{78}\) *Id.* at 753.
purpose" changes over time.\textsuperscript{79}

After finding the existence of a public purpose, the court quashed the plaintiff's claim that the plan should fail because its primary purpose was not to promote economic development but, rather, to promote entertainment and recreation.\textsuperscript{80} The court explained that economic development would occur.\textsuperscript{81} In response to other claims made by the plaintiff, the court simply stated that they amounted to economic and/or political matters, which are for the legislature, not the courts, to determine.\textsuperscript{82}

In the 1980s and 1990s, the cry for publicly funded sports facilities was again heard across the nation. Lawsuits have arisen on the issue in Maryland,\textsuperscript{83} Wisconsin,\textsuperscript{84} Florida,\textsuperscript{85} and Washington.\textsuperscript{86} Some new stadiums built with public money have the support of the citizenry.\textsuperscript{87} In situations in which citizens have opposed the use of public funds to construct new stadiums, many courts have found a public purpose regardless of the citizens' discontent.\textsuperscript{88}

In San Francisco, California, several attempts to gain public approval for the construction of a new baseball stadium failed.\textsuperscript{89}

\textsuperscript{79} Id. at 754 (citing \textit{Central Lumber Co. v. City of Waseca}, 188 N.W. 275 (1922)). In \textit{Central Lumber Co.}, the Minnesota Supreme Court restated:

\begin{quote}
Economic and industrial conditions are not stable. Times change. Many municipal activities, the propriety of which is not now questioned, were at one time thought, and rightly enough so, of a private character. The constitutional provision that taxes can be levied only for public purposes remains, but conditions which go to make a purpose public change.
\end{quote}

\textit{Id.} (quoting \textit{Central Lumber Co.}, 188 N.W. at 275).

\textsuperscript{80} Id. at 755.

\textsuperscript{81} Id.

\textsuperscript{82} \textit{Lifteau} 270 N.W.2d at 755.

\textsuperscript{83} See \textit{Kelly v. Marylanders for Sports Sanity, Inc.}, 530 A.2d 245 (Md. 1987).

\textsuperscript{84} \textit{Libertarian Party of Wisconsin v. State}, 546 N.W.2d 424 (Wis. 1996).

\textsuperscript{85} \textit{See Poe v. Hillsborough County}, 695 So.2d 672 (Fl. 1997).

\textsuperscript{86} \textit{See CLEAN (Citizens for Leaders with Ethics and Accountability Now!) v. State}, 928 P.2d 1054 (Wash. 1997); \textit{Citizens for More Important Things v. King County}, 932 P.2d 135 (Wash. 1997); and \textit{King County v. Taxpayers of King County}, 949 P.2d 1260 (1997).

\textsuperscript{87} \textit{See Poe}, 695 So.2d at 674. Fifty-three percent of the voters supported the imposition of a one-half cent sales tax. \textit{Id.}

\textsuperscript{88} In 1995 in the State of Washington, King County voters rejected a referendum for a tax increase for the purpose of funding a new stadium. \textit{CLEAN}, 928 P.2d at 1057. In Pennsylvania, voters in the southwestern part of the commonwealth overwhelmingly rejected the Regional Renaissance Initiative, which included a one-half percent increase in sales tax for counties in Southwestern Pennsylvania, with proceeds to be used for new stadiums and other development projects. Jon Schmitz, Tax Strikes Out. Half-Cent Sales Tax Increase Loses in All 11 Counties, Closest Margin is in Allegheny, \textit{PITTSBURGH POST-GAZETTE}, Nov. 5, 1997, at A1.

\textsuperscript{89} City of Pittsburgh and County of Allegheny Regional Destination Financing Plan, p. 4.
The alternative solution in San Francisco was to use private funds.\textsuperscript{90} The local officials who devised the plan in Pittsburgh have determined that purely private funding was not feasible.\textsuperscript{91} The officials cited Milwaukee, Wisconsin, and Seattle, Washington, as cities that are comparable to Pittsburgh.\textsuperscript{92} Wisconsin and Washington have passed Stadium Acts that authorize public funding of new stadiums.

I. YER OUTTA HERE!

In Milwaukee, Wisconsin, the Southeast Wisconsin Professional Baseball District ("SEWPBD") was created pursuant to the state's Stadium Act.\textsuperscript{93} The SEWPBD is responsible for the construction of a new baseball stadium.\textsuperscript{94} Funds for the new stadium are made up of (1) sales and use tax revenues, (2) revenues from the issuance of revenue bonds, and (3) a contribution by the Milwaukee Brewers.\textsuperscript{95} Furthermore, the Brewers will have to pay approximately $1.1 million per year in rent.\textsuperscript{96}

In \textit{Libertarian Party of Wisconsin v. Wisconsin}, the Supreme Court of Wisconsin dealt with the issue of whether the Stadium Act was constitutional.\textsuperscript{97} The Libertarian Party raised more than a dozen challenges.\textsuperscript{98} Deciding that most of them were without merit, the court discussed only five.\textsuperscript{99}

The Libertarian Party first argued that the Stadium Act amounted to a special tax law in violation of Article IV, sections 31 and 32, of the Wisconsin Constitution.\textsuperscript{100} In response, the court determined that the act created districts through a classification that was

\begin{enumerate}
\item Id.
\item Id.
\item Id.
\item Id. at 424, 429 (Wis. 1996).
\item Id.
\item Id.
\item Id. at 429-30.
\item Id. at 428.
\item \textit{Libertarian Party}, 546 N.W.2d at 430.
\item Id. at 428.
\item Id. Art. IV, § 31, entitled "Special and Private Laws Prohibited," provides, in pertinent part, that "The legislature is prohibited from enacting any special or private laws . . . [f]or assessment or collection of taxes or for extending the time for the collection thereof."
\item Art. IV § 32, General laws on enumerates subjects, provides that "The legislature may provide by general law for the treatment of any subject for which lawmakership is prohibited by section 31 of this article. Subject to reasonable classifications, such laws shall be uniform in their operation throughout the state." Id.
\end{enumerate}
"open, germane and relate[d] to true differences between the entities being classified." Therefore, regardless of the fact that SEWPBD was the only district that fell within the class, the act constituted general legislation.

The Libertarian Party argued that a baseball stadium did not serve a public purpose. In response, the court noted that the Brewers may not serve a public purpose, but the baseball park districts do. The court determined that an incidental benefit enjoyed by the Brewers did not negate the public purpose. Furthermore, the court explained that the legislature is fit to determine what constitutes a public purpose. The legislature made this decision when it decided that the baseball districts served the public purpose of "encouraging economic development and tourism by reducing unemployment and by bringing needed capital into the state for the benefit and welfare of people throughout the state." Although the court noted that public purpose is a concept that changes over time, they decided that it was not time to change.

In addition, the Libertarian Party claimed that the Act violated Article VIII, § 10 of the Wisconsin Constitution, which prohibits the state from taking part in internal improvements of construction projects. The court responded by explaining that the state is well within the constitutional guidelines in playing a role in the construction of a building that serves a "predominant government purpose." Relying on Wisconsin v. Milwaukee Braves, the court decided that the new stadium served the government interest of "preserving business activity" in Wisconsin. The court also noted

101. Id. at 431.
102. Id. at 431-33.
103. Libertarian Party, 546 N.W.2d at 433.
104. Id. The court noted that "The question is not whether the game of baseball or the Milwaukee Brewers serve a public purpose; rather, the question is whether the legislation creating local baseball park districts satisfies the public purpose doctrine." Id.
105. Id. at 434.
106. Id. at 433-34 (citing State ex. rel. Warren v. Reuter, 170 N.W. 790 (1969)).
107. Id. at 434.
108. Libertarian Party, 546 N.W.2d at 433.
109. Id. at 435. Art. VIII § 10, entitled "Internal Improvements," provides that "Except as further provided in this section, the state may never contract any debt for works of internal improvement, or be a party in carrying on such works." Id.
110. Id.
112. Libertarian Party, 546 N.W.2d at 435 (citing State v. Milwaukee Braves, 144 N.W.2d 1 (1966)).
the recreation benefits provided by sports stadiums.\textsuperscript{113}

The fourth challenge presented was that the municipal debt exceeded the amount permitted by Article XI, section 3(3), of the Wisconsin Constitution.\textsuperscript{114} On this claim, the court decided that the new stadium construction did not create public debt.\textsuperscript{115} On the contrary, the Stadium Act created a "special fund" that served to pay for the stadiums.\textsuperscript{116} This creative financing was deemed to be constitutional.\textsuperscript{117}

Finally, the challengers asserted that the state engaged in an invalid pledge of public credit to benefit a private party.\textsuperscript{118} The court rejected this claim.\textsuperscript{119} First, it determined that any subsidy furthered a public purpose.\textsuperscript{120} Next, the court found that the SEWPBD was not an arm of the state.\textsuperscript{121} Moreover, it held that a provision of the act that authorized the state to pay off the bonds if the SEWPBD defaulted amounted to an unenforceable moral obligation.\textsuperscript{122}

II. THE TAXPAYERS STRIKE OUT

In 1995, voters in Kings County, Washington, went to the polls and rejected a one-tenth of one percent increase to the state sales and use tax.\textsuperscript{123} Immediately following this defeat, Washington's governor called the legislature to a special session.\textsuperscript{124} The sole purpose of this session was to consider measures permitting the use public funds to finance stadium construction.\textsuperscript{125} Within one

\begin{itemize}
\item \textsuperscript{113} \textit{Libertarian Party}, 546 N.W.2d at 436.
\item \textsuperscript{114} \textit{Id.} at 436. Article XI §, 3(3) provides:
\begin{quote}
Any county, city, town, village, school district, sewerage district or other municipal corporation incurring any indebtedness under sub. (2) shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within 20 years from the time of contracting the same.
\end{quote}
\item \textsuperscript{115} \textit{Id.} at 436-37.
\item \textsuperscript{116} \textit{Id.} at 436.
\item \textsuperscript{117} \textit{Id.} at 437.
\item \textsuperscript{118} \textit{Libertarian Party}, 546 N.W.2d at 438. Wisc. Const. art. VIII, § 3, entitled "Credit of State," provides that "Except as provided in s. 7(2)(a), the credit of the state shall never be given, or loaned, in aid of any individual, association or corporation." \textit{Id.}
\item \textsuperscript{119} \textit{Libertarian Party}, 546 N.W.2d at 438-40.
\item \textsuperscript{120} \textit{Id.} at 438.
\item \textsuperscript{121} \textit{Id.} at 439. The court noted that the Stadium Act provides that "The state is not liable for the actions of the district." \textit{Id.}
\item \textsuperscript{122} \textit{Id.} at 440.
\item \textsuperscript{123} \textit{CLEAN}, 928 P.2d at 1057.
\item \textsuperscript{124} \textit{Id.}
\item \textsuperscript{125} \textit{Id.}
\end{itemize}
week, the legislature passed the Stadium Act.126 This act authorized the use of public funds, through a public facilities district, to be used for construction, maintenance, and other stadium needs.127

The efforts of the Washington legislature met with several legal challenges. Within one year, three cases on the issue of publicly financed stadiums made their way to the Washington Supreme Court.128 In court, the opponents of publicly funded stadiums struck out.129

In CLEAN v. Washington, Citizens for Leaders with Ethics and Accountability Now ("CLEAN") alleged that the Stadium Act violated five state constitutional provisions.130 First, CLEAN argued that the act violates a provision of the Washington Constitution providing that taxes "shall be levied and collected for public purposes only."131 The court responded to this argument by noting that public purposes are determined by the legislature and that most other jurisdictions have held that stadium construction serves a public purpose.132 The court further explained that the substantial benefits that the Seattle Mariners may realize are merely incidental to the public purpose being served.133 Then, in a most peculiar statement considering the public's sentiment against the use of public funds for the stadium, the court noted that public purpose "is a concept that must necessarily evolve and change to meet changing public attitudes."134

Next, CLEAN contended that the Stadium Act violated constitutional provisions prohibiting the extension of public credit to private entities.135 In determining whether there was a
constitutional violation the court applied the following two-prong test: (1) are the public funds targeted for a basic government service; if so, then (2) was consideration given in return for the funding?\(^{136}\)

The court conceded that construction of a stadium is not a "fundamental purpose" of a government.\(^{137}\) However, the court found that adequate consideration—the lease with the Mariners—was given in return for the public funds.\(^{138}\) Therefore, the court held that the Stadium Act did not amount to an unconstitutional extension of public credit.\(^{139}\)

The third constitutional challenge was that the use of public funds to build a stadium was tantamount to an investment by government in a private organization.\(^{140}\) The stadium financing plan does call for the Mariners and King County to share profits, but only for the term of the bonds.\(^{141}\) The court pointed out that the profit sharing is merely a means of security for the public debt.\(^{142}\)

Furthermore, CLEAN asserted that the Stadium Act was special legislation, which is prohibited by the state constitution.\(^{143}\) The court disagreed, finding that the Stadium Act constitutes general legislation because it applies to a class.\(^{144}\) A class, the court concluded, can be composed of a single person or entity.\(^{145}\)

\(^{136}\) Id.
\(^{137}\) Id. at 1061. First, the court asks if the funds are being expended to carry out a fundamental purpose of the government? If the answer to that question is yes, then no gift of public funds has been made. The second prong comes into play only when the expenditures are held to not serve fundamental purposes of government. The court then focuses on the consideration received by the public for the expenditure of public funds and the donative intent of the appropriating body in order to determine whether or not a gift has occurred (citations omitted). Id.

\(^{138}\) Id.
\(^{139}\) Id.
\(^{140}\) Id. at 1063. See WASH. CONST. art. VIII, § 7. Id.
\(^{141}\) CLEAN, 928 P.2d at 1063. The court noted that after the bonds are paid off, the District will not have any ownership rights in the Seattle Mariners. Id.

\(^{142}\) Id.
\(^{143}\) Id. See WASH. CONST., art. II, § 28. The court explained the difference between special and general legislation as follows: "Special legislation which operates upon a single person or entity. General legislation, on the other hand, operates upon all things or people within a class. A class, however, may consist of one person or corporation as long as the law applied to all members of the class." Id. at 1063 (citations omitted).

\(^{144}\) Id.
\(^{145}\) Id.
Finally, CLEAN contended that the Stadium Act usurped the citizens' constitutional right to have a voter referendum to reject or approve the act. The constitution provides for the availability of a referendum to "approve or reject" legislative acts unless the act is "necessary for the immediate preservation of the public peace, health or safety, (sic) support of the state government and its existing public institutions." The Stadium Act contained a clause that parroted the emergency clause of the referendum provision of the state constitution. Because it contained an emergency clause, the court ruled that the act did not violate the referendum provision of the constitution. Strike one!

In a dissenting opinion, Justice Sanders expressed his displeasure with the majority's ruling concerning the referendum provision. The essence of his opinion is that the legislature failed to explain the emergency. He further expressed his belief that there was no emergency and the phrase was inserted merely to block the referendum.

After deciding CLEAN, the Supreme Court of Washington decided Citizens For More Important Things v. King County, which again raised the invalid public purpose argument. Citizens For More Important Things claimed that using public funds for stadium preconstruction costs without first receiving a commitment

146. CLEAN, 928 P.2d at 1064. WASH. CONST. art. II, § 1, provides:
Legislative powers, where vested. The legislative authority of the state of Washington shall be vested in the legislature, . . . but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature. . . . (b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, [or] support of the state government and its existing public institution.

147. CLEAN, 928 P.2d at 1064 (citing WASH. CONST. art. II, § 1 (Amend. 72)).
149. CLEAN, 928 P.2d at 1068-69. One would have a difficult time supporting an argument that a new stadium is "necessary for the immediate presentation of the public peace, health or safety [or] support of the state government and its existing public institutions."

150. CLEAN, 928 P.2d at 1073 (Sanders, J., dissenting).
151. Id. at 1074-75 (Sanders, J., dissenting).
152. Id. at 1075 (Sanders, J., dissenting).
153. 932 P.2d 135.
from the Mariners did not serve a public purpose. The court relied on CLEAN's finding of a public purpose for the Stadium Act and held that the preconstruction cost provision of the act was also constitutional. Strike two!

The third case to reach the Supreme Court of Washington was King County v. Taxpayers of King County. Among the issues the court addressed were (1) whether the bond issuance was lawful, (2) whether the lease agreement amounted to an unconstitutional gift of public money to a private corporation, and (3) whether taxes imposed to pay off bonds were constitutional.

In upholding the validity of the bond issuance to finance the stadium, the court adopted the following three-part test:

1. Is there legislative or constitutional authority delegated to the municipality to issue the bonds for the particular purpose?
2. Was the statute authorizing the bond issue constitutionally enacted? If not constitutionally enacted or if unconstitutional for any other reason, the issue is void and recitals are of no effect. (3) Is the purpose for which the bonds are issued, a public and corporate purpose, as distinguished from a private purpose?

The court explained that the stadium served a public purpose that incidentally benefited a private organization.

On the issue of whether the lease constituted an unconstitutional gift of public funds, the court reiterated its holding in CLEAN: a lease agreement charging nominal rent might violate the state constitution. The court then determined that the lease was supported by sufficient consideration. Furthermore, the court noted that, although the deal may be bad, the court's job is to rule on the deal's constitutionality, not its wisdom.

---

155. Id. No major league team had committed to playing in a new stadium if built. Id.
156. Id. at 137.
158. King County, 949 P.2d at 1263. There were five issues decided by the court. However, only three of them are relevant to this comment.
159. Id. at 1266.
160. Id. (quoting 15 Eugene McQuillan, Municipal Corporations § 43.04 at 575 (3d ed. 1995)).
161. Id. at 1266.
162. Id. at 1266.
163. King County, 949 P.2d at 1266. The court quoted from CLEAN, "Enter into an agreement with the Mariners that would permit the ball club to play its games in the stadium for only nominal rent, then the constitutional prohibitions against making a gift of state funds might be implicated." Id. (citation omitted).
The court then held that the new taxes authorized by the Stadium Act and imposed on King County residents were unconstitutional. In making this determination, the court reiterated that stadium construction serves a public purpose because it enhances the economy and the quality of life for the citizens of Washington. Strike three! The taxpayers are out.

Justice Sanders again dissented. He reaffirmed his belief that the supreme court had blatantly disregarded the state constitution. Judge Sanders was of the view that the judiciary conspired with the legislative and executive branches of government to put an end to all taxpayer claims against public funding of a new stadium. In his opinion, the public funds earmarked to finance the new stadium constituted a public gift to a private organization and, therefore, violated the state constitution.

Justice Sanders also explained that the court should act as a watchdog for the will of the people, which is expressed in the state constitution. He then noted that the court had failed in its duty to protect the citizens from the shortcomings of their elected leaders.

The trio of cases in Washington clearly expresses one idea—that the courts will uphold public funding of sports stadiums regardless of public opinion. The question that remains is whether the Washington court ignored the constitutional ground rules. On the referendum issue, the answer is yes. It is preposterous to think that stadium construction constitutes a state emergency. However, on the issue of whether the stadium serves a public purpose, the answer is no. Members of the public attend baseball games as a leisure activity.

III. WILL THE PENNSYLVANIA COURTS ENFORCE THE GROUND RULES?

When a Pennsylvania citizen files suit to enjoin the use of public funds for the construction of two new stadiums, the following provisions of the Pennsylvania Constitution will serve as the

164. Id.
165. Id.
166. Id. at 1291 (Sanders, J., dissenting).
167. Id. (Sanders, J., dissenting). Regarding the bond issuance, Justice Sanders stated that the issuance was "invalid absent an affirmative vote in that election. But there will be no election because the county unlawfully prevented it, and this court will not defend the legal rights of the citizens to hold one." Id. (Sanders, J., dissenting).
168. King County, 949 P.2d at 1291 (Sanders, J., dissenting).
169. Id. (Sanders, J., dissenting).
170. Id. (Sanders, J., dissenting).
ground rules: Article VIII, section 7; Article VIII, section 8; Article IX, section 9; and Article IX, section 10. If the court interprets these ground rules consistently with past decisions involving the use of public funds, then the proposal will be upheld.

On February 9, 1999, Pennsylvania enacted legislation enabling the use of commonwealth funds for the construction of sports facilities. Under Article VIII, section 7, the commonwealth may incur debt for capital projects so long as the debt is paid within the period of useful life of the project and the commonwealth remains

---

171. PA. CONST. art. VIII, § 7(b) provides:
All debt incurred for capital projects shall mature within a period not to exceed the estimated useful life of the projects as stated in the authorizing law, and when so stated shall be conclusive. All debt, except indebtedness permitted by clause (2)(i), shall be amortized in substantial and regular amounts, the first of which shall be due prior to the expiration of a period equal to one-tenth the term of the debt.

172. PA. CONST. art. VIII, § 8 provides that "The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association."

173. PA. CONST. art. IX, § 9 provides:
The General Assembly shall not authorize any municipality or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to any corporation, association, institution or individual. The General Assembly may provide standards by which municipalities or school district may give financial assistance or lease property to leasing is necessary to the health, safety or welfare of the Commonwealth or any municipality or school district. Existing authority of any municipality or incorporated district to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual, is preserved.

174. PA. CONST. art. IX, § 10 provides:
Subject only to the restrictions imposed by this section, the General Assembly shall prescribe the debt limits of all units of local government including municipalities and school districts. For such purposes, the debt limit base shall be a percentage of the total revenue, as defined by the General Assembly, of the unit of local government computed over a specific period immediately preceding the year of borrowing. The debt limit to be prescribed in every such case shall exclude all indebtedness (1) for any project to the extent that it is self-liquidating or self-supporting or which has heretofore been defined as self-liquidating or self-supporting, or (2) which has been approved by referendum held in such manner as shall be provided by law. The provisions of this paragraph shall not apply to the city or County of Philadelphia.

Any unit of local government, including municipalities and school districts, incurring any indebtedness, shall at or before the time of so doing adopt a covenant, which shall be binding upon it so long as any such indebtedness shall remain unpaid, to make payments out of its sinking fund or any other of its revenues or funds at such time and in such annual amounts specified in such covenant as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

175. See Bernstein, 77 A.2d 452; Cohen, 80 A.2d 732; Martin, 215 A.2d at 894; and Conrad, 218 A.2d at 906.

under its debt ceiling. The law requires that the professional sports team benefiting from the stadium perform at the stadium for the longer of the term of its lease or the expiration of the commonwealth’s debt, limited to the estimated useful life of 29.5 years. Therefore, so long as the commonwealth does not exceed its debt ceiling, the amount loaned to the PAA is a valid use of the commonwealth’s money.

Under Article VIII, section 8, the commonwealth is prohibited from pledging public credit to private organizations. In explaining the meaning of the phrase “pledge or loan of credit,” the Pennsylvania Supreme Court stated that it was a term of art that “was not intended to prohibit . . . financial transactions between the Commonwealth and private . . . corporations that serve a public purpose and are otherwise lawful.” Furthermore, the same court determined that a loan to a public authority for construction of a facility with a subsequent lease to a private entity does not violate Article VIII, section 8.

Under the current stadium funding proposal, the PAA will own the stadiums and will, in turn, lease them to the respective teams. This is the identical situation that the Pennsylvania Supreme Court held to be valid in Basehore v. Hampden Industrial Development Authority.

Article IX, section 9 of the Pennsylvania Constitution, entitled “Appropriation for Public Purpose,” prohibits the legislature from authorizing a municipality to “loan its credit to any corporation, association, institution or individual . . . [unless it is] necessary to the health, safety or welfare of the Commonwealth or any municipality.” Under this provision, public funds may be used for a project that constitutes a public purpose. Most courts deciding the issue have held that stadiums serve a public purpose.

177. PA. CONST. art. VIII, § 7.
179. See generally Basehore, 248 A.2d 212.
180. See supra note 174.
184. Id.
185. Basehore, 248 A.2d at 222.
186. PA. CONST. art. IX § 9.
187. Id.
188. See 67 A.L.R.3d 1186 (collecting cases).
Pennsylvania is no different.\textsuperscript{189}

To establish a valid public purpose, local government officials will direct attention to anticipated economic development, entertainment, and recreation. Regarding the economic development to derive from the existence of new stadiums, courts will generally defer to legislative judgments concerning potential economic benefits.\textsuperscript{190} Furthermore, Pennsylvania case law supports the entertainment and recreation claims.\textsuperscript{191} However, it has been noted that public purpose is a concept that necessarily changes with time.\textsuperscript{192}

Under Article IX, section 10, it is permissible to use public funds to finance a project if the debt is self-liquidating.\textsuperscript{193} However, in the current stadium financing proposal, the bonds are to be backed by the Regional Asset District, not by revenues from the stadium.\textsuperscript{194} Therefore, the debt is not self-liquidating and must comply with the state-authorized debt limitations.\textsuperscript{195}

Opponents of the use of public funds for stadium financing face an unenviable situation (similar to being five runs down in the bottom of the ninth inning with two outs and nobody on base). To block the proposed stadium funding, they will have to convince the court that sports stadiums no longer constitute a public purpose. In doing so, they must establish that stadiums do not spark economic development, that entertainment is not a public purpose, and that watching sports is not recreation. If the Pennsylvania Supreme Court accepts this argument, it will stand alone among the nation's state courts.

Supporters, on the other hand, can take comfort in Pennsylvania precedent and decisions from other jurisdictions. Their arguments will closely resemble Justice Musmanno's concurring opinion in \textit{Conrad}, where, in an emotional outpouring, Justice Musmanno pointed out that a city is responsible for a "municipal spirit" beyond the bare necessities of its population.\textsuperscript{196} "Baseball," he wrote, "[is] an indispensably integral part of our municipal

\textsuperscript{189} \textit{See} Conrad, 218 A.2d 906 and \textit{Martin}, 215 A.2d 894.
\textsuperscript{190} \textit{See} Libertarian Party, 546 N.W.2d 424. \textit{See also} Regional District Financing Plan.
\textsuperscript{191} Bernstein, 77 A.2d at 455.
\textsuperscript{193} \textit{See} PA. \textit{CONST.} art. IX \S 10.
\textsuperscript{194} City of Pittsburgh and County of Allegheny Regional Destination Financing Plan (July 1, 1998).
\textsuperscript{195} \textit{PA. CONST.} art. IX, \S 10.
\textsuperscript{196} \textit{Conrad}, 218 A.2d at 914 (Musmanno, J., concurring).
American way of life.” Justice Musmanno concluded by explaining that once the stadium is built, the challengers of the project will be happy they lost.

The opponents this time around can point to the *Conrad* case and essentially say “We told you so.” The likely response will be: The plan is constitutional. Your recourse is at the ballot box. Until we meet again in the year 2030, let’s play ball!

*Michael J. Cremonese*

197. *Id.* at 915 (Musmanno, J., concurring).
198. *Id.* at 916 (Musmanno, J., concurring).