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NOTE

STADIUM FUNDING IN MASSACHUSETTS: HAS THE COMMONWEALTH FOUND THE BALANCE IN PRIVATE VS. PUBLIC SPENDING?

Brian Adams+

Professional sports teams have a grip on our popular culture. Although professional sports have garnered much attention throughout the twentieth century, only recently have they affected public policy to a large degree. Cities' fears of losing their franchises and teams moving in search of greater profits have fueled a publicly financed spending spree on new sports stadiums. Before 2006, over seven billion dollars will be spent on new sports stadiums and arenas, with taxpayers contributing much of the bill. In spending this money, states and municipalities have blurred the line between what constitutes public benefit spending and what constitutes a private benefit from the use of publicly funded projects.

Public spending on sports stadiums is not a new phenomenon. In fact, municipalities have been spending public money to build stadiums

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1. J.D. Candidate, May 2002, The Catholic University of America, Columbus School of Law.
2. See Allen R. Sanderson, In Defense of New Sports Stadiums, BallParks and Arenas, 10 MARQ. SPORTS. L.J. 173, 188 (2000). Sanderson discusses the amount of time and space devoted to sports coverage in evening news programs and print media. Id. He concludes that the significant coverage devoted to sports in the media signifies its cultural importance, as these outlets are commercial ventures and would showcase other topics if they were more popular. Id.
4. Id. at 35.
5. See Geiger, supra note 2, at 460.
throughout the twentieth century. The reason for teams seeking new stadiums, however, and the tactics used to achieve their respective goals has changed. With escalating player salaries and increased revenue sharing in many leagues, teams have sought new avenues of income. One of the primary sources of this new income has been new stadiums. The proliferation of new stadiums has compelled teams without new stadiums to seek other “lucrative financial incentives” to keep teams from moving. Because these new stadiums are being built, a whole generation of professional sports stadiums has been rendered obsolete before the termination of their life expectancies. Further, for those teams that cannot obtain better accommodations in their home cities, several American cities stand ready with offers of stadium riches to lure franchises to their own backyards. As a result, municipalities are forced to make large concessions on stadium funding to team owners to keep their teams in place.

Keating points to the use of municipal funds to build a stadium in Los Angeles in an attempt to win both the 1924 and 1932 Olympic Games. Id.

7. See id. at 4-7.

8. See Webb Nichols, Losing Sight, BOSTON SUNDAY GLOBE, May 3, 1998, at G1. Teams now seek stadiums mainly to exploit revenues from luxury boxes and premium seating. Id. Luxury boxes are typically leased for between $100 thousand and $250 thousand per season and provide considerably more income to teams than traditional stadium seating. Id. As a result, teams playing in older stadiums without boxes and premium seating are at a considerable economic disadvantage to teams that play in newer stadiums with these revenue streams. Id.

9. See Todd Senkiewicz, Comment, Stadium and Arena Financing: Who Should Pay?, 8 SETON HALL J. SPORT L. 575, 580 (1998). The Texas Rangers baseball team sought a new stadium to increase its revenue. See id. The team collected $23 million in direct stadium revenue out of an average total revenue of $71.8 million for the 1994 and 1995 seasons and credited their ability to sign better players to this new money. Id. at 580-81. In the National Football League, sixty-four percent of team revenues must be returned to the players in salaries, but this total does not include luxury box revenue. Will McDonough, Kraft Hits Lottery in Connecticut, BOSTON GLOBE, Nov. 20, 1998, at C1. As a result, NFL teams that maximize luxury box revenue will make greater profits and may, if they choose, put these profits back into the team to sign better players. See id.

10. Senkiewicz, supra note 9, at 580 (“$23 million from direct stadium revenue.”).

11. Geiger, supra note 2, at 460-61. Teams who cannot build their own stadiums will often threaten to move to other cities to exact stadium funding from their host cities. Id.

12. Sanderson, supra note 1, at 183-84 (discussing how the shortened “shelf life” of stadiums is being driven by economic needs and not by structural defects of the stadiums).

13. See Robert Taylor Bowling, Comment, Sports Aggravated: The Fan’s Guide to the Franchise Relocation Problem in Professional Sports, 28 STETSON L. REV. 645, 670-71 (1999). Bowling discusses how teams use the threat of relocation to extort new stadiums from their host cities. Id. For example, the Minnesota Twins’ owner used the passage of a stadium funding referendum in North Carolina to force Minnesota legislators to address his stadium concerns. Id. at 671-72.

14. Id. at 670-71
The Commonwealth of Massachusetts is not immune from the stadium funding debate. Two of the Commonwealth’s four professional teams, the National Football League’s New England Patriots and Major League Baseball’s Boston Red Sox, each felt compelled to seek new playing facilities during the past decade. While the teams’ histories, the location of their present playing facilities, and the circumstances surrounding their funding requests differ greatly, the teams share a common bond in that both needed, and requested, public assistance to build their new facilities.

The New England Patriots are the proverbial new kids on the block among Massachusetts’ sports franchises. Formed when the American Football League granted a team to Boston businessman William Sullivan in 1959, the franchise led a nomadic life for the first decade of its existence. Between its first season, in 1960, and 1970, the team, then known as the Boston Patriots, played its home games in four different locations including three college stadiums and a baseball park. In August 1971, the team moved into a new, privately financed facility in Foxboro, Massachusetts named Schaefer Stadium. At the same time, the team changed its name to the New England Patriots. The stadium cost $6.7 million to build and seated sixty thousand spectators. The Patriots’ owners used several innovative approaches to limit costs,


17. Id. The Red Sox were not seen as a threat to leave the area due to their long established presence in the region. See Keating, supra note 6, at 10.


19. Supra note 18.

20. Id. The Patriots played games at stadiums on the campuses of Boston College, Boston University, and Harvard University before shifting their temporary home to Fenway Park. Id.; see also Keating, supra note 6, at 6.

21. See Keating, supra note 6, at 6.

22. Id.

23. Id.
including leasing the stadium name to a beer company, receiving a free scoreboard in exchange for advertising rights, and obtaining a free artificial playing surface in exchange for promoting the product.\textsuperscript{24} Sports experts hailed these cost-cutting devices as an example of how private owners can succeed in building a facility while avoiding government subsidies.\textsuperscript{25}

During the 1980s and 1990s, the Patriots changed owners several times and also changed the stadium's name; the stadium is presently known as Foxboro Stadium.\textsuperscript{26} Owners and names were not the only changes for the team, however, as economic realities of competing in the National Football League (NFL) changed as well.\textsuperscript{27} Patriot ownership began floating ideas for a new stadium as early as 1993.\textsuperscript{28} Citing the increased costs of competing in the league and the lack of revenue he could derive from the stadium, Patriots owner Robert Kraft made a proposal to build a football stadium in Boston in conjunction with a publicly funded convention center.\textsuperscript{29} When Kraft's efforts failed both at the convention center site and at several other sites in Boston, he refocused his efforts to build a new stadium next to Foxboro Stadium.\textsuperscript{30}

\begin{itemize}
\item \textsuperscript{24} Id. While the Patriots' owner received credit for these innovative moves, they were done mostly out of necessity. Id. Team owner William Sullivan lacked the personal funds to completely finance the stadium and he refused to seek public assistance in the effort. Id.
\item \textsuperscript{25} Id. Keating posits that the construction of Schaefer Stadium was the only instance of a privately financed stadium in this time period. Id. He points to new stadiums in Cincinnati, Pittsburgh, and Philadelphia as examples of new venues that were not only aesthetically displeasing but also subsidized with public dollars. Id.
\item \textsuperscript{26} Historical Capsule, The Official New England Patriots Website, at http://www.patriots.com/history/ (last visited Aug. 29, 2000).
\item \textsuperscript{27} McDonough, supra note 9.
\item \textsuperscript{28} Don Aucoin, Weld Open to Ideas on Stadium Funding, BOSTON GLOBE, Aug. 24, 1993, at 19. The team hoped to be part of a private/public development known as the Megaplex. Id. The project would combine a domed stadium with a convention center placed in a developing area on the Boston waterfront. See id. The need for the project was explained by NFL Commissioner Paul Tagliabue in a 1990 speech to the Greater Boston Chamber of Commerce where he said Foxboro Stadium was "the least suitable facility in the NFL." Ron Borges, No Relief in Site for the Patriots, BOSTON SUNDAY GLOBE, June 10, 1990, at 46 (internal quotation marks omitted).
\item \textsuperscript{29} Meg Vaillancourt & Peter S. Canellos, Clashing Agendas Undid the Megaplex: A Revival Depends on Compromises, BOSTON GLOBE, Nov. 6, 1995, at 1. Kraft offered $210 million in private financing for the project but was rejected by state political leaders. Id. The estimated cost of the stadium and convention center was to approach $1 billion. Id.
\item \textsuperscript{30} Meg Vaillancourt & Tina Cassidy, South Bay Stadium Plan Is Rejected, BOSTON GLOBE, Dec. 21, 1996, at A1; Tina Cassidy, R.I. Halts Talks With The Patriots: Almond Cities "Sticking Points," Says a Move is Up to the Team, BOSTON GLOBE, Sept. 24, 1997, at A1. The Commonwealth rejected a proposal to build the domed stadium at another Boston site known as South Bay because the team requested the state give the land to the
While Kraft abandoned ideas to build in Boston, he continued to seek public assistance to complete his project in Foxboro.\textsuperscript{31} Massachusetts, however, refused to agree with Kraft's proposed assistance package.\textsuperscript{32} Under the proposed deal, more than $57 million would be spent on roads, sewers, and other infrastructure improvements.\textsuperscript{33} Additionally, the state would buy the land on which the stadium would sit and then lease it back to the team at a nominal cost.\textsuperscript{34} Critics dismissed the package, saying public funds should not be spent on land purchases to benefit the private sector and forced Kraft to consider other options.\textsuperscript{35} Kraft assessed proposals in Rhode Island and Connecticut before signing a conditional agreement with the City of Hartford, Connecticut on November 19, 1998.\textsuperscript{36}

In Kraft's agreement with Connecticut, the City of Hartford and the state agreed to completely finance a $374 million stadium and build other facilities for the team as part of an urban renewal project.\textsuperscript{37} The team, however, retained the right to rescind the agreement if conditions relating to the projects' completion date and site clearance were not met.\textsuperscript{38} The state also promised to pay for any unsold luxury boxes or club seats for the first thirty years of the stadium's existence.\textsuperscript{39} One commentator hailed the Connecticut deal as an unprecedented windfall for a team that had once been faced with financing its own stadium in Foxboro.\textsuperscript{40} Curiously, the deal fell apart when the Patriots exercised

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\textsuperscript{32} See Keating, \textit{supra} note 6, at 10.

\textsuperscript{33} Cassidy & Vaillancourt, \textit{supra} note 31.

\textsuperscript{34} \textit{Id}.


\textsuperscript{36} See Jackson, \textit{supra} note 15; Vaillancourt & Cassidy, \textit{supra} note 29.

\textsuperscript{37} Keating, \textit{supra} note 6, at 10. Kraft committed to build a hotel and entertainment pavilion and to invest in community programs in the city of Hartford. \textit{Id}. In return, the state would build the stadium and a new practice facility for the team, and pay all insurance for the project. \textit{Id}.

\textsuperscript{38} Meg Vaillancourt, \textit{A “Grateful” Kraft Says His Journey is Over: Hails Vote on Stadium}, \textit{BOSTON GLOBE}, Dec. 13, 1999, at 1.

\textsuperscript{39} Keating, \textit{supra} note 6, at 10; McDonough, \textit{supra} note 9. This provision had the potential to add nearly $7.5 million dollars per year in costs to the state. Keating, \textit{supra} note 6, at 10.

\textsuperscript{40} McDonough, \textit{supra} note 9. One team owner said that: “he will make more money than any other team in the league . . . He will net about $50 million a year out of this thing.” \textit{Id}.
their option to terminate the contract on April 30, 1999.\textsuperscript{41} Despite the promises of a fully financed stadium and guaranteed revenue, the team opted to return to Massachusetts due both to construction delays at the Connecticut site and Kraft's desire to keep the team in the Commonwealth.\textsuperscript{42} In response, the Massachusetts Legislature quickly responded and passed a stadium bill\textsuperscript{43} where the Commonwealth would pay for infrastructure costs but would not finance the land purchase for a new stadium.\textsuperscript{44}

While the Patriots are relatively new to the Massachusetts professional sports scene, the Boston Red Sox have a considerably longer history in the region.\textsuperscript{45} Founded in 1901 as the Boston Pilgrims, the team settled on their current name in 1907.\textsuperscript{46} In its early years, the team played at the Huntington Avenue Grounds, a nine thousand seat wooden structure.\textsuperscript{47} In 1912, however, the team built Fenway Park and the Red Sox continue to play there today.\textsuperscript{48} The stadium cost $650,000 to build.\textsuperscript{49} Since its construction, Fenway Park has survived several fires and has been enhanced by almost continuous renovation.\textsuperscript{50} The park currently seats a meager 33,871 and has the smallest spectator capacity in Major League Baseball.\textsuperscript{51}

While Fenway Park is steeped in history and now rivals its tenant as an attraction, the Red Sox were forced to face the fiscal realities of stadium economics in the 1990s.\textsuperscript{52} Fenway Park had become too old, too small, and too cramped to offer the amenities modern fans desire and the stadium does not provide the revenue its owners need to keep the team

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\item \textsuperscript{41} Vaillancourt, supra note 38.
\item \textsuperscript{42} Id. The state of Connecticut could not guarantee when construction would begin, due to difficulty negotiating sale terms with the occupant of the stadium site and questions about the cost of an environmental clean up of the site. Id.
\item \textsuperscript{43} 1999 Mass. Acts 16.
\item \textsuperscript{44} Id.
\item \textsuperscript{46} Dan Shaughnessy & Stan Grossfield, FENWAY: A BIOGRAPHY IN WORDS AND PICTURES 35 (Houghton Mifflin 1999).
\item \textsuperscript{47} Id.; A History of Fenway Park, supra note 45.
\item \textsuperscript{48} Shaughnessy & Grossfield, supra note 46, at 35.
\item \textsuperscript{49} Id. at 38.
\item \textsuperscript{50} Id. at 44.
\item \textsuperscript{52} Vaillancourt, supra note 16.
\end{itemize}
competitive. As a result, in June 1999, the team unveiled a plan for a new Fenway Park to be built next to the existing stadium. The proposed project, including a forty-five thousand seat stadium, two large parking garages, and major infrastructure improvements, came with an expected price tag of $600 million, including $350 million to build the ballpark itself. Much like the Patriots before them, the Red Sox requested and received public assistance, as the Commonwealth passed a $100 million package to assist in infrastructure and utilities improvements.

This Note will examine the Commonwealth of Massachusetts’ approach to the stadium funding issue. It focuses on two recently passed laws: one to assist the construction of the new Patriots stadium and another to assist the building of a new Fenway Park. This Note also examines prior stadium funding efforts in other states and the legal

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53. See Richard Kindleberger, Red Sox Hope to be Out of Fenway by 2001, BOSTON GLOBE, Apr. 29, 1995, at 1. Competition from other teams with new stadiums, namely the Baltimore Orioles, forced the Red Sox to examine their economic situation. Id. Because they occupied the smallest stadium in the league, and paid significant money to maintain that stadium, the team did not see a way to remain profitable without moving to a new facility. Id. An early proposal had the team moving to a facility near the proposed Megaplex that the Patriots would occupy. Id.; Peter J. Howe & Adrian Walker, Mayor Now Sees Sox Site Beside Megaplex, BOSTON GLOBE, Mar. 3, 1994, at 21.


55. Id.


57. Meg Vaillancourt & Amber Bollman, Senate, House OK $312 Million for Red Sox, BOSTON SUNDAY GLOBE, July 30, 2000, at A1. Passage of the Fenway Act, however, did not mean the stadium would definitely be built. See id. The legislature authorized the state funding for the stadium and allowed the city to use its funding power, but the Boston City Council still needed to approve the city portion of the funding. Tina Cassidy & Stephanie Ebbert, Announcement Fuels Opposition to New Park, BOSTON GLOBE, Oct. 7, 2000, at A1. Unfortunately for the team, several city counselors immediately lined up against the project and threatened to deny city funding by defeating the required two-thirds vote of the council. Id. In addition to political problems, the Red Sox owners were also faced with private funding problems. Steve Bailey & Meg Vaillancourt, Wall St. Firm Upbeat on Fenway Financing, BOSTON GLOBE, Oct. 6, 2000, at A1. Serious doubts existed that the team would be able to secure private funding for the project because of the amount of money needed to pay back the public loans would not leave enough to settle the private debt. Id. As a result of this uncertainty, Red Sox CEO, John Harrington, announced the sale of the team on October 6, 2000. Meg Vaillancourt, For Sale: Olde Towne Team, BOSTON GLOBE, Oct. 7, 2000, at A1. While Harrington cited the strength of the economy and the Yawkey Trust’s desire to sell the team as soon as possible, he also acknowledged that the funding issue was a major consideration in the decision to sell the team. Id. The sale does not effect the legislation; the public funding is still intact and a vote will eventually be taken by the city council, most likely after the new ownership is in place. Id.
challenges to those efforts. This Note then examines the Massachusetts laws that shaped the Commonwealth's current stadium funding policy. Next, this Note analyzes the two funding bills and determines whether their use of public funds to provide infrastructure improvements rather than actually building the stadium is a more equitable use of public funds. Finally, this Note concludes that Massachusetts struck a balance between protecting the public interest in keeping professional sports teams while also guarding the public purse against abuse from private interests.

I. THE DEVELOPMENT OF STADIUM FINANCING LAW

A. The Beginnings of Public Subsidies

Professional sports teams did not begin the twentieth century playing in publicly funded stadiums.58 In fact, every major league baseball team in the nation played in a privately owned stadium prior to World War I.59 This situation changed just after the war when Los Angeles built its coliseum to attract the 1924 Olympic Games.60 Later, the city of Cleveland became one of the most noteworthy battlegrounds in the public stadium funding debate.61 In Meyer v. City of Cleveland,62 a citizen challenged the results of a voter referendum that directed $2.5 million in bonds be used to finance the new Municipal Stadium.63 The taxpayer alleged that using public funds for a stadium did not serve a public purpose, and he, therefore, sought to enjoin

58. Keating, supra note 6, at 3. Princeton University political scientist Michael Danielson described professional sports in the early twentieth century as being a completely private enterprise. Id.
59. Id. Keating stated:

Prior to the Great Depression, big league playing facilities were private enterprises. Entrepreneurs acquired land, built baseball parks and arenas, and operated them. In baseball, teams shifted from grounds rented from other private parties to building their own fields, with all clubs playing in team owned parks by World War I.

Id.
60. Id. Los Angeles failed in their initial attempt to land the Olympic Games in 1924 but did succeed in getting the 1932 games. Id. at 4. The stadium initially cost the city $954,873 to build, but the facility required another $951 thousand in renovations before the 1932 Olympics. Id.
61. Geiger, supra note 2, at 462-63.
62. 171 N.E. 606 (Ohio App. 1930).
63. Id. at 606. The taxpayer actually filed an injunction to stop construction of the stadium, as site preparation had already begun. Id.
Construction of the stadium. The Meyer court disagreed and held that public funds could be used for, "generally speaking, anything calculated to promote the education, the recreation or the pleasure of the public..."

When Meyer was decided, there was no case precedent for a publicly funded stadium and the court had to analogize stadium funding to other public expenditures. To that end, the court's primary example to justify a publicly funded stadium was that a municipality could undoubtedly fund a public auditorium. The court stated that a stadium could promote all of the same public benefits as an auditorium, including concerts, festivals, mass meetings, and other public functions, while also allowing the crowd to enjoy the outdoors. As long as the stadium promoted the public welfare, it would serve a public purpose. The court broadened the definition of a city's responsibilities to its citizens by holding that "the powers of a municipal corporation are not limited to providing for police, pavements, water, light, sewers, docks and markets, but it has been held that a municipality may minister to the comfort and health of its citizens, and may educate, instruct, please, and amuse its inhabitants."

The Meyer court identified ninety-three municipal stadiums built in the United States to bolster its argument. The court also pointed to ancient

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64. Id. Andrew Meyer filed his suit after the construction contract had already been awarded to two different companies. Id.
65. Id. at 607.
66. Geiger, supra note 2, at 463.
67. Id. While the court noted the differences between a stadium and an indoor auditorium, it asserted that the two had the same fundamental purpose of providing for the entertainment, education, and general welfare of the public. Meyer, 171 N.E. at 607-08.
68. Meyer, 171 N.E. at 608. The court seemed to place a premium on the availability of an outdoor recreation facility for the city and noted the wide range of activities it could host, ranging from historical pageants to music festivals and civic demonstrations. Id.
69. Id.
70. Id. at 606. The Meyer court believed this extension of public responsibility for providing entertainment was a growing trend among the nation's courts and sought a liberal interpretation of the term public use. Id. at 607.
71. Id. The court noted that:
within the forty-eight states of the Union ninety-three municipal stadiums have been erected, or are in the process of erection, to say nothing of private stadiums and those of colleges and universities. New York City has two municipal stadiums...There are such, also, in Chicago, Philadelphia, San Francisco, Los Angeles and Baltimore.

Id.
Roman and Greek civilizations for examples of publicly built stadiums.\(^72\) In its opinion, the court had "no hesitancy in reaching the conclusion that the stadium is a public building," and that Cleveland was justified to fund its construction.\(^73\)

While the \textit{Meyer} court did not hide its support for a publicly financed stadium, it failed to fully address the taxpayer's other contentions.\(^74\) The court refused to acknowledge the plaintiff's allegation that the true purpose for the new stadium was to provide a home for the American League's Cleveland Indians.\(^75\) Instead, the court noted that no lease had been signed by the team and merely said that a municipality could derive revenue from a public stadium so long as it was done in a legal manner.\(^76\) In doing so, the \textit{Meyer} court left an important question unresolved: whether a private team could benefit from a public stadium?\(^77\)

\textbf{B. The 1960s: The Continuation of Court Deference}

In the decades after \textit{Meyer}, states and municipalities continued to erect publicly funded stadiums without considerable taxpayer opposition.\(^78\) Cities including San Francisco, Los Angeles, and Bloomington, Minnesota all saw new stadiums built primarily with public dollars before 1965.\(^79\) These cities were part of a new movement where cities built stadiums to entice dissatisfied teams to their districts.\(^80\) In contrast, the city of New York refused to acquiesce to the stadium demands of two of its baseball teams during this period and lost the National League's

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\item[\(^72\)] \textit{Id.} Both the Romans and Greeks constructed stadiums that were used for the same variety of purposes that American cities contemplated using their own new facilities. \textit{See id.}
\item[\(^73\)] \textit{Id.} at 608. The court also took notice of the timing of Myers' suit. \textit{Id.} at 606. When the suit was filed the city had already undergone significant planning for the stadium and spent money to begin construction of a retaining wall on the lakeside of the site. \textit{Id.} The court signaled its feelings about the delay when it said "[e]quity aids the vigilant and not those who sleep upon their rights." \textit{Id.}
\item[\(^74\)] \textit{Id.} at 608.
\item[\(^75\)] \textit{Id.}
\item[\(^76\)] \textit{Id.} The court did not elaborate on what a legal manner was, leaving open the question of what extent a professional team could occupy and use a stadium. \textit{See id.}
\item[\(^77\)] \textit{Id.} The court did address another contention by Meyer, who asserted the city was obligated to hand the stadium site over to certain railroad companies. \textit{Id.} The court ruled that the railroads had never accepted the city's offer of the parcel. \textit{Id.} Since twelve years had passed since the passage of the relevant city ordinance and the railroads seemed to have abandoned all claim to the land, the court dismissed the land issue as well. \textit{Id.}
\item[\(^78\)] \textit{See Keating, supra note 6, at 4.}
\item[\(^79\)] \textit{Id.} at 4-5.
\item[\(^80\)] \textit{Id.} at 5.
\end{itemize}
Giants and Dodgers to San Francisco and Los Angeles, respectively.\textsuperscript{81} It was not until 1966, however, that a court again upheld public funds for stadium construction and clarified the unanswered question from Meyer.\textsuperscript{82}

The stadium funding debate shifted to Pennsylvania in 1966. In \textit{Martin v. City of Philadelphia},\textsuperscript{83} Pennsylvania’s supreme court heard a taxpayer’s challenge to a proposed publicly funded stadium. The court addressed issues similar to those the Meyer court examined thirty years earlier, but the Pennsylvania court expanded Meyer by holding that states could specifically provide that a stadium be used by a privately owned team.\textsuperscript{84} Martin, the taxpayer challenging the stadium, sought to enjoin the enforcement of a citywide referendum where voters would determine the city’s ability to loan $25 million to build a multi-purpose stadium.\textsuperscript{85} The court cited Meyer’s view of a broad mandate for cities to provide for the public welfare: “A sports stadium is for the recreation of the public and is hence for a public purpose.”\textsuperscript{86} The Martin court expanded Meyer’s holding by declaring that the city had the authority to lease a stadium to a private team so long as it did not interfere with the stadium’s public use.\textsuperscript{87} The court, quoting the lower court’s decision, stressed that:

Even if the ordinance specifically provided that the stadium will be used primarily by privately owned football and baseball clubs, there would be no conflict with the public nature of the stadium, for the City would be entering into the lease, not to

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  \item \textsuperscript{81} \textit{Id.} at 4. The city of San Francisco built a $32 million stadium for the Giants that could seat between forty and fifty thousand people. \textit{Id.} at 4-5. This stadium required several upgrades in the ensuing decades, all paid for by the city. \textit{Id.} at 5. The city spent $24 million in 1971 in an attempt to redirect the harsh winds that plagued the stadium on Candlestick Point. \textit{Id.} In addition, $30 million has been spent since 1971 to accommodate the NFL’s 49ers, who moved to Candlestick Park from downtown Kezar Stadium. \textit{Id.}
  \item \textsuperscript{82} \textit{Id.} at 894. The Dodgers’ new stadium was built with $23 million in private money, but was assisted by government subsidies. \textit{Id.} The team traded an old minor league ballpark to the city of Los Angeles for the land in Chavez Ravine upon which the new Dodger Stadium would be located. \textit{Id.} In addition, Los Angeles spent $2 million to grade the site at Chavez Ravine and the county spent $2.74 million to upgrade the roads to the stadium. \textit{Id.}
  \item \textsuperscript{83} \textit{Id.} at 464 (discussing the case of \textit{Martin v. City of Philadelphia}, 215 A.2d 894 (Pa. 1966)).
  \item \textsuperscript{84} \textit{Id.} at 895.
  \item \textsuperscript{85} \textit{Id.} at 896, 899.
  \item \textsuperscript{86} \textit{Id.} at 896 (quoting \textit{Meyer v. Cleveland}, 171 N.E. 606, 606 (Ohio App. 1930)).
  \item \textsuperscript{87} \textit{Id.} The Martin court opined that “there can be no sound reason why, when the hall is not required for public purposes, the city may not permit its use by private persons.” \textit{Id.} at 897 (citing \textit{Clarey v. City of Philadelphia}, 166 A. 237 (Pa. 1933)).
\end{itemize}
engage in the private business of promoting sporting events or leasing buildings (which might be a private, not a public, use), but rather as incident to providing for the “recreation or the pleasure of the public.”

While the court did not strike down the use of public money to subsidize a privately used stadium on constitutional grounds, it refused to judge the wisdom of such an undertaking. The *Martin* court maintained that a stadium’s necessity should be left to the judgment of the legislature and the voters.

Judicial deference to state legislatures’ determination of public use continued in *Bazell v. City of Cincinnati*, which was decided three years after *Martin*. In *Bazell*, the Supreme Court of Ohio refused to enjoin a stadium funding effort in Cincinnati. The court ruled that a city could lease a municipal stadium to a private entity even if that entity intended to derive a profit from its exhibitions. Soon after the *Bazell* decision, in *Ginsberg v. City & County of Denver*, the Colorado Supreme Court held a stadium funding effort in the city of Denver to be in accordance with that state’s constitution. The court also believed the term “public purpose” should be liberally interpreted, and held: “[w]hat is for the public good, and what are public purposes . . . are questions which the

88. *Id.* at 896 (quoting *Meyer v. Cleveland*, 171 N.E. 606, 607 (Ohio App. 1930)). The *Martin* court also went on to quote *Meyer’s* use of stadiums being constructed in Rome and Greece to further justify the validity of stadium construction in a modern American city. *Id.* (quoting *Meyer*, 171 N.E. at 607).

89. *Id.* at 898 n.5, 899. The *Martin* court noted that the city already had three existing stadiums in the city capable of holding large events: Franklin Field, Connie Mack Stadium, and John F. Kennedy Stadium. *Id.* at 898 n.5. It noted that each stadium had a seating capacity of thirty thousand or greater, though it also cited limitations of each, including limited parking, cramped conditions, and poor spectator viewing angles. *Id.*

90. *Id.*

91. 233 N.E.2d 864 (Ohio 1968).

92. *Id.* at 870. The suit contended that the stadium was being built to benefit “a few individuals rather than the public in general.” *Id.* at 868. The suit also challenged the proposed sale of the team’s old stadium, Crosley Field, to the city for a sum not to exceed $2 million. *Id.* at 870. The court refused to rule on the validity of the sale, as it said it would not affect the ability of the city to fund or lease the stadium to the baseball team. *Id.*

93. *Id.*

94. 436 P.2d 685 (Colo. 1968).

95. *Id.* at 691-92. The city of Denver planned to buy the existing stadium for an amount of no more than $1.8 million and then spend $3 million to expand and renovate the facility. Geiger, *supra* note 2, at 464-65. The money for the stadium acquisition and renovations would be collected by donation and through net revenue bonds that would be paid using stadium revenue, so that none of the money would come from the public treasury. *Ginsberg*, 436 P.2d at 687.

96. *Ginsberg*, 436 P.2d at 688.
Legislature must decide.” The opinions in Ginsberg, Bazell, and Martin are remarkably similar and suggest a national trend in stadium funding doctrine, as courts broadened the meaning of public use and allowed cities free reign to spend money on their teams.

C. The 1980’s, A Shift from Public Assistance to Public Gift

While challenges to stadium financing efforts in the 1960s and earlier focused on the appropriateness of public spending, later cases have shifted to examining how much private investment should be required. For example, in Kelly v. Marylanders for Sports Sanity Inc., the Maryland Court of Appeals upheld an act that provided funding for the proposed Camden Yards Project.

The act in question in Kelly created the Maryland Stadium Authority and initially authorized it to spend $430 million on financing site acquisition and the construction of sports stadium in the city of Baltimore. The Kelly court found no reason to question the validity of

97. Id. (quoting Milheim v. Moffat Tunnel Imp. Dist., 211 P. 649 (Colo. 1922)). The Ginsberg court also noted the decisions in both Meyer and Martin and said there seemed to be a national trend of allowing stadiums to be funded with public money. Id. at 688-89. The court seemed very reluctant to rule against the city when public policy throughout the nation supported such measures. See id.

The court also utilized a test for a public purpose taken from an earlier Colorado case: "The test is whether the power, if exercised, will promote the general objects and purposes of the municipality, and of this the legislature is the judge in the first instance; and unless it clearly appears that some constitutional provision has been infringed, the law must be upheld." Id. at 688 (quoting Denver v. Hallett, 83 P. 1066, 1068-69 (Colo. 1905)).


99. See generally King County v. Taxpayers of King County, 949 P.2d 1260 (Wash. 1997) (ruling that a limited payback provision did not constitute invalid consideration for construction of a new stadium); Libertarian Party v. Wisconsin, 546 N.W.2d 424 (Wis. 1996); Kelly v. Marylanders for Sports Sanity, Inc., 530 A.2d 245 (Md. 1987) (discussing the amount of private revenue required to be paid back to the stadium authority).

100. Kelly, 530 A.2d at 264. The purpose of the stadium authority was outlined in a report done by the General Assembly’s Department of Fiscal Services. Id. at 261-62. This report held that:

[The Authority’s purpose to acquire, construct, and operate facilities for professional baseball and football had two objectives: (1) to insure that the Baltimore Orioles baseball franchise remained in Baltimore under a long-term lease, and (2) to give the State the best possible chance to regain a [NFL] franchise upon expansion of the league.

Id. at 262.

101. Id. at 246-47. Baltimore was a city particularly sensitive to the stadium issue because it had lost an NFL team to another city due to its stadium deal. See Keating, supra note 6, at 7-8. In 1984, the Baltimore Colt’s owner Robert Irsay packed his team up overnight and moved it to Indianapolis, Indiana, where the city had built a $78 million
the act’s public purpose and the use of public funds.\textsuperscript{102} Instead, the court focused more on the question of whether the project required private involvement as well.\textsuperscript{103} The plaintiff, a taxpayer association, argued that the enabling legislation contemplated a private contribution and specifically sought to limit public use of taxes and lotteries to fund the stadium complex.\textsuperscript{104} Because the Baltimore Orioles had not pledged money towards the project and had not signed a long-term lease before the commencement of litigation, the taxpayers asserted that the project could not move forward without the required private contribution.\textsuperscript{105} The Maryland Court of Appeals, however, broadly interpreted the statute and allowed the state to move forward without private assistance because “the project was of a type, and of such financial proportions, as unlikely to attract much in the way of private entrepreneurship.”\textsuperscript{106} As a result, court determined that the legislature had the authority to fund the $210 million project without private help because the size and scope of the effort made the stadium effort a “fundamental governmental purpose.”\textsuperscript{107}

In 1997, the Washington Supreme Court tackled private contribution issue in \textit{King County v. Taxpayers of King County.}\textsuperscript{108} The \textit{King County} case involved the construction of a baseball stadium in Seattle, Washington.\textsuperscript{109} In \textit{King County}, a group of taxpayers contended that public bonds could not be issued to supply a gift to a private enterprise.\textsuperscript{110}

domed stadium. \textit{Id.} Irsay was also enticed by a new practice facility and several personal loans he received. \textit{Id.} at 8.

\textsuperscript{102} \textit{Kelly}, 530 A.2d at 257. The Kelly court held “[i]t is well settled in Maryland that government, state or local, acts pursuant to a valid public purpose when it provides parks or sports facilities, including stadiums, for public recreational activities.” \textit{Id.}

\textsuperscript{103} \textit{Id.} at 260.

\textsuperscript{104} \textit{Id.} at 259-60. The court noted that the legislation did contemplate a private contribution to the project, but did not believe that such statutory language prohibited public participation in the stadium. \textit{Id.} at 260.

\textsuperscript{105} \textit{Id.} at 259,262.

\textsuperscript{106} \textit{Id.} at 260. This determination showed the considerable leeway the court was willing to grant the legislature in order to begin the stadium project. \textit{See id.}

\textsuperscript{107} \textit{Id.}; \textit{see also Keating, supra} note 6, at 8. The court also noted a floor report by the Senate Budget and Taxation Committee that asserted no stadiums would be constructed until long-term leases had been signed by the teams. \textit{Id.} at 262.

\textsuperscript{108} 949 P.2d 1260 (Wash. 1997).

\textsuperscript{109} \textit{King County}, 949 P.2d at 1262.

\textsuperscript{110} \textit{Id.} at 1266. This was one of three court challenges brought by various groups to halt the stadium’s construction. \textit{Id.} at 1262. Seattle’s first attempt to secure funding by raising the sales tax was put to referendum in 1995, and the taxpayers voted down the proposal by a narrow margin. Rodney Fort, \textit{Stadiums and Public and Private Interests in Seattle}, 10 MARQ. SPORTS L.J. 311, 313 (2000). City and State officials refused to give up, however, and in 1997, the King County Council voted to authorize $414 million in state
The group contended that the commitments the American League's Seattle Mariners made to the stadium effort were inadequate consideration for the public outlay of $344 million to construct the stadium. The King County court responded by citing contract principles and held that the team's contributions were not illusory and that the agreement's provisions were not unconscionable. In dismissing the taxpayers' argument, the court made a comment similar to the one made by the Martin court: "[t]he wisdom of the King County plan is not for the consideration of this court — its constitutionality is."

D. Massachusetts Law: A More Restrictive Model

While courts throughout the nation have allowed state legislatures considerable deference when defining a public use for stadium funding, Massachusetts courts have not followed this example. In a series of decisions beginning in the nineteenth century, the Commonwealth's courts found valid public purposes in a range of recreational projects. These decisions, however, do not address whether public funds can be used to build stadiums where the professional team's use will dominate
over the public use. As a result, Massachusetts lawmakers and team owners have been severely restricted in their efforts to build new stadiums.

Massachusetts courts’ reluctance to classify stadium funding as a public use was not apparent from early court decisions. In fact, the Commonwealth’s courts followed conventional thinking that held that the definition of a public use was an evolving concept that should be left to the legislature. An early example of this legislative deference is seen in the Massachusetts Supreme Judicial Court’s 1899 decision in Attorney General v. Williams. The Williams court decided the legality of a zoning restriction in a residential neighborhood of Boston known as Copley Square. The court’s opinion discussed the constitutionality of a zoning statute meant to protect public access to a recreational park. The Williams court held that the state was acting within its powers “by providing for fresh air, a public recreation, or by educating the public taste . . . .” Not only did the Williams court hold that the state had the authority to provide for public recreation, but it also held the state should determine the proper guidelines for a public use and allow the

117. Id.
118. See generally Williams, 55 N.E. at 77-78 (extending the definition of public interest to providing recreation activities); Merchants, 154 N.E.2d at 706 (allowing a publicly funded entity to be used for private shows and exhibits).
119. Merchants, 154 N.E. 2d at 705.
120. Williams, 55 N.E. at 77. The zoning restriction set a limit on the height of buildings in a residential area of the city. Id. The purpose of the ordinance was to ensure that tall buildings did not block out the sunlight to an area dedicated for recreational use. Id.
121. Id. The statute read:
building now being built, or hereafter to be built, rebuilt or altered in the city of Boston upon any land abutting on Saint James avenue . . . may be completed, built, rebuilt or altered to the height of ninety feet and no more . . . provided however that there may be erected on any such building above the limits hereinbefore prescribed, such suitable towers, domes, sculptured ornaments and chimneys as the board of park commissioners of said city may approve.
122. Id. The Williams court noted that this restriction was a taking by the government. Id. It also recognized that ample provision was made in the statute to compensate those owners who were restricted by this ordinance. Id. at 77-78.
123. Id. at 78. The Williams court explained the new emphasis on protecting public park space by saying that: “[M]any things which a century ago were luxuries, or were altogether unknown, have now become necessaries. It is only within a few years that lands have been taken in this country for public parks. Now the right to take land for this purpose is generally recognized and frequently exercised.” Id.
courts to be the ultimate judge of their validity.\textsuperscript{124} Thus, the Williams court granted the state flexibility to determine the parameters of a public use.\textsuperscript{125} The Williams court, however, also retained the power to review these legislative determinations; a scenario that would happen several times in the twentieth century.\textsuperscript{126}

A modern example of a Massachusetts court invoking their power to review a state determination of a public use occurred in the 1958 Massachusetts Supreme Judicial Court opinion \textit{City of Boston v. Merchants National Bank.}\textsuperscript{127} In \textit{Merchants}, the court issued a declaratory determination regarding whether the use of city funds to build a municipal auditorium was a valid public use.\textsuperscript{128} The issue arose when Merchants National Bank refused to follow through with an agreed-upon purchase of $1 million in municipal notes needed to fund the auditorium because it doubted the constitutionality of the enabling legislation.\textsuperscript{129} The city of Boston had commissioned the purchase of a parcel of land and had designed the new auditorium to replace another privately owned hall that was slated for demolition.\textsuperscript{130} The \textit{Merchants} court determined

\begin{itemize}
  \item \textsuperscript{124} \textit{Id.} The Williams court relied on the following passage: In discussing the line between public and private uses . . . \textcolor{red}{[t]}the power requires a degree of elasticity, to be capable of meeting new conditions and improvements and the ever-increasing necessities of society. The sole dependence must be on the presumed wisdom of the sovereign authority, supervised, and, in cases of gross error or extreme wrong, controlled, by the dispassionate judgment of the court. \textit{Id.} at 78 (citing Olmstead v. Camp, 33 Conn. 531, 551 (Conn. 1866)).
  \item \textsuperscript{125} \textit{Id.} The court merely stated the judgment of public officials in charge of parks and public recreation should be: \textcolor{red}{[U]}plifting, and, in the highest sense, educational. If wisely planned and properly cared for, they promote the mental as well as the physical health of the people. For this reason it has always been deemed proper to expend money in the care and adornment of them, to make them beautiful and enjoyable. \textit{Id.}
  \item \textsuperscript{127} \textit{154 N.E.2d 702 (Mass. 1958)}.
  \item \textsuperscript{128} \textit{Id.} at 703-04. The bank had contracted to purchase temporary notes, authorized by the City of Boston Municipal Auditorium Loan Act of 1957. \textit{Id.} at 704.
  \item \textsuperscript{129} \textit{Id.} The bank had already made a bid on the notes and the city had accepted the bid when the bank's counsel questioned the constitutionality of the legislation. \textit{Id.} The city commission had, in fact, already voted to purchase the site and had drawn up plans for the two-story building. \textit{Id.} Seating capacity of the auditorium was to be between five and six thousand seats. \textit{Id.}
  \item \textsuperscript{130} \textit{Id.} at 704-05.
\end{itemize}
that the hall had an obvious public purpose because "[w]ithout it, the city of Boston, which is a cultural, educational, and historical center of more than national prominence, will have within its limits no place indoors suitable for public meetings of about five thousand people."\textsuperscript{131}

The \textit{Merchants} court believed that an auditorium could have public uses by hosting hearings, rallies, debates, and other public displays;\textsuperscript{132} a view which gave deference to the Legislature as prescribed by the \textit{Williams} court.\textsuperscript{133} The \textit{Merchants} court carried state deference one step further, however, when it dealt with the issue of private use of the facility.\textsuperscript{134} Merchants National Bank worried that the city's planned use of the auditorium to host private conventions and meetings undermined the public purpose.\textsuperscript{135} The \textit{Merchants} court, however, held differently, stating that a public facility could host private, commercial events so long as the private use remained subordinate to the public purpose.\textsuperscript{136} The \textit{Merchants} court acknowledged that private events would largely pay for the construction and upkeep of the auditorium and opined that there was no reason the building had to become a taxpayer burden.\textsuperscript{137} As in

\begin{itemize}
\item \textsuperscript{131} \textit{Id.} at 705. The court opined that: [W]e have no hesitation in determining that the erection of the proposed auditorium is a public purpose... Such a facility is an obvious necessity if the city is to maintain its position in the front rank of municipalities of our nation. Lacking such a building, Boston might disappear from the list of great convention cities. It is well known that an appropriate convention site is of important value in promoting the public interests of a large city, a public advantage which is not swallowed up because conventions may also be of incidental benefit to private citizens. We cannot accept the contrary contention. \textit{Id.}
\item \textsuperscript{132} \textit{Id.} The defendant conceded that the use of such a hall for "public exercises and hearings, political rallies and other meetings in the exercise of the constitutional right to assembly, and exhibitions incidental to municipal functions such as exhibits of the work of public school pupils and fire prevention and civil defense displays" would be a valid public purpose for the building. \textit{Id.}
\item \textsuperscript{133} Attorney General v. Williams, 55 N.E. 77 (Mass. 1899).
\item \textsuperscript{134} \textit{Merchants}, 154 N.E.2d at 706.
\item \textsuperscript{135} \textit{Id.} at 705. The court held that: [R]egarding the objectives enumerated in the statute, we do not perceive that they have the effect of swinging the pendulum to the side of a predominating private purpose. To us the objectives seem reasonably incidental to public use. If, in practice, unforeseeable improprieties should develop, means for their correction are available. \textit{Id.}
\item \textsuperscript{136} \textit{Id.} at 706. "[I]f a sound financial scheme embraces facilities which tend to make possible a more nearly full time use, it is not to be presumed that the dominant purpose ceases to be public and becomes private." \textit{Id.}
\item \textsuperscript{137} \textit{Id.} "This structure does not have to be so designed as to become an unnecessary drain on the taxpayers." \textit{Id.}
\end{itemize}
Williams, the Merchants court reserved the court’s right to make an ultimate determination of whether private use superseded the public purpose.\textsuperscript{138} Despite retaining the power of judicial review, the Merchants court joined other state courts in expanding the parameters of the allowable use of public funds.\textsuperscript{139}

While the Commonwealth’s highest court mimicked courts around the nation by granting legislative deference in public use determinations, the court refused to extend this reasoning to the realm of professional sports stadiums.\textsuperscript{140} In its 1969 \textit{Opinion of the Justices to the House of Representatives},\textsuperscript{141} the Massachusetts Supreme Judicial Court drew a clear distinction between a public and private purpose in stadium funding.\textsuperscript{142} The justices’ opinion answered several questions concerning the validity of proposed legislation that would fund, among other projects, a multi-purpose stadium in the city of Boston.\textsuperscript{143} While the justices envisioned scenarios that would allow public funds to be used to build a stadium, they held that the proposed legislation did not sufficiently protect the public interest.\textsuperscript{144}

The justices stated in their opinion that, while building a stadium was not as clear a public purpose as road building or public education,\textsuperscript{145} a public purpose could be found if enacting legislation dictated specific standards governing use, rental, and operation of the facility.\textsuperscript{146} In

\begin{itemize}
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} \textit{Id.} at 706-07. The court listed a large number of public auditorium projects around the nation that either had or would be constructed and noted the unsuccessful court challenges to these buildings. \textit{Id.}
\item \textsuperscript{140} \textit{See generally} \textit{Opinion of the Justices to the House of Representatives}, 250 N.E.2d 547 (Mass. 1969). In Massachusetts, the Legislature may send inquiries about proposed legislation to the highest court for a constitutional determination before enactment. \textit{See} Michael J. Cremonese, Comment, \textit{Building New Stadiums with Your Money Whether You Like it or Not: The Pennsylvania Constitution Does Not Prohibit the Use of Public Funds to Construct New Stadiums}, 37 DUQ. L. REV. 423, 427 n.38 (1999).
\item \textsuperscript{141} 250 N.E.2d 547 (Mass. 1969).
\item \textsuperscript{142} \textit{Id.} at 560.
\item \textsuperscript{143} \textit{Id.} at 549-50. There were a number of other projects included in this bill, including a tunnel under Boston Harbor, an extension of a toll road into Western Massachusetts, and the building of an arena in Boston. \textit{Id.}
\item \textsuperscript{144} \textit{Id.} at 560. The court noted the vagueness of the statute’s language and concluded that “in the absence of adequate statutory guidance and standards on the matters mentioned above, and of clear provision for reasonable review of compliance with appropriate standards, we are unable to advise that the stadium complex and the arena will be for a public purpose.” \textit{Id.}
\item \textsuperscript{145} \textit{Id.} at 558. The court felt a new stadium was not essential compared to other state responsibilities such as supplying housing, schools, and transportation. \textit{Id.}
\item \textsuperscript{146} \textit{Id.} The court stated the stadium could serve a public purpose “if the expenditure of public funds, the extension of public privileges, powers, and exemptions, and the use,
Opinion of the Justices, the court noted that there were no such provisions in the submitted legislation. In addition, the court held that if a stadium was "operated, so as in effect to subsidize private organizations operated for profit, then the facilities could not be said to exist for a public purpose." The justices did not hold that any use by a private entity, such as a professional team, would defeat the public purpose. Rather, only legislation without proper safeguards against private interests dominating the public use would fail the justices' test. With their ruling, the justices ended plans for the Commonwealth to fund a stadium in Boston and the stadium funding issue disappeared from the Commonwealth for the next two decades.

Following the 1969 Opinion of the Justices, the Commonwealth's courts did not decide another stadium funding issue until February 2000, when City of Springfield v. Dreison Investments, Inc was decided. This decision by the Massachusetts Superior Court came after the legislature funded improvements for the new football stadium and during the debate over funds for a new Fenway Park. Its holding provides an example of how a present day court in the Commonwealth interpreted the 1969 Opinion of the Justices.

In Dreison, the court refused to allow the city of Springfield to use its eminent domain power to seize land for the construction of a minor league baseball stadium. Springfield planned to lease the stadium to

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147. Id. at 559. The court stated the standards were "vague and fragmentary" and were "too indefinite to be the basis of adequate implied standards." Id.
148. See id. at 558.
149. See id. at 560.
150. See id. The court provided a test to determine if legislation guarded against the use of a stadium becoming a private purpose. Id. at 559. The opinion said that: [If] the legislation itself contains standards and principles governing and guiding the operation of the facilities in a manner which reasonably can be expected adequately (a) to protect all aspects of the public interest and (b) to guard against improper diversion of public funds and privileges for the benefit of private persons and entities, then such enterprises may be found to be for public objectives.

Id.
152. Id. The Springfield stadium was to be a five thousand seat structure designed by the reputed architecture firm Hellmuth Obata Kassabaum (HOK), the same firm that designed successful ballparks in Baltimore and Cleveland. Id. at *3.
153. Id. at *41.
154. Id. at *50. Springfield hoped to build the stadium as part of an urban renewal project. Id. at *5. During the 1980s and 1990s, Springfield had seen many of its shopping facilities and other downtown attractions leave the city limits for suburban locations. Id.
the baseball team but not receive any monetary payment in exchange.\textsuperscript{155} The city argued that similar lease agreements had been approved in other states and that the stadium would be providing a public purpose as recreation and a means of urban renewal.\textsuperscript{156} The Dreison court, however, refused to give credence to these arguments.\textsuperscript{157} Instead, the Dreison court pointed to the standard enacted in the 1969 \textit{Opinion of the Justices}, stating that the private use of the stadium superseded its public use.\textsuperscript{158} Accordingly, the court held the land taking was invalid.\textsuperscript{159} As a result, Springfield’s baseball stadium was not built.

\textbf{II. MASSACHUSETTS’ ATTEMPTS TO SPLICE THE DIFFERENCE.}

\textbf{A. Infrastructure for Foxboro}

With the Massachusetts Supreme Judicial Court’s stadium funding principles in mind, the Commonwealth’s Legislature set out to craft an acceptable stadium bill for the Patriots’ new venue.\textsuperscript{160} The enacted a statute on May 24, 1999\textsuperscript{161} which carefully stayed within the parameters of the justices’ 1969 opinion.\textsuperscript{162} Massachusetts General Law, Chapter 16, Sections 1-13 authorizes the infrastructure improvements around the new

\textsuperscript{155} Id. at *41. The court pointed out that this type of free lease deal was exactly what the 1969 \textit{Opinion of the Justices} was trying to prevent. Id.

\textsuperscript{156} Id. at *42. To prove this point the city pointed to courts in Washington, Wisconsin, and Minnesota as examples of courts finding a valid public purpose for building a stadium. Id. at *42-*43.

\textsuperscript{157} Id. at *45.

\textsuperscript{158} Id. at *46.

\textsuperscript{159} Id. The court acknowledged the city’s right to lease a stadium to a third party, even if that party intended to make a profit. Id. at *45. The Dreison court, however, could not sanction a lease “when the evidence overwhelmingly demonstrates that the dominant reasons for a taking is to benefit private interests.” Id. at *46 (citing Pheasant Ridge Assocs. Ltd. P’ship v. Burlington, 399 Mass. 771, 776 (Mass. 1987)).

\textsuperscript{160} Id. at *50. The Springfield stadium had other problems in addition to the court’s ruling. Id. at *8. Despite promises from the state’s governor that $10 million in state money would be committed to the project, the city was never able to secure the funding. Id. at *8. Speaker of the House Thomas Finneran blocked the proposed funding because he viewed it as a direct subsidy to a team. Id.

\textsuperscript{161} An Act Relative to the Construction and Financing of Infrastructure and Other Improvements in the Town of Foxborough and at Foxboro Stadium, 1999 Mass. Acts 16.

\textsuperscript{162} Id.

\textsuperscript{163} Id.; see generally \textit{Opinion of the Justices to the House of Representatives}, 250 N.E. 2d 547 (Mass. 1969).
football stadium in Foxborough, Massachusetts. The statute outlines the purposes of the legislation and dictates exactly how and where state money may be spent.

Section 1 of the Foxboro Stadium Act contains a list of state findings that justify the statute. For example, the Commonwealth determined that building a new stadium would enhance the economy of both the town and the state as a whole by providing entertainment, recreation, and tourism revenue. The Commonwealth also noted the team's need for a new stadium and its commitment to stay in the area. Based on these findings, the Commonwealth determined that providing infrastructure improvements and assistance to build a new stadium constituted a public purpose.

Section 2 of the statute creates the financing mechanism for the project and lists the authorized improvements, including construction of access roads, storm drainage and sewer improvements, several pedestrian bridges, and traffic signals. To fund the project, Section 2 authorizes the Foxboro Industrial Development Financing Authority to sell municipal bonds to pay for infrastructure improvements. Section 2 also stipulates that the combined costs of these improvements could not exceed $70 million.

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165. Id.
166. 1999 Mass. Acts 16 §1. The act states that the stadium would "significantly enhance the economic development and general welfare of the Commonwealth". Id. Section 1 also points to the stimulation of hotel and restaurant revenue as a validating purpose for the Commonwealth's assistance. Id.
167. Id.
168. Id. In mentioning the inadequacy of the stadium, the statute points to a fundamental purpose of the funding -- to keep both the team and the entertainment opportunities the stadium provides in the area. Id.
169. Id. The public purpose mentioned by this act was the economic stimulus provided by the construction of the stadium and the possible economic development of the surrounding community and the state as a whole. Id.
170. Id. §2.
171. Id. The authority in Massachusetts law that allows towns to stimulate economic development is MASS. GEN. LAWS ch. 40D, § 2. Id. Normally an Industrial Development Financing Authority will allow the town to issue state authorized bonds for construction projects that will enhance the economy of the town or region. MASS. GEN. LAWS ch. 40D, § 2 (1994). Several towns may combine to form an authority when projects, such as this one, overlap town lines or affect several communities. Id.
172. 1999 Mass. Acts 16, §2. Included in the $70 million total were several roads, retaining walls, new sewage systems and a waste management facility, traffic controls and signals, and several underpasses and bridges that would allow fans to access the site from parking facilities. Id.
Section 3 of the statute provides details of the infrastructure improvements. Specifically, it states that the team must grant the Town of Foxborough a perpetual easement to allow many of the improvements, that financing of this infrastructure was the only consideration paid for the easement, and that the team would assume responsibility for all maintenance and operation of any improvements made.

Sections 4 and 5 provide for cost reimbursement and construction contracting issues. Section 4 states that the Authority, acting with the town's permission, would reimburse the team for infrastructure improvements it made up to the prescribed funding level. Section 5 also states that the Authority would reimburse the Department of Highways for work done outside of the main site.

Section 6 of the Foxboro Stadium Act imposes a repayment schedule on the team if it chooses to move to another stadium. Under these sanctions, the team would repay the state a declining balance to reimburse the Commonwealth’s general fund for the costs of the infrastructure improvements. While this provision might prove a

173. Id. §3. This section grants the town the power to contract with the team to perform all of the infrastructure construction on the site. Id.

174. Id.

175. Id. §§ 4-5. Section 4 stipulates that the team had the responsibility of designing and planning for all of the improvements. Id. § 4. Once all the improvements were completed, the authority would then reimburse the team up to the specified amounts. Id. As a result, any cost overruns would be the team's responsibility. Id.

176. Id.

177. Id. § 5. Section 5 requires the team to adhere to all state hiring and bidding policies and makes all attempts to hire state residents for the work. Id.

178. Id. § 6. In addition, section 6 places certain requirements on the team before any money could be spent on infrastructure. Id. These requirements include one that states the plans for the $225 million stadium must be submitted to the state and all infrastructure plans must be submitted to the town before construction begins. Id.

179. Id. The passage outlining penalties read:

If the stadium lessee should cease to conduct professional football business at the stadium, the stadium lessee shall, if the date that the conduct of professional football ceases is: (a) less than five years after the effective date of this act, be obligated to pay to the commonwealth an amount equal to any outstanding debt on the infrastructure bonds issued pursuant to section 7 and an amount equal to 100 per cent of the commonwealth’s contract assistance payments made as of said date; (b) five or more years but less than ten years after the effective date of this act, be obligated to pay to the commonwealth an amount equal to any outstanding debt on the infrastructure bonds issued pursuant to said section 7 and an amount equal to 75 per cent of the commonwealth’s contract assistance payments made as of said date; (c) ten or more years but less than 15 years after the effective date of this act, be obligated to pay to the commonwealth an amount equal to any outstanding debt on the infrastructure bonds issued
deterrent to any future move by the team, Section 6 provides these repayments as the only remedy and forbids the use of an injunction to keep the team at the stadium.\footnote{180}

Section 7 outlines the payments the Commonwealth will receive from both the team and the towns surrounding the new stadium as repayment for the state expenditures.\footnote{181} The Commonwealth will collect a total of $1.15 million in parking surcharges per year from the towns and a $250 thousand annual payment from the team for administrative costs.\footnote{182} In addition to these fees, section 9 directs the team, subject to the town’s approval, to develop a traffic management plan.\footnote{183}

The statute’s final sections mandate that the team build the $225 million stadium.\footnote{184} The act also requires the team to complete an environmental impact study for the stadium and the improvements authorized by the statute.\footnote{185}

\textbf{B. The Commonwealth’s Attempt to Provide for a New Fenway Park}

Using the Foxboro Stadium funding plan as a guide, the Commonwealth enacted Massachusetts General Law Chapter 208, Sections 1 – 13 on August 10, 2000, to fund infrastructure improvements around a new Fenway Park.\footnote{186} The Fenway Act, however, contains key differences from the Foxboro Stadium legislation.\footnote{187} The Fenway Act

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\footnote{180} Id.
\footnote{181} Id. § 7.
\footnote{182} Id. These fees are to be collected both from parking facilities on the stadium site that are owned by the team and independent businesses in the area that operate lots on game days. \textit{Id.}
\footnote{183} Id. § 9.
\footnote{184} Id. §§ 10-11. The team was also required to compensate and move any residents located on the construction site to another area of the parcel owned by the team. \textit{Id.} § 10.
\footnote{185} Id. § 13.
\end{quote}
authorizes the Economic Development and Industrial Corporation of Boston to issue bonds and take loans to pay for site construction.\textsuperscript{188} The Economic Development and Industrial Corporation would not only provide funding for infrastructure improvements, but would also acquire the project site and lease it back to the team.\textsuperscript{189} The Fenway Act also includes the city of Boston as a partner in the stadium project, allowing the city to borrow money in order to loan it to the corporation for site acquisition and clearance.\textsuperscript{190}

Section 1 of the Fenway Act includes a similar list of findings found in the Foxboro Stadium Act.\textsuperscript{191} The Legislature notes the need for a new baseball park and the expected economic benefits of a new stadium.\textsuperscript{192} The act, however, also contains a finding that "the continuation and expansion of such [baseball] activities shall enhance the public pride and spirit within the Commonwealth and within the city of Boston."\textsuperscript{193} Based on these findings, Section 1 concludes that financing infrastructure improvements around the new stadium constituted a public purpose.\textsuperscript{194}

Section 2 of the Fenway Act outlines the authorized improvements, places restrictions on how state money may be spent, and caps the amount of state money used in the project.\textsuperscript{195} The act contemplates the reconstruction of several streets, utility and sewer improvements, new traffic signals, a new rapid transit station and other rail improvements, and general improvements to walkways and pedestrian bridges in the area.\textsuperscript{196} Section 2 also provides that none of the allotted money may be spent in the design or construction of the actual stadium.\textsuperscript{197} Finally, section 2 caps state expenditures at $100 million.\textsuperscript{198}

\begin{footnotes}
\begin{enumerate}
  \item Id. § 6.
  \item Id. § 5.
  \item Id. § 1; see also 1999 Mass. Acts 16, § 1. Section 1 of the Fenway Act states a purpose of retaining professional sports teams in the region and notes the economic impact the team could have on the Commonwealth. 2000 Mass. Acts 208, § 1.
  \item Id.
  \item Id. This notion was not included in the findings for the Foxboro Stadium Act. See 1999 Mass. Acts 16.
  \item 2000 Mass. Acts 208, § 2. Section 2 lists the public purpose as being the economic development of the area and the promotion of public safety in and around the development site. Id.
  \item Id. § 2.
  \item Id. The railway work involves relaying and realigning track and constructing a new commuter rail station where an antiquated one now stands. Id.
  \item Id. Section 2 also caps the total amount able to be spent on feasibility and cost analyses of new ramps on and off the Massachusetts Turnpike at $150 thousand. Id.
  \item Id.
\end{enumerate}
\end{footnotes}
Section 3 provides a list of definitions for the act’s text. Included in this list is a definition for the Economic Development and Industrial Corporation which the state authorizes to administer the state funds.

Section 4 enumerates several requirements for the team and the corporation. Among these requirements are provisions for the team to convey land to the Economic Development Corporation, for the corporation to provide relocation assistance for displaced businesses, and for each to prepare both environmental and economic impact reports for the new stadium.

Section 5 of the Fenway Act exhibits the major difference between the Fenway Act and the Foxboro Stadium Act. While the Foxboro Stadium Act utilizes only state funding, section 5 of the Fenway Act specifies the city of Boston’s contribution to the project in addition to the $100 million in state funds. Under section 5, the city is authorized to borrow and spend up to $140 million to assist with site preparation and land acquisition for the ballpark. In addition, section 5 stipulates that the team will assume any costs over the authorized $140 million.

Section 6 of the Fenway Act outlines the provisions for the corporation to lease the stadium to the team and the manner in which the city will be reimbursed for its contribution. As consideration for acquiring the land for the stadium project, the team will pay the corporation up to $12 million annually until the city’s debt is satisfied. Once the city’s debt is retired, the team will pay $1 per year in consideration. The team will

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200. Id.
201. Id. § 4.
202. Id. Under this act, the land the team conveys includes the site of the existing Fenway Park. Id.
206. Id.
207. Id.
208. Id. at § 6.
209. Id. The act states that:

[T]he developer shall pay annually to the corporation as consideration for the lease of the ballpark site a sum equal to the total debt service incurred by the city in such period on debt of the city issued in accordance with section 5 on account of the ballpark site project, but in no event more than $12,100,000 annually, or, subsequent to the payment of all such debt, an amount equal to $1 annually.

Id.

210. Id. This $1 payment would only be made after the team had paid off the entire debt incurred by the corporation to fund the land purchase and site clearance. Id.
also collect and pay to the city a five percent ticket surcharge and a fifteen percent tax on luxury box fees.211 The city will collect a $5 fee on every parking space used during games and will collect the state retail sales tax on any food or merchandise sold within or around the ballpark before, during, and after games.212 The above fees will be returned to the city treasury and will defray the amount of money the team pays for debt retirement.213

The remaining sections of the Fenway Act contain various requirements that the city and the team must satisfy before development commences.214 Among these provisions is a requirement that the team and the Economic Development Corporation draft a report outlining how the state’s money will be utilized.215 The act also authorizes the state treasurer to sell $100 million in bonds and to borrow money on state credit to provide infrastructure funding.216 The Fenway Act further mandates that the team employ a community relations officer to assist with construction related problems and directs that the team allow community groups to use the stadium’s banquet facilities for certain occasions.217

III. AN ANALYSIS OF MASSACHUSETTS STADIUM FUNDING

Massachusetts’ contributions to stadium construction reflect the differences in the Commonwealth’s law and public policy as compared to other states. The 1969 Opinion of the Justices restrains the Commonwealth from offering the same type of aid seen in Kelly and Taxpayers of King County, where state courts accepted full public

211. Id. This fifteen percent luxury box fee will be paid on the price determined by both the team and the city treasurer. Id.
212. Id. The parking space fees take affect two hours before every game and will not be imposed on residents, students, or other employees of businesses or hospitals in the area. Id. The collection of retail sales tax on game days will be capped at $1.5 million annually. Id.
213. Id. Section 6 limits the team’s repayment obligations. Id. The provision reads: [T]he corporation shall credit the amount of all special receipts received by the city in this act in any year against the obligations hereunder of the developer to pay rent to the corporation for its lease of the site of the ballpark on such terms and conditions as shall be approved by the collector-treasurer of the city and specified in such lease.

Id.
214. Id. §§ 7-8.
215. Id. §§ 4, 8. Section 10 also requires that the team and corporation submit all infrastructure designs to the city and state before the ballpark can be built. Id. § 10.
216. Id. § 8.
217. Id. §§ 13A,13B.
funding for stadiums. The Commonwealth's political leaders also determined that building stadiums for the state's professional sports teams would not be the legislature's overriding concern.

Speaker of the House of Representatives Thomas Finneran led a call for moderation in public stadium spending. In public speeches, editorials, and even in testimony before the United States Senate Judiciary Committee, Finneran decried the lavish public spending on stadiums seen in other states and vowed that Massachusetts would not follow suit. In his testimony to the Senate Judiciary Committee, Finneran acknowledged the public's affection for the Commonwealth's teams. The Speaker asserted, however, that the Massachusetts legislature had greater responsibilities in providing funds for education, transportation, public health, and housing than in ensuring the teams' economic viability.

In his speech, Finneran articulated eight principles that he used to guide negotiations with the teams, including no direct subsidies to the

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218. Compare, Opinion of the Justices of the House of Representatives, 250 N.E. 2d 547, 558-61 (Mass. 1969) (refusing to allow public funding where private entity would be primary beneficiary); with King County v. Taxpayers of King County, 949 P.2d 1260, 1269-70 (Wash. 1997) (allowing county to almost fully fund a stadium), and Kelly v. Marylanders for Sports Sanity, Inc., 530 A.2d 245, 257 (Md. 1987).

219. Peter J. Larkin, Editorial, The Difference between Handout and Handup, BOSTON GLOBE, Dec. 2, 1998, at A26. Mr. Larkin, a Massachusetts State Representative, discusses the greater obligations the Commonwealth's leaders have to the public other than funding stadiums.

220. Derrick Z. Jackson, Finneran Stands up for Taxpayers, BOSTON GLOBE, July 26, 2000, at A15. Finneran was accused of holding up the Red Sox negotiations by refusing to agree to proposals that the Commonwealth's other political leaders had agreed to. Id.


223. Hearing, supra note 222, at 14. Finneran asserted that most of his constituents widely praised his efforts to protect the public purse. Id. at 16. As justification for his hard line approach, Finneran noted the teams do not provide much economic value to the Commonwealth. Id. at 17. Given the choice, the Speaker asserted he would rather the Commonwealth lose a professional sports franchise, and suffer the inevitable wrath of die-hard sports fans, than lose one of the state's large employers such as Gillette or Raytheon.
teams, repayment of public money used, and refusal to loan money to the teams. These principles guided negotiations for both stadium acts, as Finneran's considerable political muscle ensured he could defeat any stadium bill not conforming to these ideals. Both of the acts reflect the priorities stated by Finneran by limiting public money to infrastructure assistance and ensuring that the Commonwealth is properly compensated for any assistance it provides.

Speaker Finneran's testimony to the Judiciary Committee, which acknowledged the teams' importance to the community but also gave other state interests priority, reflects the competing ideologies in the stadium debate. Stadium funding opponents decry the use of public money for a private benefit enterprise. Their arguments focus on the economic efficiency of spending public dollars to build stadiums and conclude that the economic benefits received do not justify the enormous

224. Id. at 15. Finneran's principles included:

[N]o public funds whatsoever for any part of a stadium facility; no public funds or subsidy to be provided directly to the team franchise . . . ; no public funds for the purchase and lease-back of land which would then be used for the benefit of the franchise; no expectation that taxpayers should act as either a no-cost or low-cost bank or financing mechanism for private for-profit businesses; no recognition whatsoever, or acceptance or embrace of the so-called economic multiplier models . . . ; insistence that leagues and the member teams take full responsibility for their facility financing needs; and insistence that any public funds be used solely and exclusively for infrastructure . . . that might enhance public safety, public access and public health purposes; and finally an insistence that any infrastructure expenditure . . . have a revenue stream coming back to the Commonwealth in order to assist and help support part of that debt service.

225. See Jackson, supra note 220. Though Finneran does not occupy the highest constitutional office in the Commonwealth, many consider him to be the state's most powerful political figure. Brian MacQuarrie, Finneran's Tight Reigns Irk Some in House, BOSTON GLOBE, Aug. 5, 2000, at B3. This reputation is mainly due to the Speaker's tightly controlled votes in the House of Representatives' democratic majority. Brian MacQuarrie, Finneran Could Face House Revolt, BOSTON GLOBE, Aug. 31, 1999, at A1. The Speaker is known for delaying votes on key bills in the house until the bill's language suits him and for threatening to table measures in the house if both the Governor's and Senate President's proposals do not follow his lead. Id. Though there have been occasional complaints about these tactics from other legislators, Finneran has withstood several challenges to his power and promoted enough of his supporters to solidify his power base in the House. Tina Cassidy, Finneran Moves Critics From Choice Committees, BOSTON GLOBE, Feb. 3, 1999, at B2.


227. See Cassidy, supra note 222. Finneran acknowledged that he faced considerable pressure from both constituents and others due to fears of losing their teams. Id.

Stadium funding opponents assert that, after construction, few full time jobs are created by new stadiums and that the parking needs of many stadiums discourage construction of nearby shops and restaurants that would rely on stadium crowds. Stadium funding critics also argue that stadiums do not create new entertainment revenue, as it is local individuals, rather than visitors, who spend most of the money at a stadium, and that the local citizen would otherwise be spending money in other entertainment venues. Finally, stadium funding opponents assert that public funding of stadiums actually hurts taxpayers because it often consumes the limited bonding power of municipalities that could potentially be spent on other projects, such as new roads, schools, or other public works projects.

Stadium funding advocates base their arguments on two premises. Advocates argue that stadiums provide the local economy with new dollars and jobs. While funding opponents dispute the economic benefits of new stadiums, funding advocates lean on a less quantifiable basis for their reasoning. Stadium supporters point to the intangible qualities that professional teams provide, such as community entertainment and a positive sense of a city's identity. They justify stadium spending as a means of upholding civic pride. These advocates liken the role of professional sports teams to that of a museum or large airport in the development of civic pride, maintaining that hosting a team

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229. *Id.*
230. *Id.* Bast points out that most jobs created by new stadiums are part time jobs at low wages, often concessions workers and ushers. *Id.* He argues that the money spent to create these jobs could be spent better by subsidizing other types of employment. *Id.*
231. *Id.* Bast argues that the construction of a new stadium does not suddenly expand a consumer’s spending power. *Id.* If the average consumer chooses to spend their entertainment money at a new stadium then they will not be spending it in another venue. *Id.*
232. *Id.* Bast cites the inability of municipalities to fund infrastructure projects as a possible consequence of using bonds to fund stadiums. *Id.*
234. Noll & Zimbalist, *supra* note 3, at 36. The authors cite the example of the San Francisco 49ers campaign to build a new stadium and its promise to create new jobs in the city. *Id.*
235. Bast, *supra* note 228. Although Bast discounts their importance, he acknowledges there are intangible benefits to keeping professional sports teams in cities. *Id.* He also argues, however, that there are more inexpensive ways to instill community pride than building a sports stadium. *Id.*
236. Sanderson, *supra* note 1, at 189-90.
237. *Id.* Sanderson argues that money spent on a new baseball stadium in Chicago did not prevent a list of crucial public works projects from being completed. *Id.* He also notes the public money spent on improving the city’s cultural institutions and private colleges and likens the city’s stadium commitment to those projects. *Id.* at 185-86.
Stadium Funding in Massachusetts is a sign of a top tier city. Their arguments point to the intense interest in professional team sports in many cities, as evinced by the amount of media coverage, and they conclude that identity with a team is a positive force for community spirit. These supporters note that certain “activities . . . do not pass [the] benefit-cost tests on the basis of direct scrutiny, but . . . are nevertheless socially efficient in a broader context,” because they provide a positive community benefit. As a result, funding supporters argue that a more rational means of evaluating a stadium’s value is to balance these future intangible benefits with the pure economic concerns.

A. Comparing Massachusetts’ Plan to Other States’ Plans.

The provisions of the two stadium financing acts detailed above demonstrate that Massachusetts has aptly balanced the needs of its citizens and teams as compared to other states’ efforts. The Commonwealth’s contribution to the two projects totals $156 million, not including the $140 million the Commonwealth authorized the city of Boston to spend. While the amount of public money spent is certainly significant and represents a form of government subsidy for the teams, the Massachusetts stadium acts differ considerably from recent stadium efforts in other cities. The Massachusetts stadium acts differ in both the manner in which public money is spent in support of the stadium and in how or whether that money will be repaid.

A defining feature of both Massachusetts stadium acts is the limitation on how public money may be used. Both acts stipulate that money

238. Id.
239. Id. at 188-89.
240. Id. at 189.
241. Id. at 190. Sanderson asserts that the question to ask is the extent to which a new stadium will affect the community’s sense of pride versus losing a team to another city. Id. at 189.
242. Id. at 192. Sanderson discusses the various factors, including economic considerations and intangibles, that should be considered in analyzing the validity of a stadium financing plan. See generally id. at 184-92.
245. See supra note 243-44.
raised by the public entities may be used only for infrastructure and utility improvements. Each act specifically states the projects that the money will be spent on, including: roads, bridges, sewers, and traffic signals. Further, the acts each cap the money at prescribed levels, with the teams required to pay any overruns. Both acts also specifically state that public money may not be used to fund the construction of the stadiums themselves; rather, the teams must bear the entire cost of stadium construction. These funding limitations are not found in the recent stadium funding acts in Maryland and Washington.

The Maryland Stadium Authority, discussed in Kelly, was granted the authority to spend $235 million for site clearance, acquisition, and construction of two stadiums in Baltimore. One rare mention of private funding by Maryland came in the requirement that the authority "endeavor[] to maximize private investment in the sports facility." Similarly, as discussed in Taxpayers of King County, the Washington State Major League Baseball Stadium Public Facilities District requested, and eventually received, $336 million for the construction of a new facility. While Massachusetts authorized $156 million in state funds for stadium assistance, none of that money will be spent on construction of the stadiums.

Another difference between the Massachusetts acts and other states' stadium funding initiatives is the return the Commonwealth expects to receive on its investment. The Foxboro Stadium Act mandates a return of $1.15 million in parking fees and $250 thousand in administrative costs per year. The Foxboro Act also stipulates that the team will reimburse the Commonwealth for infrastructure costs if it

254. King County v. Taxpayers of King County, 949 P.2d 1260, 1263-64 (Wash. 1997)(referring to a letter from the District to King County requesting issuance of bonds in the stated amount).
255. See supra notes 243, 248-50 and accompanying text.
257. 1999 Mass. Acts 16, § 7. These payments aim to recoup the entire state outlay of infrastructure money spent at the stadium site. Id.
moves to another site.\textsuperscript{258} The Fenway Park Act stipulates that the team will pay up to $12.1 million per year in lease payments to satisfy the city's outlay, though these payments could be offset by the collection of taxes on goods and food as well as parking fees.\textsuperscript{259} Such provisions are wise because this money will ensure the city receives a full return on its investment to purchase and clear the stadium site.\textsuperscript{260} These repayment plans are in stark contrast to the Maryland plan that receives little, if any, return on the millions spent to construct two stadiums.\textsuperscript{261} Massachusetts also will receive a more significant return on its investment than Seattle, where the team contributed only $45 million in construction costs to the $336 million stadium.\textsuperscript{262}

Massachusetts' lawmakers delicately straddled the line between considerations of the Commonwealth's pocketbook and considerations of its civic pride when negotiating the Foxboro and Fenway Acts.\textsuperscript{263} Political sentiment and the 1969 \textit{Opinion of the Justices} dictated that money would not be spent to build the stadiums, but lawmakers also feared losing the teams.\textsuperscript{264} The resulting stadium acts can be seen as a benefit to both the public and the teams because they provide assistance

\textsuperscript{258} \textit{Id.} § 6.

\textsuperscript{259} \textit{Id.} The $12.1 million fee will be offset by whatever the city is able to collect from these revenue sources, guaranteeing the state return but also allowing the team a way to lower its payments. \textit{See id.}

\textsuperscript{260} \textit{See supra} notes 256-58. This was one of the stated goals mentioned in Speaker Finneran's guidelines for stadium financing and a provision which he held out for. \textit{See Hearing, supra} note 222, at 15.

\textsuperscript{261} \textit{Noll} & \textit{Zimbalist, supra} note 3, at 36 (noting that Baltimore invested $200 million in Camden Yards).

\textsuperscript{262} \textit{King County v. Taxpayers of King County,} 949 P.2d 1260, 1268 (Wash. 1997); \textit{see also WASH REV. CODE ANN.} §82.14.360(4)(b).

\textsuperscript{263} \textit{See generally, Tina Cassidy, Foxboro Stadium Proposal Stalls in House Panel, BOSTON GLOBE,} Nov. 14, 1997, at A1 (discussing the slow process of approving the bill due to objections to the amount of debt service the team would pay); \textit{Meg Vaillancourt, Menino Wants High Return on Investment in Fenway, BOSTON GLOBE,} May 11, 2000, at A1. The Boston mayor discussed his eagerness to get a deal done for the new ballpark, but also expressed concern that the city be able to recoup its investment in the project. \textit{Id.}

\textsuperscript{264} \textit{See Tina Cassidy, Finneran's Objections Seen Stifling Foxborough Plan for Pats Stadium, BOSTON GLOBE,} Aug. 20, 1997, at E1. After meeting with state leaders about the Foxboro stadium proposals, Foxborough selectman Michael Coppola was quoted as saying:

I think the whole process has taken on extra significance because we are getting closer and closer to a time when the Patriots are going to throw up their hands and say we just can't wait any longer. So yeah, the clock is definitely ticking and we're trying really hard.

\textit{Id.}
while not draining the state treasury. By funding infrastructure improvements, the Commonwealth provided assistance that kept the region’s teams in place while also preserving public dollars for more important public expenditures. Meanwhile, the state was not forced to spend millions of taxpayer dollars to build and maintain expensive stadiums.

Conclusion

The proliferation of public financing for professional sports stadiums has created a fiscal dilemma. Concerns about the vast sums of public money spent on these facilities, however, must be balanced with the public interest in maintaining professional sports as a means of entertainment and an integral part of civic identity. By assisting team owners with infrastructure improvements, the Massachusetts Legislature has devised a means to modernize stadiums, placate team owners and fans, and maintain fiscal discipline.

265. Vaillancourt, supra note 57. Through lease payment and fees, the state and city will recover their entire investment in the Fenway project. Id.
266. Cassidy, supra note 222. When speaking before the Senate Judiciary Committee, Finneran discussed the Commonwealth’s success at keeping the Patriots in the state while also thwarting what U.S. Senator Arlen Specter viewed as the “legalized extortion” used by many teams to secure stadium deals. Id.
267. Id.