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APPLICATION OF THE PUBLIC TRUST DOCTRINE TO THE PITTSBURGH STADIUM AND EXHIBITION AUTHORITY

Chris Dumbroski*

I. INTRODUCTION

Sport stadiums exist as the modern Coliseums, a testament to the popularity of American sports. Stadiums represent cities, fans and the teams that play in them. Older stadiums, such as Boston’s Fenway Park, Chicago’s Wrigley Field and Green Bay’s Lambeau Field, continue to grow in stature and are popular tourist attractions. However, many once popular stadiums became out-dated and undesirable; this trend held particularity true with stadiums build in the 1960s and 1970s. As teams outgrew stadiums, they pushed cities and states to build new state-of-the-art stadiums with public funds. A majority of cities complied; while other cities saw their sports teams leave. The relocations of the Baltimore Colts to Indianapolis, the Cleveland Browns to Baltimore and the Minnesota North Stars to Dallas are examples of teams moving because of cities’ reluctance to build new complexes.

Twice the Pittsburgh Pirates (“Pirates”), a Major League Baseball (“MLB”) franchise, and the Pittsburgh Steelers (“Steelers”), a National Football League (“NFL”) franchise, joined the push for modern

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stadiums. In 1909, the Pirates began playing in Forbes Field, which also became the Steelers' home in 1933. The teams shared the stadium until the 1960s. In the mid-1960s, the Pirates and Steelers pushed for a new stadium. The City granted the teams their wish, and built Three Rivers Stadium ("Three Rivers"), which opened in 1970.

For thirty years, Three Rivers sat as a monument to Pittsburgh sports. The Steelers hosted seven American Football Conference Championship games, and the Pirates won two World Series, while playing in Three Rivers. Eventually, the Pirates, the Steelers and the people of Pittsburgh outgrew their love for the Three Rivers. By the 1990s, the people of Pittsburgh considered Three Rivers an outdated eyesore. In conjunction with a national trend of new stadium openings, the Pirates and Steelers made a push for new separate stadiums. After a failed referendum and much debate, the Commonwealth of Pennsylvania (the "Commonwealth") and City of Pittsburgh (the "City") agreed to publically finance two new stadiums: the Pirates' PNC Park and the Steelers' Heinz Field. As construction started, the City and the teams negotiated leases for the stadiums. The responsibility of negotiating the stadiums' leases belonged to the Public Auditorium Authority of Pittsburgh and Allegheny County, now known as The Sports and Exhibition Authority (the "Authority"). The Authority's poor negotiating position allowed the Pirates and Steelers to receive favorable leases. The leases meant that teams

4. The Pittsburgh Penguins pursuit of a new arena will not be included in the same discussion as the Pirates and Steelers pushes for new stadiums because the Penguins' attempt for a new arena came nearly ten years later. Additionally, as is discussed infra, the Penguins' arena funding came from different sources than the Pirates and Steelers' stadiums.


6. Steelers' History, supra note 5 (In 1964 the Steelers moved into Pitt Stadium, which was the home of the University of Pittsburgh's football team).


8. Id.


10. Id. (the Pirates won the World Series in 1971 and 1979).


12. Id.

would not fully reimburse the public's contribution of roughly $350 million.

The public trust doctrine could provide the public with a method to ensure repayment of the public's contribution to stadium's construction funds. Under the public trust doctrine, the Authority owed fiduciary duties to the public. One of the Authority's fiduciary duties was to negotiate leases that would lead to the full reimbursement of public's contribution to the stadiums' construction costs. The Authority breached its duties to the public when the leases failed to ensure that the teams pay back the public's contribution. When a public trust breaches its fiduciary duties, the Attorney General can seek remedies. The Attorney General could request or force the Authority to renegotiate the terms of the leases. This argument is strained by several problems but the public needs a method to ensure that multi-million dollar sport franchises repay the public's contribution to stadium construction costs. If the public lacks an option to ensure repayment of public subsidies, then sports franchises will not continue to get publicly financed stadiums.

II. BACKGROUND

When Three Rivers opened in 1970, it became one of the temples of American sports. During its first decade of existence, the Pirates and Steelers won a total of six World Championships, including 1979 when both won World Championships. Starting in the early 1990s, the franchises went in opposite directions with only Three Rivers binding them. Three Rivers cost $55 million to build in the late-1960s. The City of Pittsburgh owned the stadium because a majority of the construction funds came from public money. Over time the stadium underwent minor renovations, but the City failed to address the sta-

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14. Black's Law Dictionary 545 (8th ed. 2007) (defines a fiduciary duty as, "A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary to the beneficiary to the beneficiary; a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person").

15. See Steelers' History, supra note 5 (The Steelers won in 1974, 1975, 1978 and 1979); Pirates' History, supra note 5 (click on hyper link results, then click on the postseason link) (The Pirates won in 1971 and 1979).

16. Contra Pirates' History, supra note 5 (click on hyperlink results, then click on the postseason hyperlink) (the Pirates made the playoffs three times, 1990, 1991 and 1992 and had only seven winning seasons) with Steelers' History, supra note 6 (the Steelers won the two Super Bowls, 2006 and 2009, played in the 1995 Super Bowl, made the playoffs sixteen times and had nineteen winning seasons).

17. Three Rivers Stadium, supra note 7.

dium’s worsening condition. By the mid-1990s, the condition of Three Rivers appeared dire because of new stadiums opening in Cleveland and Baltimore.

In 1996, Major League Baseball (MLB) approved the sale of the Pirates but with a caveat that the Pirates move into a new stadium. MLB stated that the Pirates needed a new stadium by 2001 and a plan needed to be in place within two years. It was also during this time period that both the Pirates and Steelers started serious campaigns for new stadiums. The teams cited the success of other new stadiums as rationales for new stadiums. Additionally, the teams wanted separate stadiums, which complicated the situation.

While the sale of the Pirates created a problem for the City and team, it solved another situation for the City and the Pirates. Since the 1980s, the Pirates future in Pittsburgh remained in question. The possibility of losing the Pirates brought turmoil to the city. Along with being the longest established professional sports team in Pittsburgh, the Pirates are also one of the oldest franchises in baseball. The Pirates began playing baseball in Pittsburgh in 1887 and during its 123 year history, won five World Series titles. Despite their success

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19. Three Rivers Stadium, supra note 7 (the type of turf used on the field was changed, the outfield fences were moved closer, and other basic maintenance was done on the stadium).
20. Smith, supra note 2, at 46 (Jacobs Field in Cleveland and Camden Yards in Baltimore became the envy of every other owner in professional sports).
23. Banks, supra note 11.
24. Ron Cook, Plan B Flawed, Options is Worse, Pitts. Post-Gaz., June 22, 1998, http://www.post-gazette.com/sports_headlines/19980622bcok3.asp (originally, the Pirates were going to build a new stadium and the Steelers were going to remodel Three Rivers Stadium and continue to play there).
27. Pirates’ History, supra note 5.
28. Pirates’ History, supra note 5; It should be noted that Major League Baseball (MLB) considers the Pirates first year to be 1882. MLB, Team Histories, MLB, http://mlb.mlb.com/mlb/history/mlb_history_teams.jsp (last visited September 15, 2009). MLB most likely considers this the Pirates founding date because that is when the current Pirates team started playing but the team entered the National League in 1987. Albrecht Powell, History of Pittsburgh Pirates Baseball, ABOUT.COM, http://pittsburgh.about.com/od/pirates/a/history.htm (last visited Sept. 15, 2009). Taking MLB official definition the Pirates would be the tied for the oldest team in baseball with the Cincinnati Reds and the St. Louis Cardinals. Supra.
on the field, the Pirates had serious financial issues. The financial success of the Steelers furthered the belief that Pittsburgh was a football city. In 1990, the Pirates drew its best attendance, with an average of 25,308 fans per game, which amounted to little more than half of Three Rivers' baseball capacity. Several ideas existed to keep the Pirates in Pittsburgh. These ideas included an abortive attempt to sell Three Rivers to an un-named New York investor in 1985; a public-private initiative of institutional and corporate investors to buy the Pirates in 1986; and a $20 million loan to the Pirates from the city, which remains unpaid. In the early 1990s, the city proposed a new stadium for the Pirates but a plan never fully materialized due to a lack of funds and uncertainty about the Pirates' future.

While the Pirates proposed stadium failed, other cities saw the opening of new publically funded stadiums. Teams and cities wanted stadiums, which from the first glance; a fan could identify the stadium's city and team. In the 1960s and 1970s, cities built stadiums for functionality, which caused stadiums to look similar in different cities. Riverfront Stadium in Cincinnati, Three Rivers Stadium in Pittsburgh and Veterans Stadium in Philadelphia all looked the same. Also, the bowl shape of these stadiums created perfect venues for football but made bad venues for baseball. Often the city's baseball team started the push for a new stadium. An original idea proposed the construction of a new stadium for the Pirates and the renovation

29. Dvorchak, supra note 21.
30. Banks, supra note 11.
32. Three Rivers Stadium, supra note 7 (the Pirates put covers over the upper deck of the stadium to try to improve the baseball feeling of the stadium. This meant that the capacity for baseball was a little less than 48,000).
33. Forsythe, supra note 25, at 239.
34. Dvorchak, supra note 21.
37. Id.
38. Id.
39. Id.
40. See Tim Chapin, The Political Economy of Sports Facility Location: An End-of-the-Century Review and Assessment, 10 MArO Sports L.J. 361 (2001)(this article explains how teams have favored moving from the suburbs back into urban settings and how this trend is especially strong with baseball teams that want more traditional stadiums).
of Three Rivers for the Steelers. This plan fell through when the Steelers decided they wanted a new stadium.\textsuperscript{41}

Next, the teams cited new stadiums creating a better economy for both the City and themselves. The teams and the governments promised new jobs, new businesses and a better quality of life for citizens.\textsuperscript{42} The City, Commonwealth, Pirates and Steelers advocated these factors as reasons why new stadiums and the use of public funds benefited the public.\textsuperscript{43} Additionally, the teams stated that new stadiums would lead to higher profits, which would allow the teams to be more competitive.\textsuperscript{44} The Pirates’ owners stated this as a pivotal reason why they needed a new stadium.\textsuperscript{45} The Steelers’ owner claimed that possible additional revenue from a new stadium would allow them to keep high price players and sign expensive free agents.\textsuperscript{46} Eventually, the time came for the City and the Commonwealth to make a decision on new stadiums.

In November 1997, the General Assembly of Pennsylvania allowed a ballot initiative in eleven southwestern Pennsylvania counties.\textsuperscript{47} If passed, the initiative implemented an additional 0.5% sales tax,\textsuperscript{48} which would be used to fund two new stadiums. While this plan was formally named the “Southwestern Pennsylvania Regional Renaissance Initiative,”\textsuperscript{49} its opponents called it the “Stadium Tax.”\textsuperscript{50} Advocates spent millions of dollars in support or opposition of the plan, including a large sum by outside interests.\textsuperscript{51} The public voted resoundingly against the plan, with some outside countries voting eight to one against.\textsuperscript{52}

Seven days after the initial plan failed, state and local leaders formulated a new plan; cleverly known as Plan B.\textsuperscript{53} Plan B involved massive state subsidies, along with existing local sales and hotel taxes to help fund two new stadiums.\textsuperscript{54} The original estimates predicted state

\begin{itemize}
\item 41. Cook, supra note 24.
\item 42. Smith, supra note 2, at 45.
\item 43. Dvorvack, supra note 21.
\item 45. Id.
\item 46. Id.
\item 47. Forsythe, supra note 25, at 237.
\item 49. \textit{See} Id. § 3000.3054(c)
\item 50. Forsythe, supra note 25, at 237.
\item 51. Id.
\item 52. Id.
\item 53. \textit{How They Scored: A Timeline}, supra note 22.
\item 54. Dvorvack, supra note 44.
\end{itemize}
subsides of roughly $75 million per stadium.\textsuperscript{55} After the public, newspapers and the Pennsylvania General Assembly vigorously debate Plan B, it passed with ease in February 1999.\textsuperscript{56} Local newspapers and pundits considered the passage of Plan B a disgrace, with Allegheny County Commissioner Larry Dunn even calling it Scam B.\textsuperscript{57} The supporters of Plan B, hailed it as a success because it involved no new taxes. Allegheny County Commission Bob Cranmer said, “This deal will be a hallmark for other cities because we did it with no new taxes. We did an outstanding job.”\textsuperscript{58}

With a financing plan in place, the City and the teams started negotiating the leases. To oversee the construction of the stadiums and to negotiate the leases the Pennsylvania General Assembly created the Authority.\textsuperscript{59} The city officials raised concerns about cost overruns, rent, non-game day revenues and parking revenues; they expected the Authority to resolve these concerns.\textsuperscript{60}

The finalized leases contained terms favorable to the teams. The Authority released the Pirates 29.5 year lease first. Under the lease the Pirates contributed roughly $40 million for construction costs.\textsuperscript{61} This money came from multiple sources but only $4 million came up front.\textsuperscript{62} The lease allocated the other $36 million over the course of the lease including $1.5 million a year from a 5% ticket surcharge and $1.4 million from naming rights proceeds.\textsuperscript{63} The City and Commonwealth contributed the other $160 million in construction costs.\textsuperscript{64} The Pirates promised to pay any cost overruns on the stadium.\textsuperscript{65}

Under the lease, the Pirates pay $100,000 a year in rent.\textsuperscript{66} At the time, the Pirates’ lease was the lowest in the major leagues by roughly $150,000.\textsuperscript{67} The Pirates keep all the profits from concessions, advertisements and restaurants inside the stadium.\textsuperscript{68} The Authority, City and Commonwealth can schedule a total of five events a year, which

\begin{itemize}
  \item 55. Forsythe, supra note 25, at 238
  \item 56. Id.
  \item 57. Dvorvack, supra note 44.
  \item 58. Cook, supra note 24.
  \item 59. 15 PA CONS. STAT. § 5505-A.
  \item 60. Forsythe, supra note 25, at 240 (City councilman, Dan Cohen, who also sat on the Authority’s board raised these concerns).
  \item 61. Id. at appendix.
  \item 62. Id.
  \item 63. Id.
  \item 64. Id.
  \item 65. Id.
  \item 66. Id.
  \item 67. Id. at 246 (Oakland was the next lowest at $250,000).
  \item 68. Id.
\end{itemize}
the Authority keeps all revenues earned. The public also pays for all of the capital improvements, which need to be made to the stadium, except for ticket surcharge proceeds beyond $1.5 million.

The Steelers' lease slightly benefited the public more than the Pirates' lease because of the franchises' stronger financial situation. The lease required the Steelers to pay $60 million in construction costs. The Steelers paid $6 million at the start, with the rest paid after the team sold club seats and seat licenses. The lease also required the Steelers to pay $1.4 million a year from ticket sale taxes to the Authority to pay for construction costs. The public contributed approximately $160 million.

The Steelers pay a rent of $250,000 per season for 29.5 years. The Steelers keep all the profits made from naming rights, concessions, novelties sold and in-stadium advertising. However, the public keeps all the profits from advertisements placed on a marquis, which sits outside the stadium. The Steelers get the proceeds from sport events held in the stadium. This includes the revenue from an agreement with the University of Pittsburgh ("Pitt"), which allows Pitt to use the stadium for its own football team. The Steelers also keep 85% of the profits made from non-football events, with the public keeping the rest. As with the Pirates, the Authority, City and Commonwealth get to schedule five events total a year at Heinz Field and keep the profits.

These leases have their similarities but they also have their differences. The Steelers contributed more money to the construction costs because of its better financial position and the fact that the Steelers play fewer home games than the Pirates. On the other hand, the Pirates' financial situation limited its initial contribution. The City hoped a new stadium would lead to a renewal in the Pirates' winning
ways, which would improve the teams' financial position. In 2009, the Pirates became arguably professional sports worst franchise, when it recorded a seventeenth consecutive losing season.

The Authority, which negotiated the leases, acts as an interesting entity, due to its quasi-governmental status. The Pennsylvania General Assembly created the Authority, and the Mayor of Pittsburgh appoints its board of directors. The Authority acts as an agent of the government and has the power of a government body. On the other hand, it can be sued as a separate entity and can incur debts separate from the government. The exemption from real estate taxes and other forms of taxes is the Authority's key governmental characteristic. The Authority and the property it owns are exempt from real estate taxes, to Allegheny County, the City and the Pittsburgh School District. Since the Authority owns some of the most expensive pieces of property in Pittsburgh, being tax exempt deprives the City of crucial tax revenues. The fact that a quasi-governmental actor owns the stadiums creates the basis of the public trust doctrine.

III. The Issue For The Public

The lease terms for the Pirates and Steelers' new stadiums strongly favored the teams and allowed them to walk away with almost $350 million of public funds. Since the opening of the stadiums, the Commonwealth experienced lower revenues due to the downturn in the local economy. During these tough times, the Commonwealth at-
tempted to exercise smart fiscal policy to ensure a balanced budget. The strain on the budget means higher taxes for the citizens of Pennsylvania, while the Pirates and Steelers get publicly financed stadiums.

While the Commonwealth struggled financially, the City and people of Pittsburgh also fell on hard times. The steel and coal industries have long left the City. However, the economy of Pittsburgh is better than other areas of Pennsylvania because of the success of the University of Pittsburgh Medical Center, which is expanding and considered one of the best medical institutions in the world.

Even in financially troubled times, the Steelers draw sell out crowds. Most likely fans and the general public care little about the lack of enthusiasm to repay the public's money. The Pirates are another story. Robert Dvorchak, of the Pittsburgh Post-Gazette, said about the elected officials, who support the building of PNC Park, that "if the ball park is a hit and the Pirates succeed and baseball gets its house in order, the complainers (those who opposed the use of public funds) will be silenced. If it isn't voters likely will forget every-

ject fiscal budget for 2010, would be 2.8 billion dollars in deficit. This was caused by the fact that the government was bringing record lows in revenue while costs were constantly rising).

95. See P.A. CONST. art. VIII, § 12. (Pennsylvania like many states has a balanced budget law, which states that the Commonwealth cannot run budget deficits, like the federal government can).

96. Barnes, supra note 94.


98. Pennsylvania's Dept. of Labor, Pennsylvania Workforce Statistics, http://www.paworkstats.state.pa.us/ (last visited February 20, 2009) (this map shows that the greater Pittsburgh area's unemployment rate is better than most of the Commonwealth's and sits at the national average).


100. NFL Football Attendance, ESPN, http://espn.go.com/nfl/attendance (select year from drop down menu)(last visited September 19, 2010) (these charts so the Steelers draw over 99% capacity for home games.).

101. In the summer of 2008, there was a rumor that the Steelers' long time owners, the Rooney family, may sell the team and several interested buyers would move the team from the Pittsburgh area. During this period, the City officials stated that if the Steelers left, the new owner would need to pay the public's contribution to the stadium. Team Sale Would Trigger Review of Public Stadium Funding, ESPN, July 16, 2008, available at http://sports.espn.go.com/nfl/news/story?id=3491526.
thing but their grudges.” However, the Pirates remain a failure on the field and in drawing fans.

While the Pirates experience poor attendance, many consider PNC Park to be a success. ESPN and Sports Illustrated rate PNC Park in the top three stadiums in professional baseball. However, the Pirates' lack of competitiveness means that few fans attend games and drove attendance below the level it was before PNC Park opened. Additionally, low attendance drives down the revenue collected through the ticket surcharge and amusement taxes.

The inefficiencies of the Pirates' and Steelers' leases became clear in September of 2007 with the release of the Pittsburgh Penguins, the City's National Hockey League franchise, lease. The Penguins, like the Pirates, used threats of leaving the City to get a new arena. Eventually, the City and Commonwealth desperate to keep the team authorized the construction of a new arena with the use of public funds. The new arena opened in the fall of 2010 across the street from the Penguin's current venue, the Mellon Arena. The Penguins' lease is much different than the Pirates and Steelers' leases. The Penguins will pay a base rent of $3.6 million. The public bears a lower burden with the construction of the Penguins' arena because gambling revenues will pay for roughly a third of the construction cost.

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102. Dvorchak, supra note 21 (It would be noted, that the two city councilman, who pushed Pittsburgh's part of the public financing through, lost their seats. Mayor Tom Murphy survived a tough challenge in the primaries and general election. Many considered him to be the one who kept the Pirates in Pittsburgh).

103. See Pittsburgh Pirates Attendance, Stadium and Park Factors, supra note 32; supra note 104.


105. See Pittsburgh Pirates Attendance, Stadium and Park Factors, supra note 31.


City and Commonwealth estimate that the Penguins’ rent and contributions from gambling revenues will pay roughly two-thirds of the total costs of the arena. This leaves the public responsible for only a third of the cost, which pales in comparison to the roughly three-fourths of the costs of the Pirates and Steelers’ stadiums.

The people of the City and the whole Commonwealth saw their elected officials spend roughly $350 million to build two new stadiums. Then the Authority negotiated two leases, which ensured that the burden to pay for the stadiums fell on the public instead of the teams. This situation happened all over the United States since 1990, leaving the public bearing a majority of stadium construction expenses. The public needs a method to change the leases’ terms. The leases should reflect the interests that best serve the public, which paid for the stadiums, as well as the tenants. The public trust doctrine may give the City, the Commonwealth, along with cities and states across the country a way out of perverse leases.

IV. The Public Trust Doctrine: A Solution?

The public trust doctrine could be invoked to force the Authority to change the terms of the leases. A “public trust comprises of the trust res, property which is subject matter of the trust; a trustee who holds legal title to the res; and a beneficiary or beneficiaries, for whose benefit the res is held, and who have equitable rights in the res.” The Commonwealth’s public trust doctrine exists both at common law and as a constitutional amendment. At common law, the public trust doctrine primarily protected navigable waterways. In 1971 the Commonwealth’s Constitution was amended to include the public trust doctrine, in an attempt to help the Commonwealth better protect

111. Id. 112. Greenberg, supra note 35, at 385-6 (since 1990, thirty-seven new stadiums or arena’s, with $6,500,000,000 in construction costs, have opened. The public has contributed most of the construction cost, while the teams donate very little. The two extremes are the Columbus Blue Jackets of the NHL, who received no public money and the Cincinnati Bengals of the NFL, whose new stadium was fully financed by public money). 113. Richard C. Lewis, The Pennsylvania Public Trust Doctrine: Its Use as a Restraint on Government, 13 Duq. L. Rev. 551, 552 (1971)(citing I G.G. BOGERT AND G.T. BOGERT, The LAW OF TRUSTS AND TRUSTEES § 1 (2d ed. 1965); RESTATEMENT (SECOND) OF TRUSTS § 2(h) (1959)). 114. Id. at 552. 115. P.A. Const. art I § 27. Article I: Declaration of Rights That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT- § 27: Natural resources and the public estate. The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of
natural resources. The public trust doctrine may have been created as a general restraint on the power of government, protecting the public from the abuses of the Commonwealth. The amendment "confers certain enumerated rights upon the people . . . and imposes upon the executive branch a fiduciary obligation to protect and enforce these rights." Additional, the public trust doctrine could be considered to be a subset of the charitable trust doctrine. The charitable trust doctrine usually governs charities, museums and educational institutions. These institutions hold res for the public enjoyment, education, charity or public purpose. Under the public trust doctrine, the government or charitable institutions are the fiduciary and the public is the beneficiary. The types of fiduciary duties depend upon the type of arrangement and the relationships between the trust and the public.

Standing to file a law suit against a public trusts can be a complex issue. If the public trust is governed by the same rules as a charitable trust then the Attorney General can file suit on behalf of the public under the doctrine of parens patriae. The parens patriae doctrine states, "a government has standing to prosecute a lawsuit on behalf of a citizen, especially on behalf of someone who is under a legal disability to prosecute the suit." The Attorney General holds this power because the Attorney General's purpose is to protect the public from harm. However, the Attorney General lacks the capacity to bring suit in an environmental trust because the Attorney General is the counsel for all government run trusts; therefore, a member of the tax paying public has standing.

Standing will be complex when dealing with the Authority. While the Authority can be sued, the extent of the suits is mainly contractual in nature. The Attorney General would be in the best position to file

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118. Lewis, supra note 113, at 572.
120. Restatement (Second) of the Law of Trusts § 368 (1959).
121. 14 C.J.S. Charities § 2 (2010)
122. Id.
126. Lewis, supra note 113, at 572.
127. Id. at 568-9.
suit for a violation of fiduciary duties. The Authority is a quasi-govern-
mental entity, so the Attorney General is not its counsel. On the
other hand, the Authority holds the stadiums in trust for the public
benefit, making it similar to a charitable trust. Therefore, the Author-
ity is a hybrid between a public trust and a governmental body; hence,
the Attorney General should pursue a claim if the Authority breached
its duties to the public.

V. Analysis

A. Does a Public Trust Exist?

If the public trust doctrine applies, then the stadiums are the res
held by the Authority for the benefit of the public. Hence, the Author-
ity will be the trustee, while the public will be the beneficiary. The
public trust doctrine applies if stadiums’ purpose is to benefit the pub-
lic and the Authority holds the stadiums in trust for that purpose.
However, for a public trust to exist, the trustee must make a "manifes-
tation of an intention to create the [public trust]."128

The Supreme Court of Pennsylvania decision of Martin v. City of
Philadelphia129 supports the applications of the public trust doctrine
because it allows for athletic stadiums to be built with public funds.130
William Martin filed a suit to stop the use of public funds for construc-
tion of a new stadium in Philadelphia during the 1960s.131 The suit
claimed that the public funding of stadiums violated the public pur-
pose clause of the Pennsylvania Constitution.132 The Supreme Court
of Pennsylvania said that the use of public funds for athletic stadiums
was permissible under the public purpose clause:

A sports is for the recreation of the public and is hence for public
purpose; for public projects are not confined to providing only the
bare bones of municipal life, such as police protection, streets, sewers,
light and water; they may provide gardens, parks, monuments, foun-
tains, libraries, museums, and ‘Generally speaking, anything calcu-
lated to promote the education, the recreation, and pleasure of the
public.133

The Pennsylvania courts dismissed all the suits filed challenging the
recent new stadiums in Pittsburgh and Philadelphia based upon the

130. Id. at 899-9.
131. Id. at 894.
132. Id. at 895.
133. Id. at 896 (citing Meyer v. City of Cleveland, 171 N.E. 606, 606 (Ohio Ct. App 1930)).
cases from the 1960s, like the *Martin* decision. Under the definition used by the Supreme Court of Pennsylvania, the stadiums provide enjoyment to the public, just as a state park provides enjoyment to the public. The Commonwealth holds the state park in trust for the people; similarly, the Authority holds the stadiums in trust for the people. Since it is well established that a state park is a public or charitable trust, the Authority should also be considered a public trust.

The Authority could argue that it fulfilled its fiduciary duty when it negotiated the leases because it did the best it could based upon its weak negotiating position. The City started to build two state-of-the-art stadiums and the stadiums needed tenants. Also, sport teams hold cities prisoner in order to get new venues and favorable lease conditions for the venues. The Authority and the City attempted to negotiate leases, which terms fell into the median of leases for other major franchises in baseball and football. However, the Authority coward in face of the teams' demands and allowed them to walk away with $350 million in public funds.

Also, the Authority's originating statute leads to the conclusion that the Authority should be considered a public trust. The act that created the Authority stated that “the purpose and interest of this [act] being to benefit the people of the Commonwealth by, among other things, increasing their commerce and prosperity and promoting their educational, cultural, physical, civic, social and moral welfare.” The legislature wanted the Authority to promote a public benefit and the means mentioned by the legislation appear similar to those associated with a public or charitable trust. Therefore, the Authority's enabling act indicates that its purpose is to act like a public trust.

According to John K. Harris, Jr., teams, themselves, are public trust and the owners owe fiduciary duties to the public. During the late-

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135. Id.


137. See Brent Bordson, *Public Sports Stadium Funding: Communities Being Held Hostage By Professional Sports Team Owners*, 21 HAMLINE L. REV. 505 (1998) (the article explains the relationship between host cities and teams and how teams are able to get new stadiums).


139. 16 PA. Cons. Stat. § 5505-A(a).

140. See John K. Harris, Jr. *Fiduciary Duties Professional Team Sports Franchises Owners*, 2 SETON HALL J. SPORTS & ENT. L. 255 (1992)(Mr. Harris was a partner at the law firm of Shutts and Bowen in Miami, Florida at the time the article was published).
1980s and early-1990s, baseball experienced troubled times, which culminated in the 1994 work stoppage. The period saw teams threaten to leave their long time home cities because of conflicts with cities. For instance the Chicago White Sox, which had been in Chicago since 1901, threatened to leave for St. Petersburg, Florida.\textsuperscript{141} Other teams traded or cut a majority of their talent. For example, the media heavily criticized the San Diego Padres (Padres) for trading or cutting a majority of its players to save on payroll.\textsuperscript{142} In some games, the Padres starting lineup’s salary was equal to the salary of one player on the opposing team.\textsuperscript{143} Situations like the Padres angered the public and caused at least two sports scholars to argue that the nature of professional sports teams made them public trusts.\textsuperscript{144} In order to fulfill their fiduciary duties the owners would have to field or attempt to field competitive teams.\textsuperscript{145} The fact that teams play in publicly financed stadiums formed a crucial part of the public trust reasoning.\textsuperscript{146}

This public economic investment may not be excessive or unwarranted. But understanding its magnitude is critical to any evaluation of the public’s stake in sports franchises. The investment is real and so are the feelings that the investment entitles the public to beneficial ownership. As the public’s economic partnership with owners grows, the manner in which owners react becomes more important.\textsuperscript{147}

The City, Commonwealth, Pirates and Steelers’ argument that the stadiums would improve the quality of life in the area helps lay the foundation for the public trust doctrine. Some businesses moved into that area, some found success and others failed.\textsuperscript{148} In the period after PNC Park opened, some of the neighboring restaurants asked the Pirates to move games to an early time.\textsuperscript{149} The restaurants’ owners hoped that an early start time for the baseball games would create a diner rush.\textsuperscript{150} The whole economy of the City lacked robustness over the past ten years, including the area around the stadiums.\textsuperscript{151}

\begin{itemize}
\item \textsuperscript{141} Id. at 257-8.
\item \textsuperscript{143} Id.
\item \textsuperscript{144} Auld, supra note 142, at 140-2; Harris, supra note 140, at 256.
\item \textsuperscript{145} Auld, supra note 142, at 140.; Harris, supra note 140, at 271-3.
\item \textsuperscript{146} Harris, supra note 140, at 257-8.
\item \textsuperscript{147} Id. at 258.
\item \textsuperscript{148} KEVIN J. DELANY AND RICK ECKSTEIN, \textit{PUBLIC DOLLARS, PRIVATE STADIUMS}, 159 (Rudgers Uni. Press, 2003).
\item \textsuperscript{149} Id.
\item \textsuperscript{150} Id.
\item \textsuperscript{151} Id.
\end{itemize}
promise of an economic boost and better conditions in the City indicates that one of the stadium’s purposes was to improve the life of the public. The goal of improving the quality of life for city residents clearly falls within the parameters of the public trust doctrine.

Furthermore, strong public policy reasoning exists for the application of the public trust doctrine. A complex relationship exists between communities and teams. In some circumstances, sports teams identify cities and whole geographical regions. The Steelers could easily be considered the identifying mark of the City, just as the Cubs are associated with Chicago, the Yankees with New York and the Cowboys with Dallas. These associations lead to cities and communities becoming attached to a team. Losing those teams could be devastating for the community. Government officials live in the fear of the public outcry if a team leaves a city. The communities’ reluctance to lose teams, shifts power to team owners, which allows them to get favorable conditions for leases, taxes or other wanted amenities. Allowing the use of the public trust doctrine gives cities and citizens leverage to push back the influence of teams. If a team wished to change a lease in its favor, it could make threat of leaving the city, which would force the city to alter the lease. A city should be allowed the same power to renegotiate leases when circumstances make it necessary.

The most prominent example of a sports team leaving its host city over a lease/stadium conflict is the Oakland Raiders. The Raiders turbulent relationship with Oakland started in the 1950s, when it used threats of leaving to get Frank Yauell Field build. Then in the 1960s the Raiders helped force the construction of Oakland-Alameda Coliseum (Coliseum). Oakland owned and ran the Coliseum. Short leases existed between Oakland and the Raiders, which allowed for

152. Harris, supra note 138, at 255.
153. See Dvorchak, supra note 21 (former Pittsburgh Mayor Tom Murphy is on record stating that he believes that the Pirates' are the brand name of Pittsburgh and that is why he fought so hard to keep them in the City).
155. See Bordson, supra note 137.
156. Mayer, supra note 154, at 206.
158. Id.
159. Id.
frequent negotiations. Eventually, conflicts arose between the two parties. The biggest conflict revolved around luxury box seating. The team refused to pay for the luxury boxes because MLB's Oakland Athletics also played at the Coliseum. Both sides proposed several plans to resolve the conflicts but no agreement could be met. Eventually, the Raiders left Oakland for Los Angeles to play at the Los Angeles Memorial Coliseum. During the Raiders stay in Los Angeles, the team negotiated with Oakland about a return. As the Raiders tired of Los Angeles, Oakland caved to the Raiders demand. In 1995, the Raiders returned to Oakland to a stadium that met its demands.

B. Fiduciary Duties Owed To The Public

If the Authority is a public trust, the duties owed to the public can be complex. For simplicity, only the fiduciary duties involving the leases will be examined.

The City and Commonwealth made the Authority the sole party able to negotiate leases with the teams. The Mayor appointed the members instead of public electing the members. The public lacked the power to ensure or force that the Authority negotiated publicly beneficial leases. The leases should ensure the eventual reimbursement of the public contribution by the teams. The majority of the citizens of the City and the Commonwealth disagreed with the use of public funds to built stadiums for sports teams. Unlike Minnesota and Montreal, where votes rejected new stadiums:

Our (the City of Pittsburgh and Commonwealth of Pennslyvania) political leaders didn't have the courage of the voters' convictions.

The voters overwhelmingly rejected the blackmail threat and stood

160. Id. at 403.
161. Id.
162. Id.
163. Id.
164. Id. at 403-4
165. Id. at 405.
167. Id.
168. Id.
169. Other duties would be that the Authority would need to help maintain the stadiums, to not make self-interested decisions about the use of the stadiums and to schedule the five public events per stadium.
170. 16 PA CONS. STAT. § 5505-A(a).
171. 16 PA CONS. STAT. § 5508-A(a)(2).
172. Cook, supra note 24 (suggesting that the stadiums are being shoved down the voters throats).
their ground, defeating the purposed half percent sale tax in all 11 counties covered by the referendum. There was wisdom and good sense in that vote. But in the end, the voter's wishes were ignored.\textsuperscript{173}

The legislature's blind ignorance to the public's wishes entitles the public to the reimbursement of their contribution.

The nature of sport stadiums creates a unique situation for fiduciary duties. The public enjoys most public trusts with relative ease. The public enjoys parks, monuments, fountains and gardens with few problems. Sports stadiums present a different level of access because the teams' schedules limit when the public can gain entrance into the stadiums. While access to a Pirates' games is relatively easy; access to Steelers' games presents a scarcity issue. Many in the public will never enjoy a Steelers game at Heinz Field because of the scarcity and price of the tickets. The high prices and limited number of tickets make games too expensive for the average citizen to attend. While market forces keep people out of Steelers' games, they are still burdened with the cost of construction of the stadiums. Also, individuals, with low incomes, are those least likely to attend sporting events; however, they also live in the city limits, which means that they are paying a higher percentage of construction costs than suburbanites, who are more likely to attend a sporting event.\textsuperscript{174} Additionally, baseball and football games do not appeal to every taxpayer. These taxpayers saw the Commonwealth give their hard earned tax dollars to an enterprise, which they have no interest in. The Authority owed a duty to those who will never enjoy an event in the new stadiums, to ensure that the teams reimburse the public's contribution.

\subsection*{C. Breach of Fiduciary Duties}

The Authority owed a duty to the public to ensure the reimbursement of the public contribution; therefore, the leases should have been structured to cause reimbursement. If the stadiums do not produce the external benefits promised by the teams and governments, then reimbursement of the public's subsidy becomes necessary. The situation dealt the Authority a bad negotiating position but the Authority bowed to the teams and let the teams dictate the terms of the leases. The fact that the Authority breached its fiduciary duties benefited the teams and harmed the public.


\textsuperscript{174} Shropshire, supra note 3, at 29.
The public contributed almost $180 million to the Pirates, after the team generously raised its initial contribution up to $40 million. The Steelers' contributed nearly sixty million dollars, leaving the public to pay for $160 million. Hence, the leases allowed the teams to walk away with nearly $350 million.

Taxes are the only way that the public can regain their contribution. However, the ticket surcharge tax cannot be taken into account because the proceeds are used to pay the teams' initial contributions and any excess will be put into the capital improvement fund. This leaves the city's amusement tax, which existed at the time of the lease negotiations. At the time the leases were signed, it was impossible for anyone to calculate the amount the amusement tax would make due to the ever changing prices of tickets, and the number of fans going to games is not a static number either. Also, the amusement tax may fail to collect extra revenues since attendance for the Pirates and Steelers is relatively the same as it was at Three Rivers. Additionally, revenues from sales taxes, parking taxes and payroll taxes are insignificant because they already existed during the negotiations. It would be hard to determine if the City collected more tax revenues from these taxes because they are determined by multiple factors, which may not be connected to the new stadiums.

Also, the City and Commonwealth attempting to recollect the public contribution through taxes is pointless because the teams pass the taxes on to the fans. The teams do not take the 5% amusement tax out of their profits but add the tax to the price of the tickets. The teams are nothing more than a tax collector. Essentially, the fans are paying twice. Fans' tax dollars paid for roughly three-fourths of the stadium construction costs. Now when fans attend a game, part of the ticket's price is used to pay down their contribution to the construction costs. This principle applies to the ticket surcharge tax too. The leases' tax provisions ensure the burdens of the construction costs remains with the taxpayers instead of the teams.

175. Cook, supra note 24 (mocking the Pirates willingness to contribute five million more dollars and suggesting that it would not stop the Pirates' owners from becoming richer).
176. Supra note 63; 74.
177. Contra supra note 31; supra note 100.
178. An increase in parking tax revenues is probably the hardest to determine. The teams share parking lots, just as they did at Three Rivers Stadium. It could just be assumed that without an increase in attendance, the parking tax revenues will remain about the same.
179. Haulk, supra note 173.
180. Id.
181. Id.
Additionally, the teams and their owners can prosper without necessarily providing a public benefit. The owners of the teams believe that the teams are mainly money-making entities; providing the public with enjoyment is just the means to profits. In both professional baseball and football, it is not even necessary to make money through attendance. Profit sharing between the teams ensures that every team will make some money, even if the team is not individually profitable. Luckily, this is the case for the owners of the Pirates. Although the Pirates have a low payroll and makes little profits off of attendance, MLB gives the Pirates a share of the leagues’ profits every year. “The ballpark stays beautiful; the payroll stays low; and the revenue-sharing profits keep rolling in. The Pirates are a boon for their owners. For their fans, not so much.”

Still the purpose of sports is entertainment. Without fans going to the games, professional sports cease to exist. Since teams are dependent upon the fans, they must provide a good product. Part of a good product is a state-of-the-art stadium. In theory, a better stadium will draw more fans, who will have a more enjoyable experience. Plus, some communities take great pride in the stadiums where their teams play. A prominent example is Yankee Stadium, the home of the New York Yankees. Yankee fans loved Yankee Stadium and when a new stadium was built, its design was essentially the same the old stadium, with a technological upgrade.

Finally, not only will the teams never repay the public’s contribution, the promised external benefits are illusory. Board econometrical studies done in other communities suggest that team’s promises of an economic improvement in the area are fictional. One study suggests that cities see similar economic conditions and crime rates after new

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182. Auld, supra note 142, at 130.
183. Id. at 130-1. (The NFL’s profit sharing agreement distributes proceeds from TV contracts to all 32 teams. Major League Baseball’s profit sharing agreement allows the sharing of actual revenues from profitable teams to unprofitable teams), see James Lincoln Ray, Baseball’s Revenue Sharing Problem, http://baseball.suite101.com/article.cfm/baseballs_revenue_sharing_problem (last visited February 20, 2009).
185. Greenberg, supra note 35, at 384 (stating how stadiums have become part of a larger and more technological sophisticated sports market.)
187. Smith, supra note 3, 45.
There appears to be no long term improvement in the condition of the Pittsburgh economy caused by construction of the new stadiums. It could take several more years to fully determine any long term economic impact from the construction of the stadiums. Even if there is an economic impact, it may be less than the public’s contribution. Over the course of the two leases, the public contributed roughly $10.2 million a year. In Baltimore, the public saw $3 million in economic benefits a year from the construction of Camden Yards but the public contributed roughly $14 million a year. If Pittsburgh does experience a long term economic benefit, it will most likely be similar to Baltimore. Therefore, any potential economic benefit will not offset the amount of the public’s contribution.

D. Remedies for Breach of Fiduciary Duties

The Authority breached its fiduciary duties by failing to negotiate leases that ensured repayment of the public’s contribution, which entitles the public to damages. Under the public trust doctrine, the public lacks the capacity to seek damages, when the trust breached its duties. The Attorney General, acting as the protectorate of the public, does have the power to seek damages. In the stadium situation, one remedy is to change the leases. Repayment of the public funds could be ensured by altered leases. The leases could be altered in several ways. Raising rents for the teams, taking more of the funds raised by the sale of the stadiums’ naming rights and raising taxes on the sale of alcohol will make it easier for the public to recollect their contribution. Also, if the Authority used some of the gambling revenues from the new casino in Pittsburgh, the repayment of the public contribution could be sped up. The use of gambling revenues to help pay back the public could also make the teams more willing to renegotiate their leases.

First, teams’ rents could be raised. The Steelers could easily afford to pay a higher rent. Forbes estimates that the Steelers net value is nearly a billion dollars. The Pirates may be hurt by a higher rent but the Pirates did little to keep its promises to the public. The Pirates promised to turn around their losing ways and to field a competitive

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188. Id. at 45.
189. Delany and Eckstein, supra note 148, 159.
190. $350,000,000 for the two stadiums/29.5 years
192. See supra Section IV.
team but have done neither. Plus, other teams pay two or three times as much in rent as the Pirates, despite having low revenues.194 The Pittsburgh Penguins struggled financially for an extended amount of time but its rent will be about forty times higher than the Pirates.195 The Pirates could not afford the same type of rent as the Steelers but enjoy the same benefits as the Steelers so should be forced to pay similar rent.

While raising the rent is an easy solution, there are several other changes that could increase the amount and pace of teams’ repayment of the public’s contribution. One of those factors concerns the naming rights to the stadiums. The Jacksonville Jaguars received a publically financed stadium during the mid-1990s.196 When the team sold the naming rights to the stadium, the amount was split roughly evenly between the city and team.197 The Pirates and Steelers took the opposite approach, claiming the importance of the profits from the sale of the naming rights to the teams’ future success.198 The teams already donated a quarter of the funds raised by the sale of the naming rights to help pay down their debt. PNC pays $1.5 million a season for the naming rights to the Pirates stadium;199 while Heinz pays the Steelers roughly $2.85 million a year.200 If the teams kept a quarter of the funds and gave the rest to the City it would help pay down the public’s contribution to the stadiums.

Also, the teams or City could place an additional surcharge on alcohol sold in the stadiums. The City and Commonwealth already levy multiple taxes against alcohol and another two or three cents would not hurt sales. Also, alcohol traditionally creates the most revenue of all concessions.202 Adding an additional tax to the sale the alcohol

194. Forsythe, supra note 35, at 267 (the appendix contains several other leases of Major League Baseball teams, compare the Kansas City Royals’ lease, Colorado Rockies’ lease and Tampa Bay Devil Rays’ lease with the Pirates. All those teams have a history of losing but all pay higher rents).


196. Forsythe, supra note 25, at 254.

197. Id.

198. Id.


could speed up the team’s repayment efforts. Collecting money from the naming rights and alcohol leads to the Authority collecting more in revenue a year.

Finally, a crucial change occurred in Commonwealth after negotiations and approval of Pirates and Steelers’ leases. In 2004, the Commonwealth approved slot machine gambling. Officials expected to collect roughly billion dollars a year in extra tax revenue from gambling. The extra tax revenue from gambling played a crucial role in helping pay for the construction of the Penguins new arena. Some of the extra gambling tax revenue, could be shifted to help pay for some of the debt owed by the Pirates and Steelers. The new casino sits near the Pirates and Steelers’ stadiums on the same street. If data shows that game days bring in extra revenue to the casino, a portion of that could be used to help pay for the stadiums. The casino’s revenue could be particularly higher on Steelers’ game days. Steelers’ games bring large numbers of people into the City and the area of the casino. The Rivers Casino officially opened August 9, 2009. Finally, allowing the use of some of the gambling revenue to pay for part of the public contribution, the Pirates and Steelers may be more willing to renegotiate their leases with the Authority.

E. Problems with using the Public Trust Doctrine

While a good argument can be made that a public trust exists between the Authority and the public; a good argument may not be enough to entice a court to create a public trust. Courts have been reluctant to expand the public trust doctrine. The courts generally confine the public trust doctrine to charitable institutions and environmental concerns. The government constantly spends money for the public benefit without creating a public trust. Therefore, the court may not believe that just because publicly financed stadiums serve a public purpose, they are part of a public trust.

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203. 4 PA CONS. STAT. §§ 1101 et seq.
204. Property Tax Relief in Pennsylvania: Devils in the Details, http://www.issuespa.net/articles/7114 (last visited Feb. 20, 2009)(gambling tax revenues were supposed to be used for education and to lower property taxes).
205. See supra note 109.
206. All three sit on North Shore Drive.
208. See Lewis, supra note 113, at 558.
VI. CONCLUSION

When the Commonwealth of Pennsylvania and the City of Pittsburgh agreed to build two new stadiums for the Pirates and Steelers, it in essence gave away $350 million in public funds. The government left the Authority to negotiate the leases with the two teams. These leases effectively ensured that the teams will never repay the public's contribution. The public needs a method to ensure that the leases would lead to reimbursement of public funds. The public trust doctrine could be used because the Authority should be considered a fidiucary of a public trust and the stadiums are the res of that trust. Under the public trust doctrine, the Authority would owe a fiduciary duty to ensure the leases would lead to the reimbursement of the public's contribution.

Under the public trust doctrine, when the fiduciary, here the Authority, breaches a duty owed to the beneficiary, here the public, only the Attorney General can bring the claim. Since the Authority breaches a duty to the public, here to ensure the repayment of the public's contribution, the Attorney General has only one possible solution; to renegotiate the leases. Increasing the rents, taking more of the money that the teams collect from the naming rights to the stadiums and money earned from the sale of alcohol would help allow the public to recollect most of the money given to the teams. Also, with the inception of gambling in the Commonwealth, some of the gambling revenue collected could be used to pay down the debt owed by the teams. Also, by allowing some of the gambling revenues to be used, the team may be more willing to renegotiate the leases.