

COPY

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

**SARASOTA CITIZENS FOR RESPONSIBLE
GOVERNMENT, a not-for-profit corporation,
and CITIZENS FOR SUNSHINE, INC.,
a not-for-profit corporation,
Plaintiffs,**

v.

**CASE NO. 2009 CA 21849 NC
2010 CA 2766 NC
2010 CA 3194 NC**

**CITY OF SARASOTA, a Florida municipal
corporation, BOARD OF COUNTY
COMMISSIONERS OF SARASOTA
COUNTY, FLORIDA, a municipal corporation,
SHANNON STAUB, NORA PATTERSON, and
JOE BARBETTA,
Defendants.**

FINAL JUDGMENT

The Sarasota County Board of County Commissioners (BCC), entered into a Memorandum of Understanding (MOU) with the Baltimore Orioles (Orioles) in July, 2009. The MOU obligated the Orioles, among other things, to relocate to Sarasota for spring training. Sarasota County is obligated to fund construction of facilities/facility improvements at the Ed Smith complex, the location within the City of Sarasota where the Orioles are obligated to conduct spring training activities, and other facilities located elsewhere in the County..

Negotiation of the MOU with the Orioles followed unsuccessful attempts to retain the Cincinnati Reds in Sarasota and to secure relocation of the Boston Red Sox to Sarasota. In November, 2008, the BCC instructed the County Administrator, James Ley, to initiate negotiations with the Orioles. Mr. Ley delegated this task to Deputy County Administrator David Bullock (Bullock). Negotiations between the County and Orioles began immediately and continued until the terms of the MOU were finalized in July, 2009. The MOU was approved by the BCC at a public meeting on July 22, 2009. At that public hearing, the BCC adopted an amended or modified Tourist Development Tax Ordinance, in part to provide part of the County's funding obligation under the MOU; approved an Interlocal Agreement with the City which included an obligation of the City to convey the Ed Smith complex to the County, to transfer funds to the County to offset part of the cost of construction and to undertake responsibility for environmental remediation, if required, at the complex; and adopted a resolution authorizing issuance of bonds for the purpose of financing costs associated with the improvements required by the MOU. Simultaneously, the City also authorized issuance of bonds to fulfill its obligations pursuant to the interlocal agreement.

SUNSHINE ISSUES¹

Case No. 2009 CA 21849 NC

Plaintiffs (collectively referred to as Citizens) seek to have this court declare void actions of both County and City, claiming multiple violations of Article I, Section 24(b),

¹ The sunshine issues are pled as affirmative defenses to the bond validation complaints filed by the City and County. Those complaints were filed subsequent to the filing of Citizens' complaint. Because the bonds at issue were authorized as part of the financing scheme relied upon to satisfy County's and City's obligations pursuant to the MOU and the Interlocal Agreement, the court's ruling on Citizens' complaint will be dispositive of the issues as raised in the bond validation proceedings.

of the Florida Constitution, and Section 286.011, Florida Statutes, collectively referred to herein as the Government in the Sunshine Law.

Citizens argue that the negotiations conducted by Bullock were subject to the Sunshine law and should have been conducted at public meetings. As Bullock engaged the Orioles in negotiation, he enlisted the assistance of various other members of County staff, members of City staff, of retained consultants, the County Attorney, and representatives of the Greater Sarasota Chamber of Commerce.² The position taken by Citizens is that Bullock formed a negotiating “team” or “collegial body” that exercised decision-making responsibilities of the BCC which could only be properly exercised in a properly noticed public meeting or hearing. They also argue that Bullock was acting in the economic interests of the County, and that he took on the role of Economic Development Agency since he was the county officer assigned, in this instance, the responsibility to promote the general business interests of the County. See Section 288.075, Florida Statutes. With regard to the latter argument, the fact that he may be entitled to maintain proprietary information of the Orioles confidential pursuant to the provisions of Section 288.075(2)(a), does not convert him into a one man collegial body.

Section 2.6A of the Sarasota County Charter identifies the County Administrator as “the chief administrative officer of the County for all administrative matters and operations under authority of the Board of County Commissioners.” It is axiomatic that a Deputy County Administrator is also an administrative officer of the County. It is clear that in the context of the Charter, the County Administrator and his Deputies are executive officers of the County

² It is not clear whether Bullock solicited the Chamber of Commerce. The evidence is consistent with the notion that the Chamber may have been self-invited. How the Chamber of Commerce came to be involved is of little consequence. The issue is what role the Chamber of Commerce played.

Section 2.6F of the Charter delineates the general duties and responsibilities of the County Administrator. Included is the responsibility to “carry out duties as set forth in the General Laws of the State of Florida.”

Section 125.74(1)(m), Florida Statutes, provides that the County Administrator may “negotiate leases, contracts, and other agreements, including consultant services, for the county, subject to approval of the board,

When Bullock undertook his assignment to negotiate with the Orioles, he recognized that there would be many subjects discussed requiring the attention of other people who possessed greater expertise with regard to those subjects. He understood that the City would be an indispensable participant in any plan crafted to secure agreement with the Orioles. As the negotiations proceeded, at some point he recognized that he would require input from people or entities accustomed to negotiations with major league baseball clubs. It may be that all of these people and entities could be referred to as Bullock’s negotiating team. Whether they were a negotiating team is not the determinative issue. The authority or responsibility exercised by these people and entities is the primary consideration given in deciding whether Bullock’s ultimate work product was the fruit of actions and activities that should have been conducted in public meetings. In this instance, the people and entities Bullock met with, albeit in frequent and unpublicized meetings, operated in the roles of advisor, consultant and facilitator, to assist him in the performance of his duty to negotiate with the Orioles. They did not deliberate with, or without, him. Bullock retained and exercised the ultimate authority to negotiate the terms of the MOU that would be submitted to the BCC for consideration.

He had no authority , and did not seek , to bind the County contractually. The decision to approve the MOU, and become contractually bound, was exercised solely by the BCC. See: McDougall v. Culver, 3 So.3d 391 (Fla. 2d DCA 2009); Jordan v. Jenne, 938 So.2d 526 (Fla. 4th DCA 2006); and Knox v. District School Board of Brevard, 821 So.2d 311 (Fla. 5th DCA 2002).

In addition, the evidence does not support the conclusion that the BCC had improperly delegated its decision-making responsibility to the County Administrator, or that it merely “rubber-stamped” decisions made by Bullock. The BCC held numerous public meetings at which the negotiations with the Orioles and the City were discussed. Bullock reported regularly to the BCC at public meetings and in one-on-one meetings with the individual commissioners. The public participated, or had the opportunity to participate, at all of the public meetings. Importantly, over the course of the negotiations, the BCC, at public meetings, reviewed and rejected proposals, authorized proposals of its own, and discussed in detail financial details that it would and would not approve.

Over a two or three day period immediately prior to the BCC meeting of July 22, 2009, Bullock, individually and assisted by other members of County staff, held one-on-one meetings with each of the individual commissioners. There is no evidence that any individual commissioner was polled with regard to his or her position with regard to the MOU, or any provision of the MOU. There is no evidence that Bullock or any other person disclosed to any commissioner the position of any other commissioner with regard to the MOU or any provision of the MOU. Meetings between County staff and individual BCC members are not meetings subject to the Government in the sunshine act unless they are conducted in such a way as to constitute de facto meetings of one or more

members of the BCC at which official action is taken. Blackford v. School Board of Orange County, 375 So.2d 578 (Fla. 5th DCA 1979). Nothing in the record before this court suggests that these one-on-one meetings were de facto meetings between two or more members of the BCC, or that any official action resulted from the meetings. Citizens point out that following his one-on-one meetings, Bullock responded to an e-mail from Thomas Tryon, Opinion Editor for the *Sarasota Herald-Tribune*, that he thought Tryon's team won. Citizens believes this is evidence of polling. Viewed in context with the other evidence, this comment appears more likely an expression of Bullock's thoughts on the prospects for approval of the MOU following his one-on-one meetings. There is no evidence that any commissioner committed himself or herself to approval of the MOU during any of the one-on-one meetings.

Citizens also argues that individual commissioners conducted e-mail discussions about substantive matters that would come before them for consideration in the future. In fact, there are numerous instances in the record where two or more members of the BCC participated in e-mail discussion of issues relating to the effort to secure an agreement with the Orioles. For instance, on April 12, 2009, Kelly Kirschner, a member of the Sarasota City Commission, sent an e-mail to John Cranor and Robert Messick, who were members of the Chamber of Commerce. In this e-mail, Mr. Kirschner expresses his belief that the Orioles will not contract to conduct spring training in Sarasota on a long-term basis. Mr. Kirschner sent a courtesy copy of this e-mail to Shannon Staub and Joe Barbetta, both members of the BCC. Ms. Staub responded to Mr. Kirschner. Her response was copied to Mr. Barbetta who in turn responded to Ms. Staub. A careful review of Ms. Staub's e-mail and Mr. Barbetta's response reveals that both were

asserting what they believed certain facts to be. Neither proposed a position or action, and neither committed to a position or action.

On April 11, 2009, John Cranor sent an e-mail to a number of people, including Ms. Staub and Mr. Barbetta. In his communication, Mr. Cranor expresses his opinion that the Orioles will accept an offer from Lee County, and invites any new ideas for getting the negotiations back on track. Ms. Staub responds with a lengthy breakdown of cost information and a list of reasons why the City and County might want to see a deal with the Orioles come to fruition. Nora Patterson, another member of the BCC responds, acknowledging Sunshine issues and suggesting that the County Administrator provide information about the source of the information cited in Ms. Staub's e-mail; that staff provide other information; and expressing her belief that it would be "nice" to hear directly from the Orioles.

On March 16, 2009, Carole Gorin, a citizen, sent an e-mail in support of securing a major league baseball team for spring training in Sarasota. Ms. Staub responded and copied her response to others, including Mr. Barbetta. Mr. Barbetta responded to Ms. Staub's e-mail by stating that he himself had responded to Ms. Gorin.

Between December 25, 2008 and December 27, 2008, an e-mail was sent by Lou Ann Palmer, a member of the Sarasota City Commission, forwarding a newspaper article about baseball. This incited a string of e-mails to and from John Cranor, Shannon Staub, Joe Barbetta, and Nora Patterson. Essentially, the participants in this exchange seemed to be conducting a post mortem over negotiations with the Orioles and taking issue with statements made by Orioles representatives. No opinion is stated other than the general

belief that a deal could have been reached had all parties been committed to finding a way.

The advisory opinion of Florida's Attorney General in Fla. AGO 2007-35, 2007 WL 2461925 (Fla. A.G.) would appear to interpret the above-referenced e-mail exchanges as violative of the Government in the Sunshine Law.

On November 28, 2008, Howard Akey, a citizen apparently opposed to the effort to bring the Orioles to Sarasota, sent an e-mail to each member of the BCC. Ms. Patterson responded, explaining some of the County's position with regard to funding of a possible arrangement with the Orioles. Mr. Barbetta responded to Ms. Patterson taking issue with her comparison of an earlier offer to the Boston Red Sox with the apparent offer being discussed with the Orioles and discussing various other issues the he believed to be important factors in any agreement to be offered to the Orioles. Ms. Staub responds to Mr. Barbetta essentially requesting he relax and await further updates from Bullock. Mr. Barbetta takes issue with Ms. Staub's suggestion that he be patient. Ms. Staub responds to Mr. Barbetta with an inquiry addressed to Mr. Barbetta and members of County staff. This exchange clearly exceeds information sharing, commiseration, or airing of a rhetorical question. This is discussion and debate of substantive issues that will ultimately come before the BCC for consideration and decision. This is the type of discussion and debate that should take place only at an advertised public meeting. **Finch v. Seminole County School Board**, 995 So.2d 1068 (Fla. 5th DCA 2008).

While it thus appears that the referenced e-mail exchanges violated the Government in the Sunshine Law as the application of that law is currently interpreted in Florida, the evidence shows that the members of the BCC participating in the exchanges

did so believing that they were in compliance with the law. There was clearly no attempt to subvert the law by avoiding public debate. In short, if in fact violations occurred, the violations were not egregious or intentional. The evidence clearly demonstrates that the BCC met multiple times between November, 2008 and July, 2009, and that the subject of the Orioles negotiations were fully vetted. The decision of the BCC was “not merely a ceremonial acceptance of secret actions and not merely a perfunctory ratification of secret decisions at a later meeting open to the public.” **Tolar v. School Board of Liberty County**, 398 So.2d 427 (Fla. 1981); and **Finch v. Seminole County School Board**, 995 So.2d 1068 (Fla. 5th DCA 2008).

Finally, Citizens argues that Mr. Barbetta used a proxy to persuade Ms. Patterson – and perhaps other commissioners - to support the effort to secure an agreement with the Orioles. This allegation stems from an e-mail sent by Mr. Barbetta to some citizens who were concerned that support for the negotiations might be wavering. In the e-mail, Mr. Barbetta included a number of “talking points” that might be used in conversation with people about the issues. Mr. Barbetta asked that his name and e-mail address be deleted from the talking points before they were used. He wished to avoid attribution. He wished to avoid the appearance of some improper communication or attempt to improperly influence one of his fellow commissioners. Furthermore, there is no evidence that Ms. Patterson or any other member of the BCC was influenced in any way by use of the talking points prepared by Mr. Barbetta, or for that matter, that they were ever made aware of published talking points.

The court finds that if violations of the Government in the Sunshine Law were committed as outlined in this judgment, they were cured. The cure was the result not

only of the public hearing of July 22, 2009, but by the aggregate of all the public hearings which preceded it. The court does not address the purported cure of February 19, 2010, basically because the court has determined that no cure was necessary on that date.

Furthermore, the court does not believe that sanctions against the individual commissioners is warranted. They conducted themselves in the good faith belief that what they were doing was proper. This court believes that none of the current BCC membership is likely to commit further such violations of the Government in the Sunshine Law.

It is therefore

ADJUGED:

1. That the relief sought by Citizens in its Sunshine action is denied.
2. The court reserves for determination of any issues relating to award of lawyer fees and taxable costs.

BOND VALIDATION

Case No. 2010 CA 2766 NC

In this case, the County, seeks validation of Capital Improvement Revenue Bonds in an amount not to exceed \$20,325,000.00. On the evidence presented, the court finds as follows:

On February 19, 2010, the BCC adopted Resolution No. 2010-029 authorizing issuance of the bonds. The principal purpose of the bonds is to provide financing of improvements to baseball facilities in Sarasota County, funding a debt service reserve

fund and paying the costs of issuance of the bonds. At the same time, the BCC readopted, or reauthorized, Ordinance No. 2009-038, which authorized the levy of an additional one-half percent of the County's Tourist Development Tax.

The issues for the court's determination in this case are whether the County has authority to issue the bonds; whether the purpose of the bonds is legal; and whether the obligations comply with the requirements of law.

First, the court finds that the bonds satisfy the requirement of a legal purpose. The BCC, over the course of numerous public hearings, determined that a "paramount" public purpose supported authorization of the bond issue. There is ample evidence in the record to support the determination of the BCC. Among other things, the BCC determined that having the Orioles come to Sarasota for spring training, and the improvements to be made to publicly owned baseball facilities promoted tourism and economic development/revitalization. While there is certainly benefit to the Orioles, even substantial benefit, the court is not at liberty to disturb the BCC's determination of paramount public purpose.

The court also determines that the bond issue complies with the requirements of law and that the County has authority to issue the bonds. Section 5.2D of the Sarasota County Charter places a limit on "...bonds,or other instruments of indebtedness evidencing borrowing" that may be issued without referendum. The parties agree that the aggregate amount of the bonds authorized by the County does not exceed the Charter limit. Citizens argues that the County's total obligations under the Interlocal Agreement and the MOU must be considered together with the bonds to determine the total indebtedness undertaken by the County. However, the Interlocal Agreement obligates

the County to make payments for long-term capital repairs and insurance expenses for county owned property and facilities.³ This is not an instrument of indebtedness evidencing borrowing.

Citizens also argues that the County could not amend its Tourist Development Plan without referendum. However, there is no such requirement in Section 125.0104(4)(d), Florida Statutes. Rowe v. Pinellas Sports Authority, 461 So.2d 72 (Fla. 1984).

Citizens further argue that Section 218.64(3), Florida Statutes, prohibits the pledge of the County's half-cent sales tax to finance improvements to a spring training facility, because the County is not a "certified applicant."⁴ However, Section 218.64(3) is not the section that applies to the County's financing scheme in this case. The applicable section is Section 218.64(4). Section 218.64(4) provides that "A local government is authorized to pledge proceeds of the local government half-cent sales tax for the payment of principal and interest on any capital project." This is precisely what the County proposes to do in this instance.

The court here reiterates the findings and ruling made in Case No. 2009 CA 21849 NC.

It is therefore

ADJUGED:

1. That the bonds which are the subject of this action are validated.
2. That the court reserves jurisdiction to determine any issues regarding award of lawyer fees and taxable costs.

³ The City transferred ownership of the Ed Smith complex to the County.

⁴ In this case, the City is a certified applicant.

3. That the court reserves jurisdiction to enter such further orders as may be necessary to give effect to this judgment.

BOND VALIDATION

Case No. 2010 CA 3194 NC

Since 2006, the City has been receiving funding from the State of Florida's Office of Tourism, Trade and Economic Development (referred to herein as "OTTED" funds. The funds amount to \$41,000.00 per month. Pursuant to the Interlocal Agreement, the City authorized the issue of bonds to finance a portion of the cost of the construction and renovation of the Ed Smith Stadium Complex. The bonds are to be repaid from the OTTED funds. The City further pledged to transfer accumulated OTTED funds and bond proceeds in a total amount not less than \$7,500,000.00 to the County which would control the construction and renovation project.

As was true in the County's bond validation case, the issues to be determined in this case are the authority of the City to issue the bonds, the legality of purpose for the bonds, and whether the bonds comply with the requirements of law.

Article VII, Section 10, of the Florida Constitution, requires that the bonds "serve a paramount public purpose and any benefits to a private party must be incidental." In this case, the Sarasota City Commission (SCC) determined that securing a long-term agreement from the Orioles franchise to make Sarasota County and the City of Sarasota its spring training home would promote tourism and economic development; create jobs; and make a positive contribution to the quality of life for all citizens. In addition, transferring ownership of the stadium complex to the county, and eliminating the costs of

maintenance and repair, would eliminate a significant subsidy obligation of the City. Furthermore, there is reserved to the County and City defined uses they can make of the complex pursuant to the MOU. These findings were supported by an economic impact study presented to the SCC.⁵ This court cannot go behind the determination of the legislative body unless the benefit to the Orioles is so great as to tarnish the paramount public purpose. Orange County Industrial Development Authority v. State, 427 So.2d 174 (Fla. 1983). The fact that both, or in this case all, parties to an agreement enjoy significant benefit is not the test of legality of purpose. The City has established a clear, paramount public purpose for these bonds.

Citizens argue that the bond issue authorized by the City cannot comply with the requirements of law, because it is the product of a special law enacted without publication required by Article III, Section 10, of the Florida Constitution and by general law.

The statutory provision complained of by Citizens is found at Chapter 2010-140, Laws of Florida (2010). It was sponsored by State Representative Doug Holder, originating through House Bill 7205. It amends the OTTED statute. Under the newly enacted law, the City is able to maintain its certification for OTTED funding. It was enacted as general law. However, Citizens correctly point out that if the bill in fact operates as a special law, the characterization of the law as a general law is irrelevant. Therefore, an analysis of the law's effect must be made.

In general terms, a special law is one designed to apply solely to a particular locality, it is a special law that must be advertised as required by law, before its enactment. State ex rel. Gray v. Stoutamire, 179 So. 730 (Fla. 1938). In other words,

⁵ Economic impact studies also supported the determination of the BCC.

if there is no reasonable possibility that the law might apply to others, to whom it does not apply when enacted, it is a special law. **Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.**, 967 So.2d 808 (Fla. 2007). In this case, Citizens have failed to demonstrate that the criteria, which may have been unique to the City at the time the legislation was enacted, would never exist in another location within the State of Florida. This is especially important in a state like Florida which enjoys a rich history of involvement with major league baseball franchises.

Citizens also argues that even if the amended OTTED statute is constitutional, the City has not complied with the statute. They argue that the City of Fort Lauderdale never expressly agreed to the Orioles relocation to Sarasota. It is true that no expression of consent as made by the City of Fort Lauderdale. The City of Fort Lauderdale did, however, acknowledge the termination of that city's agreement with the Orioles. And there is no evidence that objection to the relocation was interposed. Citizens' argument is more a matter of semantics than substance.

There is no evidence in the record before this court that the City's resolution authorizing the bond issue, or the bonds themselves, otherwise do not comply with the requirements of the City's charter or the general law of the State of Florida.


The court here reiterates the findings and ruling in Case No. 2009 CA 21849 NC. There is no evidence in the record before this court that the City of Sarasota, or any member of the SCC or City staff otherwise violated the Government in the Sunshine Law with regard to the authorization of the bond issue or negotiation or execution of the MOU.

It is therefore

ADJUDGED:

1. That the City's bond issue is validated.
2. That the court reserves jurisdiction to determine any issues regarding award of lawyer fees and taxable costs.
3. That the court reserves jurisdiction to enter such further orders as may be necessary to give effect to this judgment.

ORDERED AND ADJUDGED in each of the foregoing cases at Venice, Florida
this 8th day of July, 2010.



Robert B. Bennett, Jr.
Circuit Judge

Copies to:
All counsel of record