

## SUPPORTING THE HOME TEAM...IN MORE WAYS THAN ONE: AN ANALYSIS OF THE PUBLIC FINANCING OF PHILADELPHIA'S NEW SPORTS STADIA

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### I. INTRODUCTION

Cities take great pride in their professional sports franchises. On any given day, the office water cooler is likely to be surrounded by fans reveling in the home team's latest victory or lamenting its last defeat. Living in a major league city often produces an increased sense of community and civic pride amongst its citizens.<sup>2</sup> As cities have begun to recognize the popularity and importance of sports to its citizens, the view of what constitutes projects for a "public purpose" worthy of public funding has expanded. In the late 1970s and early 1980s, local governments spent approximately \$850 million to construct new sports facilities and renovate existing ones.<sup>3</sup> The sports stadium construction boom has multiplied recently as the total cost of twenty-nine sports facilities opened between 1999 and 2003 is expected to be close to \$9 billion.<sup>4</sup> Of this \$9 billion, taxpayers financed approximately \$5.7 billion, or 64 percent.<sup>5</sup>

As stadium technology grows more sophisticated, professional sports teams desire new and more hospitable venues.<sup>6</sup> Cookie cutter, multi-sport stadia are being replaced with single sport structures that maximize revenue generating opportunities through luxury suites, club boxes, concessions, advertising, and naming rights.<sup>7</sup> Team owners recognize that obtaining a new stadium can boost a

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<sup>2</sup> See Gerald A. Carlino & N. Edward Coulson, *Should Cities Be Ready for Some Football? Assessing the Social Benefits of Hosting an NFL Team*, 2004 BUS. REV. FED. RESERVE BANK PHILA, at 7, available at 2004 WLNR 11332642.

<sup>3</sup> Lee Geige, Comment, *Cheering For the Home Team: An Analysis of Public Funding of Professional Sports Stadia in Cincinnati, Ohio*, 30 U. TOL. L. REV. 459, 460 (1999).

<sup>4</sup> Carlino & Coulson, *supra* note 1, at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Antitrust Implications of Sports Franchise Relocation: Hearing on Professional Sports Franchise Relocation-Antitrust Implications, Before the House Comm. on the Judiciary*, 104th Cong. (149-154) (1996) (testimony of Prof. Andrew Zimbalist).

<sup>7</sup> *Id.*

team's revenue by \$25 million to \$45 million per year.<sup>8</sup> As many metropolitan areas have experienced rapid population growth, they have become economically viable locations for such facilities.<sup>9</sup> With this in mind, leagues maximize their members' profits by keeping the number of franchises below the number of cities that could support a team.<sup>10</sup> Excess demand to host professional sports teams often leads to bidding between cities and offers of substantial public subsidies in order to attract new teams or retain existing teams.<sup>11</sup>

The City of Philadelphia is one of the latest to fall victim to this trend. In the late 1990s, the Phillies (the city's Major League baseball team) and the Eagles (the city's professional football team) demanded new stadia and threatened to relocate if their demands were not met.<sup>12</sup> In 1999, the City Council acquiesced and enacted ordinances approving substantial public financing for two new facilities.<sup>13</sup> The total project costs were approximately \$1.1 billion, of which the City invested \$394 million and the Commonwealth invested \$180 million.<sup>14</sup>

This note will examine the issues surrounding the public financing of the newest professional sports stadia in the city of Philadelphia. First, it will review

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<sup>8</sup> Paul J. Gessing, *Public Funding of Sports Stadia: Ballpark Boondoggle*, NATIONAL TAXPAYERS UNION FOUNDATION, Policy Paper No. 133, at 1 (2001) (citing Jim Gallagher, "Without New Stadium, Lamping Fears Team Will Slump, Lose Fans," St. Louis Post-Dispatch, (May 28, 2000)).

<sup>9</sup> Carlino & Coulson, *supra* note 1, at 1.

<sup>10</sup> Roger G. Noll & Andrew Zimbalist, *Sports, Jobs, and Taxes: Are New Stadiums Worth the Cost?*, BROOKINGS REV. Vol.15 No.3, at 37 (Summer 1997).

<sup>11</sup> Zimbalist testimony, *supra* note 5, at 2.

<sup>12</sup> OFFICE OF THE CONTROLLER, CITY OF PHILADELPHIA, STADIA OVERVIEW: MYTHS AND REALITIES, at 5 (2000), available at <http://www.philadelphiacontroller.org/overview.PDF> (last visited Oct 10, 2005). In this report in which he proposed a "workable" plan for new stadia construction, City Controller Jonathan Sidel stated that he did not believe that the teams would leave Philadelphia even if they did not receive new stadia. *Id.* at 5. He noted that the Phillies and Eagles had leases obligating them to play in Veterans Stadium until 2011 and requiring a substantial lease termination fee to break the agreements prior to this date. *Id.* In addition, he argued that the Phillies would not leave because there was no better market to which they could move. *Id.* He pointed to the fact that the Philadelphia media market at that time was larger and more lucrative than any market without baseball. *Id.* He also argued that the Phillies operated in baseball's largest unshared media market. *Id.* With respect to the Eagles, Sidel conceded that because NFL teams generate so much revenue from national television, a move by the team into other markets could have been lucrative and tempting. *Id.* at 6. However, he claimed that the Eagles' best hope to play in a new stadium in the future, without a league vote or additional complications from legal action, was to remain in Philadelphia. *Id.*

<sup>13</sup> See Philadelphia, Pa. Ordinance 000721-A and 000722-A (Dec. 20, 2000).

<sup>14</sup> Mike DelVecchia, "... Except to Cop Our Losses ..." *Philadelphia Controllor Jonathan A. Sidel on the New Stadia*, P.A.W. PRINT - PHILADELPHIA ARTS WRITERS, vol. 2 issue 1, at 3 (March 2004), available at [http://www.philadelphiawriters.com/articles/03\\_2004/sidel.htm](http://www.philadelphiawriters.com/articles/03_2004/sidel.htm) (last visited Feb.16, 2005).

some of the history of stadium litigation around the United States. Next, it will outline the financing of the new Eagles' and Phillies' facilities. It will then analyze the litigation arising from the commitment of public funds by both the city and state legislatures for the construction of these stadia. Lastly, it will examine the arguments for and against the public funding of sports stadia with respect to the economic and social effects on the surrounding community.

## II. THE HISTORY OF STADIUM FINANCE LITIGATION AROUND THE UNITED STATES

As municipalities began to consider public funding of sports stadia, taxpayers challenged whether this was an appropriate public purpose.<sup>15</sup> One of the seminal cases addressing the struggle over stadium financing was *Meyer v. City of Cleveland*.<sup>16</sup> In *Meyer*, the plaintiff filed suit as a taxpayer to enjoin construction of a new waterfront stadium in Cleveland.<sup>17</sup> The plaintiff alleged that no lawful municipal purpose existed to justify the construction.<sup>18</sup> The court disagreed, stating that Cleveland was a municipal corporation with powers extending beyond providing for police, water, and roads.<sup>19</sup> The court held that, in general, tax revenues can be spent on anything calculated to promote the education, recreation or pleasure of the public because these are within the legitimate domain of public purposes.<sup>20</sup> It noted that there are many possible

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<sup>15</sup> The "Public Purpose" Doctrine is judicially created and imposes constitutional limitations on the manner in which federal, state, and local governments spend public funds. Dale F. Rubin, *The Public Pays, The Corporation Profits: The Emasculation of the Public Purpose Doctrine and a Not-For-Profit Solution*, 28 U. RICH. L. REV. 1311, 1312 (1994). If a court determines that a government subsidy is not for a "public purpose," then it will not permit such aid. *Id.* This doctrine was first pronounced by the Pennsylvania Supreme Court in 1853: "Neither has the legislature any constitutional right to create a public debt, or to lay a tax, or to authorize any municipal corporation to do it, in order to raise funds for a mere private purpose. No such authority passed to the Assembly by the general grant of legislative power. This would not be legislation. Taxation is a mode of raising revenue for public purposes. When it is prostituted to objects in no way connected with the public interests or welfare, it ceases to be taxation, and becomes plunder." *Sharpless v. Mayor & Citizens of Philadelphia*, 21 Pa. 147, 168-169 (Pa. 1853). This doctrine was later recognized by the U.S. Supreme Court stating, "There can be no lawful tax which is not laid for a public purpose." *Loan Ass'n v. Topeka*, 87 U.S. 655, 664 (1874).

<sup>16</sup> 171 N.E. 606, 606 (Ohio Ct. App. 1930).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 607.

<sup>20</sup> *Id.* Because the question of whether a city could finance a stadium was one of first impression, the court was forced to analogize a stadium with a public auditorium. *Id.* at 608. In making its determination, the court noted that it had uniformly been held that municipalities had the power to construct public auditoriums. *Id.* at 607. It concluded that there was no legal difference between the

uses for a stadium such as patriotic celebrations, civic demonstrations, concerts as well as athletic events.<sup>21</sup> The court concluded that such uses promote the public welfare and afford recreation, entertainment, and education to the public.<sup>22</sup> Thus, it found that construction of a stadium serves a legitimate public purpose.<sup>23</sup>

The battle over public financing of sports stadia soon found its way into Philadelphia. In *Martin v. City of Philadelphia*, the plaintiff taxpayer brought an action to enjoin the city from implementing an ordinance that authorized a \$25 million loan to build a new multi-sport stadium.<sup>24</sup> The plaintiff claimed that the ordinance was contrary to the Philadelphia Home Rule Charter<sup>25</sup> and the Pennsylvania Constitution because it authorized an increase of the indebtedness of the city for the purpose of building a stadium for use by private enterprise.<sup>26</sup> The court held that a sports stadium is for the recreation of the public and thus serves a public purpose.<sup>27</sup> It stated that public projects are not confined to providing only the bare essentials of municipal life, such as police protection, streets, and water.<sup>28</sup> The court found that public projects may also provide “gardens, parks, libraries and anything calculated to promote the education, recreation or pleasure of the public.”<sup>29</sup> In addition, it held that even if the ordinance specifically provided that the stadium would be used primarily by

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erection of a stadium and the erection of an auditorium because they both promote the education, amusement, and inspiration of the public. *Id.* at 608.

<sup>21</sup> *Id.* at 608

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 215 A.2d 894, 895 (Pa. 1966).

<sup>25</sup> The Home Rule Charter is a document that describes how Philadelphia’s government is structured. Within this document the City’s powers are described: “Pursuant to Section 1 of Article XV of the Constitution and the Act of the General Assembly, approved April 21, 1949, P.L. 665, of the Commonwealth of Pennsylvania, the City of Philadelphia shall have and may exercise all powers and authority of local self-government and shall have complete powers of legislation and administration in relation to its municipal functions, including any additional powers and authority which may hereafter be granted to it.” PHILADELPHIA HOME RULE CHARTER § 1-100 (2003).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 896; *see also* Lيفةau v. Metro. Sports Facilities Comm’n, 270 N.W.2d 749, 753-754 (Minn. 1978) (holding that the acquisition or construction of a stadium to be used in part by one or more professional sports teams constitutes a public purpose for which public expenditures could be legally undertaken).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* quoting Meyer, 171 N.E. at 607.

privately owned sports clubs, the city would have the power to lease the stadium to private enterprise.<sup>30</sup> The court reasoned that this was because the city would be doing so not to engage in the private business of promoting sporting events or leasing buildings, but to provide for the recreation or pleasure of the public.<sup>31</sup>

The Pennsylvania Supreme Court subsequently confirmed its view of which projects are undertaken for a public purpose in *Basehore v. Hampden Indus. Dev. Authority*.<sup>32</sup> In *Basehore*, the court held that even when private entities receive substantial benefits from legislative programs, they are sufficiently public in nature to withstand constitutional challenge if the public will benefit from the projects.<sup>33</sup> The court found that it is not essential that the entire community or even any considerable portion of it should directly enjoy or participate in an improvement to make it a valid public use.<sup>34</sup> Advocating a more flexible approach to determining what constitutes a public purpose, the court reasoned that as society grows more complex and integrated, the concept of public use naturally expands.<sup>35</sup>

Although most courts have found that constructing sports stadia constitutes a valid public purpose, that opinion has not been unanimous. In *Brandes v. City of Deerfield Beach*, taxpayers in Deerfield Beach, Florida challenged the proposed issuance of municipal bonds secured by the pledge of certain city tax revenues.<sup>36</sup> The purpose of the bond issue was to obtain funds to construct a spring training facility for the Pittsburgh Pirates baseball team.<sup>37</sup> The plaintiffs asserted that the issuance would violate Article IX, sections 5 and 10 of

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<sup>30</sup> *Id.* (noting that because of the public interest in the case, the City would have this power to lease the stadium to private enterprise only if the lease would not be inconsistent with the public use of the stadium).

<sup>31</sup> *Id.*

<sup>32</sup> 248 A.2d 212, 217 (Pa. 1968). This case did not involve stadium finance. Rather, it was a complaint by taxpayers that industrial authorities were using public money to construct plants for two private manufacturing corporations. However, it offers insight into the factors considered in determining whether a project is undertaken for a public purpose.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 218 (quoting *Dorman v. Philadelphia Housing Authority*, 331 Pa. 209, 222 (Pa. 1938)).

<sup>35</sup> *Id.* at 217 (“Views as to what constitutes a public use necessarily vary with changing conceptions of the scope and functions of government, so that today there are familiar examples of such use which formerly would not have been so considered. . . . Generally, the legislature, which is more responsive to the people and has more adequate facilities for gathering and assembling the requisite data, is in a better position to evaluate and determine public purpose than are the courts . . .”).

<sup>36</sup> 186 So. 2d 6, 7 (Fla. 1966).

<sup>37</sup> *Id.*

the Florida Constitution.<sup>38</sup> The Florida Supreme Court held that the proposed bond issue was not for a public purpose and that the City would be lending its credit in contravention of the Constitution.<sup>39</sup> It reasoned that the mere incidental advantage to the public resulting from public aid in the promotion of private enterprise is not a public or municipal purpose.<sup>40</sup> The court further stated that a municipality's power to levy taxes is founded in the duty to maintain and administer all of the functions having a municipal purpose.<sup>41</sup> According to the court, a sports facility serves no such purpose.<sup>42</sup>

### III. THE STRUCTURE OF THE PUBLIC FUNDING OF PHILADELPHIA'S NEW STADIA

Although the Phillies and Eagles had leases with the City committing them to play at Veteran's Stadium through 2011, the teams contended that those leases did not provide them with opportunities to realize locally generated revenue available to other franchises.<sup>43</sup> The leases did not provide the Phillies and Eagles with opportunities to increase revenue by charging premiums for things such as luxury seating and stadium naming rights.<sup>44</sup> The teams argued that because of escalating player salaries, such revenues were essential to compete in the free agent market and win championships.<sup>45</sup> Fearing that the teams might look to

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<sup>38</sup> *Id.* at 11. Article IX, § 5 provides that "The Legislature shall authorize incorporated cities . . . to assess and improve taxes . . . for municipal purposes, and for no other purposes." FLA. CONST. art. IX, § 5. Article IX, § 10 states that "The Legislature shall not authorize any . . . city . . . to loan its credit to any corporation, association, institution or individual." FLA. CONST. art. IX, §10.

<sup>39</sup> *Id.* at 12.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* ("[S]uch taxing power may not be used or pledged to the end that trade may be accelerated by an experiment in practical economics through a particular private enterprise of a non-governmental nature").

<sup>42</sup> *Id.*

<sup>43</sup> OFFICE OF THE CONTROLLER, CITY OF PHILADELPHIA, *supra* note 11, at 2.

<sup>44</sup> *Id.* Naming rights are extremely valuable to a team. Lincoln Financial Group will pay the Eagles about \$6.7 million annually over twenty-one years for naming rights. Associated Press, *Eagles Secure Naming Rights for New Stadium* (June 2, 2002), at [http://abclocal.go.com/wpvi/sports/print\\_06022002sp\\_eaglesstadium.html](http://abclocal.go.com/wpvi/sports/print_06022002sp_eaglesstadium.html) (last visited Jan. 25, 2005). Similarly, the Phillies have a naming rights deal with Citizen's Bank worth approximately \$57.5 million over 25 years. Associated Press, *Take Me Out to the Ballpark! Phillies Hope to Hit Home Run with New Home* (Mar. 31, 2004), at [http://www.abclocal.go.com/wpvi/news/print\\_033104\\_sp\\_park.html](http://www.abclocal.go.com/wpvi/news/print_033104_sp_park.html) (last visited Jan. 25, 2005).

<sup>45</sup> OFFICE OF THE CONTROLLER, CITY OF PHILADELPHIA, *supra* note 11, at 2. While City Controller Saidel conceded that locally generated revenue potentially accompanying new stadium deals might benefit

other cities that were willing to pay exorbitant costs in order to obtain a professional team, Philadelphia approved substantial public funding for two new stadia. In December, 2000, the Philadelphia City Council, by a vote of fifteen to two, enacted a series of ordinances that set the structure for the development, finance, construction, and operation of the new ballpark and football stadium in South Philadelphia.<sup>46</sup> Ordinance 721-A established a four lease structure for acquiring, financing, constructing and operating the Eagles' stadium, and Ordinance 722-A set the same structure for the Phillies' ballpark.<sup>47</sup> Section 1 of each ordinance authorized the "Ground Lease" agreements, the "Prime Lease" agreements, the "Leaseback Lease" agreements, and the "Team Lease" agreements.<sup>48</sup> The "Ground Lease" agreements are between the City and the Philadelphia Authority for Industrial Development ("PAID")<sup>49</sup>, and they provide for the City's lease to PAID of certain parcels of land owned or to be acquired by the City.<sup>50</sup> The "Prime Lease" agreements, which are between PAID and the City, provide for the sublease by PAID back to the City of all or a portion of such land and certain improvements constructed thereon, including the Phillies' ballpark and the Eagles' stadium.<sup>51</sup> The "Leaseback Lease" agreements provide for the sub-sublease of this improved land back from the City to PAID, which in turn allows PAID to enter into the "Team Leases", as landlord, with the Phillies and

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the Eagles and the Phillies, he noted that some teams in smaller markets had consistently outperformed Philadelphia's teams without significant stadium revenue. *Id.* He also noted that other teams such as the Baltimore Orioles and the Washington Redskins struggled to win despite additional revenue from new stadia. *Id.* at 3; see also Raymond J. Keating, *Sports Pork, The Costly Relationship Between Major League Sports and Government*, CATO INSTITUTE POLICY ANALYSIS No. 339, at 15 (April 5, 1999) (noting that "The sports fan is particularly susceptible to pleas from team owners that a new facility is needed in order to compete with other teams that are getting new venues chock full of revenue generating club seats, luxury suites and skyboxes. After all, who wants to root for a team that has a miniscule payroll (by the standard of pro sports) and thus, perhaps, little chance of winning a championship").

<sup>46</sup> See Philadelphia, Pa. Ordinance Nos. 000721-A, 000722-A, 000725, 000729, 000730, 000731 (Dec. 20, 2000).

<sup>47</sup> See Philadelphia, Pa. Ordinance 000721-A; Philadelphia, Pa. Ordinance 000722-A.

<sup>48</sup> Philadelphia, Pa. Ordinance 000721-A, § 1; Philadelphia, Pa. Ordinance 000722-A, § 1.

<sup>49</sup> PAID is a public instrumentality of the Commonwealth of Pennsylvania organized for the purpose of acquiring, constructing, improving and maintaining projects including industrial facilities, commercial facilities and public facilities in the city of Philadelphia. Eagles Ground Lease, Background ¶ B.

<sup>50</sup> Philadelphia, Pa. Ordinance 000721-A, § 1; Philadelphia, Pa. Ordinance 000722-A, § 1.

<sup>51</sup> *Id.*

Eagles.<sup>52</sup> The term of each Team Lease is thirty years with ten consecutive five-year renewal options exercisable by the teams.<sup>53</sup>

In addition to the lease structures, the ordinances authorized PAID to issue bonds, notes or other forms of indebtedness for the purpose of financing a portion of the costs of the stadium complexes.<sup>54</sup> For the Eagles' stadium, the Council authorized the issuance of bonds in an aggregate principal amount not to exceed \$101.5 million.<sup>55</sup> It also authorized PAID to make a one-time payment of \$10 million as a contribution to capital repairs, replacements or improvements.<sup>56</sup> With respect to the Phillies' ballpark, the Council authorized PAID to issue bonds in an aggregate principal amount not to exceed \$202.5 million.<sup>57</sup> The Phillies Lease Terms did not include a one-time contribution for capital repairs. In order to help pay the City's obligation under the leases, the Council authorized the Director of Finance to enter into an agreement with PAID, committing the proceeds from the excise tax on rental vehicles.<sup>58</sup>

Not only did the City commit a great deal of its own resources to these stadia, it also sought assistance from the Commonwealth. In 1999, then Governor Ridge signed into law the Capital Facilities Debt Enabling Act.<sup>59</sup> The Act authorizes and provides procedures for application to the Commonwealth by municipalities and municipal authorities for state funding of certain capital projects.<sup>60</sup> It authorizes the Commonwealth to undertake debt by issuing general obligation bonds for the purpose of making grants to local authorities for the construction, repair, renovation, improvement or equipment of qualifying capital projects.<sup>61</sup> Chapter 5 of the Act specifically addresses sports facilities financing and provides for grants of Commonwealth funds to a municipality or authority

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<sup>52</sup> *Id.*

<sup>53</sup> Eagles Lease Terms, at 7; Phillies Lease Terms, at 7.

<sup>54</sup> Philadelphia, Pa. Ordinance 000721-A, § 3; Philadelphia, Pa. Ordinance 000722-A, § 3.

<sup>55</sup> Philadelphia, Pa. Ordinance 000721-A, § 3.

<sup>56</sup> Eagles Lease Terms, at 7.

<sup>57</sup> Philadelphia, Pa. Ordinance 000722-A, § 3.

<sup>58</sup> Philadelphia, Pa. Ordinance 000721-A, § 10; Philadelphia, Pa. Ordinance 000722-A, § 10. This was in accordance with Act 25 and Bill No. 000083 approved in March, 2000. This ordinance enacted the excise tax on rental vehicles and dedicated it solely to the costs of capital projects and debt service on bonds issued for capital projects.

<sup>59</sup> 72 Pa. Stat. §§ 3919.100 – 3919.5102 (2004).

<sup>60</sup> *See Id.*

<sup>61</sup> *See Id.*

for the purpose of constructing or renovating a qualifying sports facility upon proper application.<sup>62</sup> Desiring such assistance for its new stadia, the Philadelphia City Council authorized PAID to file applications through the Commonwealth Office of the Budget for \$170 million in grants to be split evenly between the two projects.<sup>63</sup> The State agreed to provide \$85 million for each stadium and an additional \$10 million for general site work.<sup>64</sup>

In the end, the projects resulted in the largest and most expensive complex in any U.S. city.<sup>65</sup> The total building and land development cost was \$1.0989 billion.<sup>66</sup> Of this, the total City investment was \$394 million, or approximately 36 percent, while the Commonwealth's \$180 million investment amounted to approximately 16 percent.<sup>67</sup>

#### IV. LITIGATION ARISING FROM THE PUBLIC FINANCING

The substantial amount of public financing provided by both the City and the Commonwealth for the new stadia resulted in litigation challenging the validity of their actions. In *Giordano v. Ridge*, plaintiff taxpayer claimed that the Capital Facilities Debt Enabling Act violates Article VIII of the Pennsylvania Constitution by incurring debt on behalf of the State and by pledging the credit of the Commonwealth to an individual, company, corporation or association.<sup>68</sup> Citing the Pennsylvania Supreme Court's decision in *Basehore*, the court held that this language does not prohibit loans from the Commonwealth to a municipal authority, even where the ultimate beneficiary of such a loan may be a private party.<sup>69</sup> The court reasoned that as in *Basehore*, the money flowed from the Commonwealth to a municipality or municipal authority and not directly to

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<sup>62</sup> See 72 Pa. Stat. §§ 3919.501 – 3919.5102.

<sup>63</sup> Philadelphia, Pa Ordinance 000725, § 1 (Dec. 20, 2000).

<sup>64</sup> DelVecchia, *supra* note 13, at 3.

<sup>65</sup> *Id.* at 4.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> 737 A.2d 350, 352 (Pa. Commw. Ct. 1999). Article VIII § 7 provides, "No debt shall be incurred by or on behalf of the Commonwealth except by law and in accordance with the provisions of this section." PA. CONST. art. VIII, § 7. Article VIII § 8 states, "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." PA. CONST. art. VIII, § 8.

<sup>69</sup> *Giordano*, 737 A.2d at 353.

the private entity.<sup>70</sup> Thus, the court concluded that even if the credit of the Commonwealth was being pledged or loaned within the meaning of article VIII, it was not to an individual, company, corporation or association.<sup>71</sup>

After the City Council approved funding for the stadia, plaintiffs brought a similar constitutional claim against the City. In *Consumers Educ. and Protective Ass'n v. City of Philadelphia*, the appellants argued that the ordinances authorizing the funding and development of the new stadia violated the debt limitation set forth in article IX, § 12 of the Pennsylvania Constitution.<sup>72</sup> This claim was based on the fact that the City's rental payments would have to retire \$304 million in debt, which exceeded the \$270 million constitutional limit as calculated pursuant to article IX, § 12.<sup>73</sup> The court examined the Prime Lease agreements and found that the City's obligation to make payment to PAID is expressly limited to the availability of current revenues.<sup>74</sup> In addition, the court found that where the current revenues of the City are insufficient, the City must provide current revenues in the ensuing or subsequent year or years to cure the deficiency.<sup>75</sup> The court held that because repayment is limited to current revenues, the City incurred no debt in the constitutional sense.<sup>76</sup> It reasoned that

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* Conversely, the dissent argued that the Debt Enabling Act does not represent the type of public benefit or public purpose contemplated by Article VIII. *Id.* at 356. It stressed that unlike the legislation at issue in *Baseshore* that represented an effort to resolve serious unemployment problems in certain areas and was supported by clearly stated employment projections, any economic development or employment benefits from the stadia is purely speculative. *Id.* at 355. The dissent claimed that while the public was the main beneficiary in *Baseshore*, the benefits in this case are received by the private sports organizations and their players. *Id.*

<sup>72</sup> 808 A.2d 266, 270 (Pa. Commw. Ct. 2002). Article IX states, "The debt of the City of Philadelphia may be increased in such an amount that the total debt of said city shall not exceed thirteen and one half percent of the average of the annual assessed valuations of the taxable realty therein . . . but said city shall not increase its indebtedness to an amount exceeding three percent upon such average assessed valuation of realty, without the consent of the electors thereof at a public election . . ." PA. CONST. art. IX, § 12.

<sup>73</sup> *Consumers*, 808 A.2d at 270 n.10.

<sup>74</sup> *Id.* at 271. Section 4.2 of the Prime Leases provides, "The rent shall be payable only out of the current revenues of the City and the City agrees to provide for payment of the Rent and include the same in the City's annual operating budget for each Fiscal Year of the City." Eagles Prime Lease, §4.2; Phillies Prime Lease, § 4.2 .

<sup>75</sup> *Id.* at 272. Section 4.2(a) of the Prime Leases provides, "If the current revenues of the City are insufficient to pay the Rent in any Fiscal Year as the same becomes due and payable, the City shall include amounts not so paid in the City's operating budget for the ensuing Fiscal Year and shall produce sufficient current revenues to pay in the ensuing Fiscal Year such balance due for the preceding Fiscal Year in addition to the amount of Rent due for the ensuing Fiscal Year." Eagles Prime Lease, § 4.2(a); Phillies Prime Lease, § 4.2(a).

<sup>76</sup> *Id.*

contracts or engagements, which create obligations not exceeding current revenues, do not constitute debts within the contemplation of the Constitution.<sup>77</sup>

Not only were the ordinances challenged by taxpayers, but they were also challenged by a member of the City Council. In *Cohen v. City of Philadelphia*, petitioner City Councilman claimed that the ordinances approving the construction and finance of the stadia were invalid because, in part, they 1) delegated legislative power that only the City Council could exercise;<sup>78</sup> 2) violated the City's fiduciary duty by unwisely committing taxpayer funds to luxury projects;<sup>79</sup> and 3) denied the City Council's basic rights to legislate and appropriate under the Home Rule Charter.<sup>80</sup> However, the court deemed all of the petitioner's complaints unmeritorious.<sup>81</sup> It found that the ordinances created no threat to the City Council's legislative powers in contravention of the Charter.<sup>82</sup> The court also found that the petitioner was unable to show that the City's appropriations would not satisfy a substantial public purpose, and thus

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<sup>77</sup> *Id.* at 271.

<sup>78</sup> 806 A.2d 905, 909 (Pa. Commw. Ct. 2002). Cohen alleged that a clause in each of the Prime Leases between PAID and the City permits the City to acquire additional obligations at the whim of the *Mayor* during the lease periods without having to obtain City Council approval. *Id.* In addition, Cohen claimed that Section 5 of Ordinances 721-A and 722-A clarifies that any obligations incurred by the City or PAID in the future will be binding on the City, and City Council approval of such obligations is not required. *Id.* He asserted that these ordinances undermine and annul City Council's powers under the Home Rule Charter and unlawfully delegate those powers to the executive branch. *Id.* at 909-910.

<sup>79</sup> *Id.* at 910. Cohen alleged that by committing over \$1 billion in funds to two private corporations (the teams), the City Council violated its fiduciary duty. *Id.* He maintained that the funds should be used on the many important challenges that the City faced in the future. *Id.* As examples, he cited failing and under-funded schools, continued growth of the AIDS epidemic, and growing physical blight in large sections of the City. *Id.*

<sup>80</sup> *Id.* at 910-911. In this count of the petition, Cohen averred that using the Debt Enabling Act to provide Commonwealth funds for the stadium projects constituted a denial of the Council's rights to legislate under the Home Rule Charter. *Id.* at 910-911. In particular, Cohen noted that by enacting Bill 725, the City Council authorized the City to enter into an agreement with the Commonwealth in which the Commonwealth would provide not less than \$170 million in funding. *Id.* at 911. He pointed to the fact that this agreement requires the City to repay the assistance if any of the conditions of the grant are violated. *Id.* He stated that the Council would be barred from denying funds for stadium repairs whenever demanded by the teams because the City would be obligated to pay back the \$170 million to the Commonwealth if the repairs are not made. *Id.* Cohen concluded that this obligation impairs the Council's discretion in appropriating funds as required under the Home Rule Charter. *Id.*

<sup>81</sup> *Id.* at 922.

<sup>82</sup> *Id.* at 915.

concluded that the Council did not breach its fiduciary duty.<sup>83</sup> The court reasoned that while the teams' owners will accrue a substantial private benefit, that is no reason to declare the City's contributions to the stadia invalid because a substantial public benefit will also inure.<sup>84</sup> With respect to the wisdom of the funding, the court concluded that it must not adjudicate that which is up to the City Council's legislative discretion.<sup>85</sup>

Although many question the propriety of using public funds to finance sports stadia, it is apparent that the notion of projects undertaken for a "public purpose" has been judicially expanded to include such funding. The aforementioned decisions demonstrate that the majority of the judiciary both in Pennsylvania and nationwide view the construction of sports stadia as valid public projects worthy of municipal and state funding. While a court may not believe that building a stadium is the best use of public resources, it is usually unwilling, as evidenced in *Cohen*, to substitute its view for that of the legislature.<sup>86</sup> Thus, the boom in public subsidies for new stadia is not likely to be diminished by litigation.

## V. ARGUMENTS FOR PUBLIC SUBSIDIES OF STADIA

In order to justify the government subsidization of professional sports, proponents in Philadelphia and around the country claim that new facilities result in large economic benefits for the surrounding area.<sup>87</sup> Advocates often commission economic impact studies that purport to show how much the city or

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<sup>83</sup> *Id.* at 920 (stating "Although Cohen's priorities and those of the *Mayor* may be entirely different, that fact does not result in a conclusion that the civic appropriateness of the expenditure is not an authorized investment in the City's future").

<sup>84</sup> *Id.* at 919.

<sup>85</sup> *Id.* at 920.

<sup>86</sup> See *Cohen*, 806 A.2d at 920; see also *Allegheny Inst. Taxpayers Coalition v. Allegheny Reg'l Asset Dist.*, 727 A.2d 113, 119 (1999). This case involved challenges to a funding plan providing long term public financing for new stadia for the Pittsburgh Pirates and Pittsburgh Steelers. *Id.* at 114. The Pennsylvania Supreme Court stated that its scope of review does not extend to the wisdom or discretion of the Allegheny Regional Asset District. *Id.* at 119. The court concluded that it could only review the statutory authority and regularity of the challenged board resolution and could not substitute its individual views of the resolution's prudence. *Id.*

<sup>87</sup> Dennis Coates & Brad R. Humphreys, *The Stadium Gambit and Local Economic Development*, REGULATION Vol. 23 no.2, at 16 (2000); see also Joseph L. Bast, *Sports Stadium Madness: Why it Started, How to Stop it*, HEARTLAND INSTITUTE POLICY STUDY No. 85, at 5 (Feb. 23, 1998) ("We subsidize professional sports, we are frequently told, because they produce more social and economic benefits than a typical private business. Like other 'public goods,' the argument goes, stadia would not be produced in sufficient supply if the decision were left solely in the hands of private investors").

region will benefit from the presence of a new stadium or team.<sup>88</sup> Among the alleged benefits of publicly funded stadia are new construction jobs; new spending in the community, which creates more jobs; and a “multiplier effect” that occurs when money is spent and then re-spent in the community.<sup>89</sup> The arguments typically rest on the assertion that stadia and teams are unique catalysts that expand the economy and enable further public investment in other areas.<sup>90</sup> Advocates of public subsidies claim that new stadia spur so much economic growth that they are essentially self-financing.<sup>91</sup> They argue that the subsidies are offset by revenues from ticket taxes, sales taxes on concessions and other spending outside the stadium, and property tax increases arising from the stadium’s impact.<sup>92</sup>

Stadia and professional sports teams are said to bring three sources of economic benefits to a metropolitan area: direct expenditures, indirect expenditures and intangible benefits.<sup>93</sup> Direct expenditures represent the money spent by the professional sports franchise, its employees, and its patrons.<sup>94</sup> To estimate the direct expenditure benefits provided by a facility or team, the direct expenditures by the team for goods and services in the city are added to the expenditures by both the fans (not including tickets) and the players on goods and services in the city.<sup>95</sup>

This spending by fans, players, and teams on local restaurants, hotels, transportation, and other goods and services becomes income for other

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<sup>88</sup> Coates & Humphreys, *supra* note 86, at 16 (“These impact studies rely upon input-output models of the local or regional economies into which the team and its new stadium will be placed and estimate the economic impact prospectively. These studies ask the question: what will happen if a new franchise and stadium enter this community? . . . and advocates of stadiums and franchises typically produce impact studies that find large economic impacts, translated as benefits, from building a stadium or enticing a team to enter the city”).

<sup>89</sup> Bast, *supra* note 86, at 6.

<sup>90</sup> Robert A. Baade, *Stadia, Professional Sports, and Economic Development: Assessing the Reality*, HEARTLAND INSTITUTE POLICY STUDY No. 62, at 5 (Apr. 4, 1994).

<sup>91</sup> Noll & Zimbalist, *supra* note 9, at 35.

<sup>92</sup> *Id.*; see also Jordan Rappaport & Chad Wilkerson, *What are the Benefits of Hosting a Major League Sports Franchise?* FEDERAL RESERVE BANK OF KANSAS CITY ECONOMIC REVIEW 66 (1st Quarter 2001) (“The second main source of benefits on which both stadium advocates and independent economists focus is the increased tax revenues that may arise from hosting a team. Fan’s spending before, during, and after games is likely to be subject to local and state income taxes”).

<sup>93</sup> Baade, *supra* note 89, at 5.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

metropolitan businesses and their employees.<sup>96</sup> The local businesses and employees then re-spend part of this income while purchasing other local goods and services.<sup>97</sup> This re-spending process, which continues through subsequent rounds, constitutes the indirect expenditure benefit to the region.<sup>98</sup> Since direct expenditures result in indirect expenditures, the direct expenditures are said to have a “multiplier” effect on the local economy.<sup>99</sup> The size of the multiplier depends on the location of the subsequent spending.<sup>100</sup> If new income is likely to be spent on locally produced goods, and the income from these expenditures is in turn likely to be spent on other local goods and services, then the value of the multiplier is larger.<sup>101</sup>

Aside from the direct and indirect expenditures, proponents of publicly subsidized stadia argue that these stadia can bring intangible benefits to a city. Teams with state of the art facilities are said to positively impact a city’s marketability and potential to attract business.<sup>102</sup> New jobs are arguably created from the expansion or relocation of businesses to the host area because of its big-league allure.<sup>103</sup>

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<sup>96</sup> *Carlino & Coulson, supra* note 1, at 3.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*; see also Roger G. Noll & Andrew Zimbalist, *The Economic Impact of Sports Teams and Facilities*, in *SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS* 63 (Roger G. Noll & Andrew Zimbalist eds., 1997) (explaining that public investment has a “multiplier effect” because producing direct benefits causes an increase in real income, which is then spent on further consumption).

<sup>100</sup> Baade, *supra* note 89, at 6.

<sup>101</sup> *Id.* For example, if one dollar of direct spending results in an additional dollar of indirect spending in the local economy, the total spending in the area is two dollars, and the value of the multiplier is 2. See *Carlino & Coulson, supra* note 1, at 3.

<sup>102</sup> *The Stadium Financing and Franchise Relocation Act: Hearing on S. 952 Before the Senate Comm. On the Judiciary*, 106th Cong. (June 22, 1999) (testimony of Richard Horrow, President, Horrow Sports Ventures) (noting as an example of the positive effects of a stadium on a city’s marketability, “The Jacksonville Sports Development Authority and Chamber of Commerce suggests that the Jacksonville Jaguars and Alltel Stadium enrich the local economy by an estimated \$131 million a year from visitors buying tickets, eating at restaurants, and staying at hotels. Additionally, they believe that the new team and facility have been indirectly responsible for the creation of upwards of 50,000 new jobs by virtue of companies expanding or relocating to Jacksonville as a consequence of a successful marketing campaign”).

<sup>103</sup> *Id.*; see also Noll & Zimbalist, *supra* note 98, at 73 (“According to this argument, corporate executives prefer cities with major league sports teams, and so in a close decision about where to locate a new business facility, they will favor these cities”).

In addition, community leaders advocate the presence of franchises and new facilities as critical components of civic pride.<sup>104</sup> It is argued that cities are judged both internally and externally based on the quality and support of its professional sports teams.<sup>105</sup> According to this argument, cities must have professional sports teams with top-quality facilities to be viewed as first class.<sup>106</sup> Economists recognize that teams and stadia can contribute to the quality of life in an area by increasing the satisfaction or happiness of residents in general, whether they attend games or not.<sup>107</sup> The presence of professional sports is said to provide public consumption benefits such as the ability of citizens to follow and root for the home teams through television and newspapers.<sup>108</sup> It also provides citizens with a common point of interest and discussion which is thought to be a uniting force for the city.<sup>109</sup> These benefits can potentially be large in the aggregate because no citizen can be excluded from their consumption, and one citizen's consumption does not diminish the consumption available to others.<sup>110</sup> Because a fan cannot be charged simply for being a fan, it is difficult to quantify these external benefits. However, economists have compared them with other quality of life benefits such as clean air, good weather, and scenic views.<sup>111</sup> Through such comparisons, the value of a city's special traits can possibly be determined by what people are willing to pay in order to live

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<sup>104</sup> Horrow testimony, *supra* note 101.

<sup>105</sup> Brett Smith, *If You Build it Will They Come? The Relationship Between Public Financing of Sports Facilities and Quality of Life in America's Cities*, 7 GEO. PUBLIC POL'Y REV. 45, 47 (2001) (noting the argument that cities that lose sports teams no longer view themselves as "major-league" and have diminished civic images).

<sup>106</sup> Coates & Humphries, *supra* note 86, at 18.

<sup>107</sup> *Carlino & Coulson, supra* note 1, at 5 ("[P]erhaps residents should think of a professional sports team in the way they think of a new art museum or new symphony hall or, indeed, an environmental resource such as an old growth forest: It's a commodity from which they receive enjoyment just by having it around").

<sup>108</sup> Dennis Zimmerman, *Subsidizing Stadiums: Who Benefits, Who Pays?*, in SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 121 (Roger G. Noll & Andrew Zimbalist eds., 1997).

<sup>109</sup> Smith, *supra* note 104, at 47; *see also Carlino & Coulson, supra* note 1, at 5 (quoting Philadelphia Mayor John Street, "We are incredibly fortunate to be the home of great professional sports franchises. They enrich our community, fortify our tax base, and provide major support for the region's future economic growth. And then there are the intangible benefits: These Phillies, if we give them our full support, will bring us together and solidify a sense of community with civic pride as they drive toward the pennant").

<sup>110</sup> Zimmerman, *supra* note 107, at 121.

<sup>111</sup> *Carlino & Coulson, supra* note 1, at 5.

there.<sup>112</sup> If a person values the presence of professional sports teams where she lives, she may be willing to pay more to live in that area as opposed to one that does not have any teams.<sup>113</sup> One can pay more either through increased housing costs, lower wages, or a combination thereof.<sup>114</sup> Advocates argue that such quality of life analyses provide additional support for public funding of stadia.<sup>115</sup>

## VI. ARGUMENTS AGAINST PUBLIC SUBSIDIES OF STADIA

While the results of economic impact studies commissioned by teams or local advocates promise great economic benefits, data from independent economists suggests that the economic benefits of new facilities are, at best, negligible.<sup>116</sup> The reasons for this stark contrast are numerous. First, team supported impact studies often overlook opportunity costs.<sup>117</sup> To measure the true benefits of a new stadium, the apparent economic benefits must be reduced by the benefits that would have been produced by alternative uses of the same capital and land.<sup>118</sup> Subsidizing stadium construction has a net beneficial effect

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<sup>112</sup> *Id.* (noting that this amounts to the sum of what people are willing to pay for each local characteristic that either adds or reduces the quality of life in the area; but conceding that it is difficult to determine the prices of these local traits because they are not bought or sold in markets).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 7 (“In our study, we estimated the change in rents and wages resulting from a change in NFL status between 1993 and 1999. . . . We found that the presence of an NFL team raises annual rents, on average, 8 percent. We also found that wages were about 2 percent lower in cities that host an NFL team . . .”).

<sup>115</sup> *See Id.* (“Since the 53 cities in our sample had, in 1999, an average monthly rent of \$500, the finding of an average rental premium of 8 percent implies an NFL amenity premium of about \$40 a month per housing unit, or \$480 annually, on average, in cities hosting NFL teams. In 1999, there were approximately 290,000 households in a typical central city, so \$480 per household implies that the aggregate amenity value to a city that hosts an NFL team is, on average, about \$139 million per year (or about \$184 per person). . . . The annual quality-of-life benefit of \$139 million found in our study is substantially larger than the annual subsidy, suggesting that these subsidies were good investments for the typical city”).

<sup>116</sup> *See* Noll & Zimbalist, *supra* note 9, at 36; *see also* Ronald D. Utt, *Cities in Denial: The False Promise of Subsidized Tourist and Entertainment Complexes*, THE HERITAGE FOUNDATION BACKGROUND No. 1223, at 1 (October 2, 1998) (stating that the mounting evidence suggests that such projects offer very little to the urban community in general). The author also concludes that “elected officials in declining cities, however desperate they may be for new investment in their communities, must realize that the revitalization boost from such projects is negligible and that community resources and civic energy would be better directed to more productive activities.” *Id.* at 11.

<sup>117</sup> Bast, *supra* note 86, at 8; *see also* Carlino & Coulson, *supra* note 1, at 3 (suggesting that impact studies “make unrealistic assumptions regarding construction and operating costs and fail to account for the opportunity cost of the funds tied up in these projects”).

<sup>118</sup> Bast, *supra* note 86, at 8.

only if the stadium produces more value than the other opportunities that the city has forgone.<sup>119</sup> Resources are scarce, and local authorities have limited budgets. Thus, money spent on a stadium is money that is not available to invest in police, schools, streets and parks.<sup>120</sup> When a city chooses to build a stadium, the opportunity forgone is not the cost of the stadium, but rather the benefits from the alternative uses of the funding (including tax reduction).<sup>121</sup> The depletion of public funds or services caused by subsidizing a stadium can, in turn, reduce local income by diminishing the ability of the local economy to produce other non sports-related goods and services.<sup>122</sup>

The opportunity cost evaluation is complicated by the general state of the economy.<sup>123</sup> The opportunity cost of a public subsidy of a stadium is larger if there is a reasonably full employment of labor and other resources than if there are unemployed resources in the economy.<sup>124</sup> No alternative activities are sacrificed, so there are few trade-offs to putting the unemployed to work.<sup>125</sup> On the other hand, moving an employed person or resource to another use (such as stadium construction) can have a serious net social cost.<sup>126</sup>

In addition, the financial costs of public investments such as stadia ultimately are paid from taxation, either immediately or eventually to pay off public debt.<sup>127</sup> This taxation imposes an additional opportunity cost because it reduces the consumption of taxed goods.<sup>128</sup> Because tax collections are merely

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<sup>119</sup> *Id.*; see also Baade, *supra* note 89, at 7 (“Any analysis of the economic impact of sports would be incomplete without an acknowledgement that a city . . . forgoes other opportunities when it builds a stadium or otherwise subsidizes a sports franchise. . . . Officials must evaluate whether the subsidized sports business would have the greatest net impact of available alternative uses of the money”).

<sup>120</sup> Noll & Zimbalist, *supra* note 98, at 62.

<sup>121</sup> *Id.*; see also Bast, *supra* note 86, at 9 (noting that whatever benefit would have come from these alternative uses must be subtracted from the visible benefits produced by the stadium investment in order to determine its net benefits).

<sup>122</sup> Coates & Humphreys, *supra* note 86, at 19.

<sup>123</sup> Charles P. Rock, *The Case Against Public Subsidies for a New Florida Marlins Stadium*, 31 JAMES MADISON INSTITUTE POLICY REPORT 6 (April 2001).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Noll & Zimbalist, *supra* note 98, at 60.

<sup>128</sup> *Id.*; see also Keating, *supra* note 44, at 18 (noting that positive multiplier effects are largely offset by the negative multiplier effect of taxing citizens because every citizen who pays a dollar in taxes to support the stadium must reduce his or her spending to compensate).

transferred to those who build and operate the public investment, the true economic cost of the tax system is not the taxes that are paid.<sup>129</sup> Although the taxpayers generally count these taxes as a personal cost, the payment is transferred between individuals and entities in the same community, and therefore, it is not a net cost to that region.<sup>130</sup> Instead, the real social cost of taxation is the reduction in net consumption benefits caused by imposing a tax.<sup>131</sup> Research indicates that the opportunity cost of taxes is substantial, as the average social cost of taxation is said to exceed tax collections by almost 25 percent.<sup>132</sup> This means that if an economy is operating at full employment, opportunity costs of public subsidies can be significantly larger than the financial costs.<sup>133</sup>

The opportunity cost of public subsidies for sports stadia not only affects local taxpayers but federal taxpayers as well.<sup>134</sup> In many cases, a substantial share of the public subsidy is paid by federal taxpayers because some portion of the local government's debt financing for the stadium is through the sale of bonds whose interest income is exempt from federal income taxes.<sup>135</sup> This, in turn, causes the interest rate on the tax-exempt bonds to be lower than the interest rate on equivalent taxable bonds.<sup>136</sup> While these lower interest payments may be advantageous to the local tax base, federal taxpayers pay for this in the form of forgone federal tax receipts from the interest income that would have been taxed if taxable debt had been used to finance the stadium.<sup>137</sup>

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<sup>129</sup> Noll & Zimbalist, *supra* note 98, at 60.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 61.

<sup>133</sup> *Id.*

<sup>134</sup> Zimmerman, *supra* note 106, at 126; *see also* Utt, *supra* note 114, at 9 (noting that federal tax policy plays an important role in stadium finance and that the federal taxpayer plays a part in the subsidies).

<sup>135</sup> Zimmerman, *supra* note 107, at 126; *see also* Gessing, *supra* note 7, at 3 (“[T]he federal role in stadium construction is an important one. By issuing tax-exempt bonds to cities and counties for the funding of capital projects, the federal government subsidizes investments in public infrastructure. . . . Although some may say that not paying taxes on a loan is really not a subsidy, it is a subsidy if the tax break is only given for a specific purpose such as stadium building. Assuming that a stadium costs \$225 million to build, a tax-exempt loan amounts to a lifetime federal tax subsidy as high as \$75 million, or 34 percent of construction costs”).

<sup>136</sup> Zimmerman, *supra* note 107, at 126.

<sup>137</sup> *Id.* at 127; *see also* Utt, *supra* note 115, at 9 (“As subsidies go, the federal tax exemption on municipal debt is one of the most inefficient because the loss in federal income tax revenues is generally higher than the interest rate savings to the municipality provided by the tax exempt status”).

Next, impact studies that predict substantial positive results often do not sufficiently account for the difference between new and diverted spending.<sup>138</sup> Local spending on professional sporting events likely results in less spending on other recreational activities in the area.<sup>139</sup> This is true because most people have a limited amount of income that they can spend on leisure and entertainment activities.<sup>140</sup> If a person attends a game, she is spending money that would otherwise be spent in a local restaurant, theater, or bowling alley. Thus, every dollar spent at the ballgame is probably replacing a dollar that would be spent elsewhere in the local economy.<sup>141</sup> Therefore, under this “substitution effect” the amount of money in the local economy remains the same.<sup>142</sup> Moreover, if the impact of each dollar spent on these forgone alternatives has a larger effect on the local economy than each dollar spent on sporting events, the local economy could actually contract and cause income to be lower.<sup>143</sup> This is possible if the revenue generated by the stadium, which becomes income for concessionaires, players and owners, is in turn re-spent outside of the local economy more than the income of other local businesses.<sup>144</sup>

In contrast, the net spending in the local economy would increase if the stadium attracts a large number of out of town fans.<sup>145</sup> However, this is generally not the case for baseball and basketball because the number and frequency of games is so great that the market for ticket sales is metropolitan.<sup>146</sup> Football

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<sup>138</sup> Zimbalist testimony, *supra* note 5, at 2; *see also* DENNIS COATES & BRAD R. HUMPHREYS, PROFESSIONAL SPORTS FACILITIES, FRANCHISES AND URBAN ECONOMIC DEVELOPMENT, at 8 (U. of Md., Balt. County Econ. Dept., Working Paper No. 03-103, 2003) (noting that impact analyses routinely ignore reductions in spending on other forms of entertainment due to substitution in private spending, and thus these reports systematically exclude any potential economic harm to other businesses in the entertainment sector of the local economy).

<sup>139</sup> *Carlino & Coulson*, *supra* note 1, at 5.

<sup>140</sup> Zimbalist, *supra* note 5, at 2.

<sup>141</sup> *Id.*; *see also* COATES & HUMPHREYS, *supra* note 137, at 8 (finding that earnings and employment in the Amusements and Recreation sector, of which professional sports are a part, rise, and earnings and employment at Eating and Drinking Establishments and Retail Trade establishments fall with the size of the professional sports environment in cities).

<sup>142</sup> Keating, *supra* note 44, at 18; *see also Carlino & Coulson*, *supra* note 1, at 4 (stating that sporting events may merely shift the timing and location of spending within the metropolitan area while leaving aggregate spending unchanged).

<sup>143</sup> Coates & Humphreys, *supra* note 86, at 19.

<sup>144</sup> *Id.* at 19-20.

<sup>145</sup> Bast, *supra* note 86, at 9.

<sup>146</sup> *Id.*

draws fans from greater distances because there are fewer games and they are usually played on the weekends.<sup>147</sup> But, due to the small number of home games, the total number of fans attending during a season is much smaller, and this greatly limits the potential for increased net spending.<sup>148</sup> In fact, out of town fans comprise only 5 to 20 percent of all fans attending major league sporting events.<sup>149</sup> However, a few teams do attract fans from outside their immediate area.<sup>150</sup> These teams typically play in facilities located on the outskirts of major metropolitan areas or near central business districts such that they draw visiting business people or fans from neighboring jurisdictions.<sup>151</sup> For example, one of the most successful export facilities is Oriole Park, where almost a third of the crowd at every game comes from outside the Baltimore area.<sup>152</sup> Despite this fact, the net gain to Baltimore's economy in terms of new jobs and tax revenue is only about \$3 million a year, which is a small fraction of the City's \$200 million investment.<sup>153</sup>

Although the numbers suggest otherwise, economic impact studies commissioned by teams would have the public believe that a stadium does, in fact, attract tourism.<sup>154</sup> These studies frequently conduct surveys of fans in attendance at games to determine where the fans live.<sup>155</sup> They then count all fans that reside outside the area where the stadium is located as tourists attracted by the team.<sup>156</sup> In addition, surveys are conducted to determine how much money the average tourist spends on restaurants, hotels, shopping, and other activities.<sup>157</sup> Then, the stadium is credited with creating new tourism income

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Carlino & Coulson, supra* note 1, at 4.

<sup>150</sup> *Bast, supra* note 86, at 9.

<sup>151</sup> *Id.*

<sup>152</sup> *Noll & Zimbalist, supra* note 9, at 36 (stating that Baltimore's out of town fan base is enhanced because it is 40 miles from Washington, D.C., which until recently had no major league baseball team).

<sup>153</sup> *Id.*

<sup>154</sup> *Noll & Zimbalist, supra* note 98, at 68.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

equal to the number of nonresident fans times the average tourist spending.<sup>158</sup> Finally, this figure is multiplied by the regional multiplier, which is typically in the range of 1.5 to 2.<sup>159</sup> This calculation overstates net income arising from the presence of the stadium because it credits the facility with drawing all those in attendance into the local community.<sup>160</sup> However, if these non-resident patrons are actually visiting the area for another purpose, such as a business trip or a family vacation, these figures would not be accurate.<sup>161</sup> The net tourist revenue benefit attributable to hosting a sports team and stadium should be calculated based not on the number of non-local residents who attend games, but rather on the number of non-local residents who are explicitly motivated by the presence of the team.<sup>162</sup> If the motivation for the visit to the area is independent of the presence of the team, spending before, during, and after the game represents a shift in spending that would have occurred on other local goods and services.<sup>163</sup>

Independent economic studies also question whether businesses are attracted by the presence of a new sports facility.<sup>164</sup> New sports stadia are designed and built in a way that is unlikely to prompt local economic

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<sup>158</sup> *Id.* at 68-69.

<sup>159</sup> *Id.* This multiplier is derived from studying the effects of new industrial facilities to determine the overall increase in local economic activity that is accounted for by imports. *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* The authors note that these errors are likely to be substantial. *Id.* at 70. "The survey instruments used in these calculations do not attempt to ascertain causality in any form, including who actually paid for the ticket or why the non-resident is visiting the city. Teams do sell tickets, even season tickets, to non-residents but rarely are data about ticket sales made public." *Id.*

<sup>162</sup> Rappaport & Wilkerson, *supra* note 91, at 66.

<sup>163</sup> *Id.*; see also Noll & Zimbalist, *supra* note 98, at 70. Although there is a lack of systematic information with which to evaluate the magnitude of the errors made in attributing tourism to stadia, Noll and Zimbalist conclude that the importance of sports teams in attracting tourism is likely declining as the number of teams increases. *Id.* They note that early on, professional sports were confined mainly to a few cities in the northeast, and thus many Americans could attend a game only by travelling to these cities. *Id.* However, expansion and relocation brought several teams in each sport to most regions of the country. *Id.* The authors argue that this has resulted not only in a larger percentage of the population having a local team, but also that tourists have less reason to plan trips around the opportunity to attend a game. *Id.*

<sup>164</sup> See Bast, *supra* note 86, at 10 ("Do professional sports teams attract new business to a city by subtly shaping the city's image in the minds of chief executive officers of the Fortune 500? This claim assumes that some CEOs choose new locations for their businesses after having seen a city's skyline during coverage of a football or baseball game. Just how implausible this is can be demonstrated by asking the following question: Would you buy stock in a company whose CEO decided where to locate the headquarters or a new factory based on where his favorite professional sports teams are based?"); see also Noll & Zimbalist, *supra* note 98, at 73 (noting that research on corporate location decisions finds that costs, the quality of the local labor force, and city amenities such as the quality of education and healthcare are the factors that determine where businesses will locate).

development.<sup>165</sup> Modern facilities usually require acres of unattractive parking lots and proximity to major highways in order to fulfill the transportation and parking needs of their patrons.<sup>166</sup> In addition, these stadia are designed as self-contained units with every possible modern amenity within their walls.<sup>167</sup> They attempt to maximize revenue by providing fans with the convenience of restaurants, gift shops, and bars (and occasionally even hotels) all at their fingertips within the confines of the stadium.<sup>168</sup> Because these various goods and services are available at the stadia, the fans are not as likely to venture into the surrounding community either before or after the game to seek them out.<sup>169</sup> Thus, businesses may not have the financial incentive to locate near these facilities.

Moreover, while proponents argue that increased revenue for a stadium greatly benefits the local economy, research indicates that this is not typically the case.<sup>170</sup> In most cases, more than half of the gross revenue of a team goes to the athletes in the form of substantial salaries and bonuses.<sup>171</sup> A significant remainder of the revenue goes to the owners, executives, managers, coaches, and scouts.<sup>172</sup> If these personnel do not reside locally, most of their income is

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<sup>165</sup> Bast, *supra* note 86, at 10.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*; but see Rock, *supra* note 122, at 8 (suggesting that stadia do attract other businesses, but these are often restaurants and entertainment franchises with headquarters in other cities and these franchised businesses often drive longtime local operators out of business).

<sup>170</sup> See Noll & Zimbalist, *supra* note 98, at 94; see also Bast, *supra* note 86, at 11; see also Baade, *supra* note 89, at 11-14. In his 1994 paper, Baade studied changes in cities' economic activity inspired by factors unique to those cities. *Id.* He investigated this "unique behavior" for statistical evidence that the presence of professional sports teams or sports stadia contributed significantly to an area's economy. *Id.* at 11. He applied an equation to 36 metropolitan areas that hosted professional sports teams during the thirty year period from 1958 to 1987 and 12 additional areas that did not host a professional team. *Id.* The empirical investigation enabled researchers to estimate the extent to which yearly changes in each metro area's per capita real income, adjusted for general trends in the 48 cities' economic growth, were explained by changes in either the number of new stadia or professional teams the area acquired. *Id.* Baade discovered that of the 30 statistical areas where there was a change in the number of stadia or arenas ten years old or less, 27 areas showed no significant relationship between the presence of a stadium and real, trend-adjusted, per capita personal income growth. *Id.* at 15. In the remaining cases, the presence of a stadium was significantly negative. *Id.* Baade concluded that as stadia and teams have no significant impact on a metro economy, stadium subsidies benefit only the team owners and players. *Id.* at 21.

<sup>171</sup> Noll & Zimbalist, *supra* note 98, at 71.

<sup>172</sup> *Id.*; see also Bast, *supra* note 86, at 11. Bast points to the fact that much of the stadium subsidies goes directly into the owners' pockets because state of the art facilities raise the resale value of the

transferred into other regional economies and thus does not contribute to local economic growth.<sup>173</sup> The careers of athletes and coaches are relatively short, and even those with longer careers will probably change teams several times.<sup>174</sup> This makes it unlikely that they will have great attachment to the cities in which they work.<sup>175</sup> Many choose permanent residences based on where they were raised or where they attended college.<sup>176</sup>

Furthermore, because most professional athletes and coaches have relatively short careers, they have great incentive to save much of their income to provide for the time when they will no longer be involved in sports.<sup>177</sup> These savings are often invested with national rather than local firms in order to maximize growth potential.<sup>178</sup> Similarly, owners who do not live in host cities also invest their money with national or even international firms seeking the best possible management of their wealth.<sup>179</sup> Consequently, a lower proportion of the income of athletes and other high-salaried team employees is spent on local consumption than would be true for income generated by other types of business.<sup>180</sup> Lastly, although new stadia may generate substantial gross revenue, a certain percentage of this is lost through revenue sharing in both football<sup>181</sup> and

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teams. *Id.* For example, he notes that Eli Jacobs bought the Baltimore Orioles for \$70 million in 1989 and sold the team less than four years later for \$173 million. *Id.* Bast attributes this 150 percent appreciation in large part to the decision of Maryland's legislators to subsidize a new \$200 million stadium. *Id.*

<sup>173</sup> Noll & Zimbalist, *supra* note 98, at 71.

<sup>174</sup> *Id.* at 71-72.

<sup>175</sup> *Id.* at 72.

<sup>176</sup> *Id.* (suggesting that to the extent that there is an absentee owner and the team's roster includes players and coaches who live elsewhere, their earnings should be excluded from calculating the local economic impact of the team and stadium).

<sup>177</sup> Bast, *supra* note 86, at 11.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> The NFL shares virtually all revenues equally among the teams. *CBA: The NFL Model*, at <http://www.andrewsstarspage.com/12-14cba.htm> (Dec.7, 2003). Revenue from broadcasting contracts, national sponsorships and licensing fees is divided equally among the teams. *Id.* In addition, the league shares a portion of gate receipts. *Id.* While 60 percent of gate receipts from NFL games go to the home team, 40 percent of the receipts go into a pool that is eventually divided equally among all of the teams. *Id.*

baseball.<sup>182</sup> Instead of this income being infused into the local economy, it automatically leaves the area and serves as a catalyst to other regional economies.<sup>183</sup>

Although advocates claim that stadium construction creates employment, economists argue that there is little evidence that professional sports create a significant number of new jobs.<sup>184</sup> Those who are optimistic about job creation potential assume that an increase in sports-generated revenue necessarily corresponds to an expansion of the local economy.<sup>185</sup> However, it is the demand for goods and services that drives the demand for labor.<sup>186</sup> Unless professional sports correlate with an increase in net new spending, jobs will not be created.<sup>187</sup> Because spending on sporting events likely leads to the reduction of consumer spending on other recreational activities, independent studies conclude that sports account for only negligible increases in net new spending and jobs.<sup>188</sup>

Several factors must be considered in determining the effect of a stadium on job creation. First, the creation of jobs varies with the extent to which the local economy is operating near its productive capacity.<sup>189</sup> If the level of unemployment in labor markets that would be affected by an expanding sports industry is higher, more jobs could potentially be created.<sup>190</sup>

In addition, if sports related expenditures migrate beyond the local economy, stimuli for a local labor market will be reduced.<sup>191</sup> If much of the

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<sup>182</sup> Under the MLB collective bargaining agreement, each team contributes 34 percent of its net local revenue to a pool that is redistributed to all 30 teams. *MLB Agreement: Key Issues of the New Deal*, MILWAUKEE JOURNAL SENTINEL, Aug. 31, 2002, Sports Section, available at <http://www.jsonline.com/sports/brew/aug02/70555.asp> (last visited Mar. 3, 2005). In addition, \$72.2 million is taken annually from the richest teams and redistributed to the poorest teams. *Id.*

<sup>183</sup> Bast, *supra* note 86, at 11.

<sup>184</sup> Robert A. Baade & Allen R. Sanderson, *The Employment Effect of Teams and Sports Facilities*, in *SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS* 93 (Roger G. Noll & Andrew Zimbalist eds. 1997); see also Rappaport & Wilkerson, *supra* note 91, at 63 (suggesting that the net number of jobs created from hosting a team is quite low; declaring that the number is almost certainly less than 1000 and likely much closer to zero).

<sup>185</sup> Baade & Sanderson, *supra* note 183, at 93.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

money generated by the presence of a team and stadium goes to owners and players who do not live or spend that income in the local market, this does not create a demand for labor.<sup>192</sup> It is also important to note that many of the new stadia and ballparks being built are replacement facilities.<sup>193</sup> Merely replacing sports infrastructure does not expand the local economy.<sup>194</sup> Once the construction phase of the new facility is completed, economic activity will remain at or near its former level.<sup>195</sup> A new stadium or ballpark simply relocates the workplace while leaving the workforce basically unaltered.<sup>196</sup> This should be viewed not as jobs gained, but rather as jobs not lost.<sup>197</sup>

The benefits of stadium subsidies can be measured not only by the number of jobs created but also by the types of jobs created. Proponents argue that stadium jobs create construction jobs and generate tax revenues through the sale of construction materials.<sup>198</sup> However, studies indicate that construction materials are often brought in from other locations, as are certain specialized construction workers.<sup>199</sup> Moreover, the companies that design and build the stadia are seldom local, and therefore, their fees are not spent in the local economy.<sup>200</sup>

Once the construction phase is complete, jobs generated by professional sports activities are concentrated in the service and trade sectors.<sup>201</sup> Since professional sports activities are seasonal and each event is completed in a matter of several hours, jobs in professional sports are classified as part-time, seasonal employment.<sup>202</sup> While these low wage part-time jobs are still important to a local economy, they are not the kind of jobs that lead to greater economic growth for a

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Rock, *supra* note 122, at 7.

<sup>199</sup> *Id.* at 8.

<sup>200</sup> *Id.*

<sup>201</sup> Baade & Sanderson, *supra* note 183, at 99.

<sup>202</sup> *Id.*

region.<sup>203</sup> Such employment does not position a community to take advantage of national and international trends toward workforces with higher skills and familiarity with technology.<sup>204</sup>

## VII. SUMMARY AND CONCLUSION

The stadium boom is in full effect. With team owners constantly looking for ways to augment profits and increase their franchise value, the publicly funded stadium has become an extremely popular device with which to lure a professional sports team to a new locale or to convince a team to stay. Because the professional sports leagues in the U.S. have no rival leagues to compete with, they are able to keep the number of teams below the number of economically viable host cities. As a result, these cities are forced to bid against one another for the privilege of hosting a team. This bidding is done primarily through offers of exorbitant public subsidies for state of the art facilities that allow teams to maximize their profits.

Despite numerous challenges from taxpayers across the country, courts have held almost universally that sports stadia are projects undertaken for a public purpose and are therefore worthy of government subsidies. While most courts acknowledge that the teams and owners receive a large share of the benefits, they agree that stadia provide for the entertainment and pleasure of the public. Thus, they have been willing to defer to the wisdom of the legislatures in approving such funding.

Local politicians who either seek accolades for enticing new teams to their cities or seek to avoid the stigma of losing a team on their watch argue that new stadia result in local economic growth. The citizens are serenaded with claims that building a stadium will create jobs, increase tax revenue, attract business, and improve tourism. The public subsidy, they are told, will pay for itself. However, the majority of research indicates that the presence of new stadia and teams have no significant economic impact. Most independent economists agree that the number of jobs created after the construction phase has ended is minimal, and these jobs are seasonal, unskilled, and low paying. Publicly funded stadia also come at a great cost to both local and federal taxpayers. Moreover, spending at the stadium and in the area is likely shifted from other forms of local entertainment and therefore does not create a net benefit. Lastly, using public

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<sup>203</sup> Bast, *supra* note 86, at 13; see also Baade & Sanderson, *supra* note 183, at 99 (“[T]his concentration should not be used to indict professional sports or to imply that cities should not provide jobs of this nature, but it does explain why professional sports do not induce the same magnitude of economic activity as some alternative uses of the public funds . . .”).

<sup>204</sup> Bast, *supra* note 86, at 13.

funds to subsidize stadium construction limits the availability of funds for essentials such as education, police, streets and water.

Although studies conducted by researchers not affiliated with the teams conclude that the presence of teams and facilities has minimal economic impact, they acknowledge that the teams may produce intangible benefits. Many claim that having quality facilities and franchises provides a city with big league allure and instills a sense of pride and community within its citizens. It is debatable whether these quality of life benefits provide some justification for large public outlays for facilities.

With respect to the effects of Philadelphia's new stadia, the jury is still out. Despite the fact that building two new facilities may have created many temporary jobs, they are nonetheless replacement facilities. Arguably, then, the number of permanent jobs within the stadia will increase only minimally. It is true that the two facilities replaced only one, and seemingly this would double the number of potential jobs. However, the stadia are utilized seasonally. Because they are not occupied year round, the number of employees in each is likely to remain close to the level for the respective football and baseball seasons at the former Veterans Stadium. Conversely, the cost to the taxpayers of two facilities is twice what it would be for one multipurpose stadium. It is also possible to argue that because these stadia merely replaced an existing structure for long-standing teams, once the novelty of the facilities fades, the fan base will remain essentially the same. Lastly, any increase in spending facilitated by the modern amenities of each new stadium, unless it occurs outside of the stadia, is recognized almost exclusively by the teams and their players. Admittedly, the importance of the Phillies and the Eagles to their city is not easily dismissed. However, it remains to be seen whether the benefits of Philadelphia's subsidy will outweigh the costs to its taxpayers.