Bryant Miller Olive

Attorneys at Law
400 N. Tampa Street
Suite 1600
Tampa, FL 33602
Tel 813.273.6677
Fax 813.223.2705
www.bmolaw.com

MEMORANDUM

TO: Julia Mandell, County Attorney, Hillsborough County
Samuel Hamilton, Chief Assistant County Attorney
FROM: Bryant Miller Olive P.A.
DATE: April 14, 2026
SUBJECT: Local Government Infrastructure Surtax

Issues

1. Can a county expend proceeds of the infrastructure surtax imposed under section 212.055(2), Fla. Stat., to fund a new publicly-owned ballpark which will be leased or licensed to a professional baseball team for use as the home game venue for such team, when neither the ordinance nor the ballot question approving the surtax include an express prohibition against such expenditure?

Brief Answer: Yes, in our reasoned opinion. Florida courts have observed that government-owned sports facilities serve recreational purposes (as well as other public purposes including commerce and tourism), notwithstanding the lease or license of such facilities to a professional sports organization. Section 212.055(2) authorizes use of the surtax to finance, plan and construct infrastructure, defines "infrastructure" to mean fixed capital outlays associated with the construction of public facilities that have a lifespan of 5 or more years, and defines "public facilities" to include parks and recreational facilities. Where neither the ordinance nor the ballot question approving the surtax include an express prohibition against using the proceeds for such purpose, a publicly-owned ballpark could reasonably be characterized as a recreational facility and therefore a "public facility" eligible for funding from surtax proceeds.

2. Where members of a county board discuss whether to include a spending limitation in the ordinance approving the surtax ballot, but the related motion is withdrawn before being voted on and the board ultimately adopts the ordinance and approves the ballot question without amendment to incorporate such limitation, does the limitation apply?

Brief Answer: No, in our reasoned opinion. The decision-making power of a county's governing body is expressed only through official actions and majority votes taken at meetings conducted under the Sunshine Law. Such official actions may be memorialized in written ordinances, and such ordinances are interpreted pursuant to the principles of statutory

interpretation which provide that a reviewing court first looks to the plain language of the ordinance. If the plain language is unambiguous, courts will not look behind the ordinance's plain meaning to determine legislative intent or resort to additional rules of statutory interpretation. That certain elected officials expressed policy views against the use of the surtax for a new sports stadium does not change the plain meaning of the ordinance or the ballot question approved by the voters.

Background

Hillsborough County imposes a local government infrastructure surtax pursuant to sections 212.054 and 212.055(2), Fla. Stat. (the "State Surtax Law"). The surtax is known locally as the "Community Investment Tax" or "CIT." The CIT was originally implemented in 1996 for a thirty-year term, pursuant to County ordinance and approval by referendum of County voters. The County adopted Ordinance No. 24-3 on April 17, 2024 (the "Ordinance"), to provide for a renewal of the surtax effective December 1, 2026 through December 31, 2041 (the "Renewal Period"). The Ordinance (i) approved the related ballot question[1] and scheduled the referendum for November 5, 2024, (ii) required the County to enter into an interlocal agreement with the School Board and the municipalities prior to August 1, 2024, providing for distribution of surtax proceeds in accordance with the State Surtax Law (the "Interlocal Agreement"), and (iii) required that the County, the School Board and the municipalities each publish a list of projects proposed to be funded from their respective distribution of surtax proceeds, conduct a public hearing to solicit citizen comment on the proposed list, and adopt a resolution identifying the specific projects to be funded from the CIT distribution for the Renewal Period.

In accordance therewith, the County published notice of a public hearing to be held on July 17, 2024, which notice included the initial list of projects proposed to be funded from the County's distribution of CIT revenues during the Renewal Period, subject to further adjustment following public hearing within the confines of the ballot question. At the conclusion of such public hearing, the County adopted Resolution No. R24-054 (the "CIT Project Resolution"). The CIT Project Resolution identified and approved the Infrastructure Projects List (attached as Attachment "A" to the resolution) to be funded with revenue from the County's share of the CIT for the Renewal Period, and provided that the resolution, including the Infrastructure Projects List attached thereto, may be amended by the Board of County Commissioners (the "Board") but only after a noticed public hearing. The projects list in Attachment "A" included a category for "Public Facilities" which did not initially include a new ballpark, but it is our understanding that following a public hearing, a new ballpark could be added through a majority vote of the Board.

1 The ballot question read as follows: "Shall Hillsborough County renew the existing local government infrastructure surtax, known locally as the community investment half-cent sales tax, commencing December 1, 2026, through December 31, 2041, to be shared with the municipalities and the School Board to fund infrastructure for transportation and public works, public safety, public facilities, public utilities and public schools?"

During the public hearing and consideration of the Ordinance on April 17, 2024, a motion was made to prohibit the use of CIT revenues for construction of new sports stadiums. Certain Board members discussed and expressed support for such motion, but the motion was withdrawn without any vote on it having been taken, and the Ordinance and ballot question were therefore not amended to include such limitation, based on the concern that the amendment was substantial enough to require additional notice to the public and a new public hearing which would have necessitated a delay the majority of the Board was not comfortable with. There was also discussion to the effect that a spending limitation could be addressed in the Interlocal Agreement, the CIT Project Resolution and/or the Infrastructure Projects List, if a majority of the Board was to approve of such spending limitation. While a new stadium was omitted from the Infrastructure Project List approved by the CIT Project Resolution, it is our understanding that no express prohibition on the use of CIT funds for a stadium was ever implemented in the legal documents by the Board.

Without such express prohibition in the relevant legal documents, the referendum on renewal of the CIT was held as scheduled and approved by majority vote of the County electors.

Analysis

1. Can a county expend proceeds of the infrastructure surtax imposed under section 212.055(2), Fla. Stat., to fund a new publicly-owned ballpark which will be leased or licensed to a professional baseball team for use as the home game venue for such team, when neither the ordinance nor the ballot question approving the surtax include an express prohibition against such expenditure?

A. Local Government Infrastructure Surtax

Section 212.055, Florida Statutes, authorizes counties to impose certain discretionary sales surtaxes. For each surtax, the statute provides the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; and the purpose for which the proceeds may be expended. Subsection (2) of the statute provides such authorization and requirements for the "Local Government Infrastructure Surtax."

The infrastructure surtax may be levied as a discretionary sales surtax of .5 or 1 percent. It must be levied by an ordinance enacted by a majority of the county's governing body and must be approved by a majority of the county's electors voting in a referendum. The ballot for an infrastructure surtax must include a statement which includes a brief general description of the projects to be funded.

Per subsection 212.055(2)(d), proceeds may only be expended "to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting

from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection."

B. Public Facilities

The statute defines "infrastructure" to mean "[a]ny fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(41), s. 163.3221(13), or s. 189.012(5), and includes facilities that are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity." The statutory definitions of "public facilities" referred to are, respectively, as follows:

> '"Public facilities" means major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities.' (s. 163.3164(41), Fla. Stat.)
>
> '"Public facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.' (s. 163.3221(13), Fla. Stat.)
>
> '"Public facilities" means major capital improvements, including, but not limited to, transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and, except for spoil disposal by those ports listed in s. 311.09(1), spoil disposal sites for maintenance dredging in waters of the state.' (s. 189.012(5), Fla. Stat.)

The listed improvement categories are not intended to be all inclusive, as indicated by the introductory clause "including, but not limited to" in the latter two definitions. Accordingly, capital improvements eligible for funding by the surtax may include others not expressly referenced in the respective listings.

Each definition of "public facilities" includes "parks and recreational facilities." Thus, to the extent a publicly-owned ballpark licensed or leased for use by a professional baseball team may be characterized as a recreational facility (and therefore a public facility), proceeds of the infrastructure surtax funds may be spent to finance, plan and construct such facility. While this specific question has not been addressed by Florida courts, said courts have recognized that the public purposes advanced by government-owned and financed sports facilities and stadiums include recreation for the citizenry, including stadiums financed by bonds secured by the infrastructure surtax.

In *Poe v. Hillsborough Cty.* 695 So. 2d 672 (Fla. 1997), the Florida Supreme Court upheld the use of public funds for a community stadium used by a professional football team, holding that it served a "paramount public purpose" despite the significant private benefits to the football team that would be primarily using it. 695 So. 2d 672, 676 (Fla. 1997). In that case, the Tampa Sports Authority issued bonds secured by a share of local government infrastructure surtax proceeds to build a stadium for the Tampa Bay Buccaneers. The team would pay a lease and a surcharge on ticket sales, but the team would keep the first two million dollars of annual revenue from all other events and divide all subsequent revenues from other events equally with the city. *Id.* at 679. The Florida Supreme Court determined that the stadium met a paramount public purpose because of the great economic impact to the area and the retention of the professional football franchise. *Id.*; *see also State v. Tampa*, 146 So. 2d 100, 103 (Fla. 1962) ("This court has frequently approved the construction of an auditorium, stadium, warehouse, inter-American cultural and trade center and other such structures as an international trade mart as a proper public purpose.").

The *Poe* case focused on a public purpose analysis in the context of the lending of public credit prohibition set forth in Article VII, Section 10 of the Florida Constitution, and while the Court recognized that proceeds of the infrastructure surtax were pledged for payment of the bonds, the case did not a involve a direct challenge to the use of surtax proceeds to fund the public facility used by the team. The Court in *Poe* did observe, however, that the stadium in question would provide recreation, entertainment and cultural activities to the citizens of the county, and noted other public benefits and purposes such as instilling civic pride and camaraderie into the community, and noted that Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community image on a nationwide basis.

The Court in *Poe* cited *State v. Daytona Beach Racing & Recreational Facilities District*, 89 So. 2d 34 (Fla. 1956). In that case, the City of Daytona Beach, through a special district set up to construct and operate a racing and recreational facility in the area, entered into a lease agreement with the Daytona Beach Motor Speedway corporation whereby the corporation was given the right of possession of a facility to be constructed for racing purposes for at least six months of each year for a period of forty years in order to conduct motorized races and other motorized events. The special district retained the right of possession of the facility for its own purposes for the remaining six months of the year, and at other times when the corporation did not have events scheduled at the facility. The commission governing the special district subsequently filed a

petition to validate bonds to pay for the cost of constructing, maintaining and operating the racing facility. The Circuit Court validated the bonds and the state appealed in part on grounds that issuance of the bonds would be improper because the racing facility did not serve a "proper public purpose."

The Florida Supreme Court upheld issuance of the bonds and observed that the racing facilities were recreational in nature and advanced other public purposes including tourism:

> "Tourism, both as between the areas of our State and as between the States of this Nation, is a competitive business. The sand and the sun and the water are not sufficient to attract those seeking a vacation and recreation. Entertainment must be offered. Even ignoring its use by the District for periods aggregating one-half the year, or more, for other recreational and educational purposes for the public, the facility in question, considering the uses to which it will be adopted and their expected effect on the public welfare, is [a valid public purpose]… In the instant case the purpose of the facility is both to increase trade by attracting tourists and to provide recreation for the citizens of the District. We have on numerous cases approved as a public purpose the development of recreational facilities. (underline added). *See State v. City of Daytona Beach,* 160 Fla. 13, 33 So. 2d 218; *State v. City of Jacksonville,* Fla., 53 So. 2d 306; *State v. City of Pensacola,* Fla., 43 So. 2d 340. …. In *State v. City of Miami,* Fla., 41 So. 2d 545, we upheld the selling of certificates to enlarge the Orange Bowl Stadium in Miami and appellant cites cases from several jurisdictions which also validated bonds for the construction of such recreational facilities. Therefore, it is our opinion that the development of the facility in question would serve a valid public purpose, and that the private benefit and gain would be incidental thereto." (underline added).

The opinion in *Daytona Beach Racing and Recreational Facilities District* cited several other decisions wherein public facilities owned by a local government but leased to a private corporation were determined to advance public purposes including the provision of recreational facilities by the governmental entity. *See State v. City of Daytona Beach,* 160 Fla. 13, 33 So. 2d 218 (upholding a tax for construction of an auditorium, stadium, boat basin and recreational center), and *State v. Escambia County,* Fla., 52 So. 2d 125 (where revenue certificates were sold to construct recreational facilities which could be leased out to private enterprises).

The cases and opinions summarized above establish a premise for concluding that a government-owned and financed sporting venue such as a ballpark leased or licensed to a professional sports organization can reasonably be characterized as a recreational facility. Under section 212.055(2)(b), the ballot question included in an ordinance calling for a referendum on the levy of the surtax must include a brief general description of the projects to be funded by the surtax. Where neither the ordinance nor the ballot question approving the surtax include an express prohibition against such expenditure, and each references the projects to be funded as including "public facilities," the meaning assigned to that term in the surtax statute applies as the

only limitation on expenditures. That meaning, by its plain terms, includes recreational facilities.

Characterization of the ballpark as a public facility and therefore "infrastructure" within the meaning of section 212.055(2) assumes a lifespan of 5 or more years for the ballpark and ownership by a governmental entity. We found no express prohibition elsewhere in section 212.055 or in section 212.054 (entitled "Discretionary sales surtax; limitations, administration, and collection") against the use of infrastructure surtax proceeds for a publicly-owned ballpark leased or licensed for use by a professional sports organization.

C. Public Ownership of Facilities

To qualify as a public facility under section 212.055(2)(d), the facility must be owned by "the local taxing authority or another governmental entity." Although section 212.055 does not define "governmental entity," and no definition appears elsewhere in Chapter 212, the term is used throughout the chapter. For example, section 212.08(6) provides sales tax exemptions for sales made to "the United States Government, a state, or any county, municipality, or political subdivision, when payment is made directly to the dealer by the *governmental entity*." The inclusion of these enumerated governments as governmental entities suggests that the term "governmental entity" as used in section 212.055(2)(d) should be interpreted broadly to include states, and by extension, the State of Florida.

Subsection 212.08(6)(b) further extends the exemption to sales of tangible personal property to contractors when the property goes into or becomes part of public works "owned by a governmental entity *other than the federal government*," provided the governmental entity supplies a certificate of entitlement confirming that the contractor is purchasing on its behalf. By distinguishing the federal government from other governmental entities, this provision reinforces a broad interpretation of the term "governmental entity," encompassing not only local governments but also state-level entities. The subsection also directs the Florida Department of Revenue ("FDOR") to adopt rules for determining when a transaction qualifies as an exempt sale to a governmental entity and for administering the certificate of entitlement process.

Pursuant to that directive, Rule 12A-1.094 of the Florida Administrative Code defines "governmental entity" as any agency or branch of the United States government, a state, or any county, municipality, or political subdivision of a state. This regulatory definition further supports a broad reading of that term as used in section 212.055(2)(d), to include facilities owned by the State of Florida or its agencies. Such entities would include member institutions of the Florida College System, which operate as agencies of the State.

Accordingly, the ownership requirement in section 212.055 is satisfied where a facility is constructed on real property initially owned by a governmental entity such as a Florida College System institution - an agency of the State of Florida - and leased to a professional baseball team, and that property and facility are subsequently conveyed to the County upon completion and licensed to the same professional baseball team.

2. Where members of the county board discusses whether to include a spending limitation in the ordinance approving the surtax ballot, but the related motion is withdrawn before being voted on and the board ultimately adopts the ordinance and approves the ballot question without amendment to incorporate such limitation, does the limitation apply?

Under Florida law, all meetings of a public body where official acts are to be taken must be open to the public, and no resolution, rule, or formal action is binding unless it is taken or made at such a meeting pursuant to the procedures that govern that body. This requirement is codified in both the Florida Constitution and Florida Statutes and is commonly known as the Sunshine Law. Article I, Section 24(b) of the Florida Constitution mandates that meetings of any collegial public body at which official acts are to be taken, or public business is to be transacted, must be open and noticed to the public, except where specifically exempted. Similarly, section 286.011, Florida Statutes, declares that all meetings of any board or commission of a state agency, county, or municipality must be public, and no resolution, rule, or formal action is binding unless taken at such a meeting.

Florida courts have consistently found that the Sunshine Law requires formal action to be taken in public meetings. For example, in *Frankenmuth Mut. Ins. Co. v. Magaha*, the Florida Supreme Court held that any approval or ratification of agreements by a governing body must occur in compliance with the Sunshine Law, as informal or unauthorized actions by individual members or attorneys cannot bind the body. 769 So. 2d 1012. Similarly, in *Broward County v. Conner*, the court ruled that actions taken by a local government's staff without formal approval at a public meeting do not bind the governing body, as such actions violate the Sunshine Law. 660 So. 2d 288. Courts interpret the Sunshine Law strictly, as to protect the public and prevent all "evasive devices." *Transparency for Fla. v. City of Port St. Lucie*, 240 So. 3d 780, 784 (Fla. 4th DCA 2018).

It is clear that the legislative body of Florida local governments must take official actions through formal votes at properly noticed public meetings. Verbal statements or informal actions by individual members are not binding on the body as a whole. Such official actions are subject to interpretation under the principles of statutory interpretation. *See, e.g., Hollywood Park Apartments S., LLC v. City of Hollywood*, 361 So. 3d 356, 359 (Fla. 4th DCA 2023). In *Hollywood Park Apartments S., LLC*, the court applied the principles of statutory interpretation to interpret the constitutionality of an ordinance. In making such an analysis, the plain language of the official act is the starting point. *Id.* at 361. If the plain language is unambiguous, there is no need to delve into other principles of statutory interpretation. *Id.*; *see also Dozier v. Duval Cty. Sch. Bd.*, 312 So. 3d 187, 192 (Fla. 1st DCA 2021) (holding that "where the language of the statute is clear it should be given its plain meaning, and the court will not look behind the statute's plain meaning to determine legislative intent or resort to the rules of statutory construction.").

As such, if an official action of a county's governing body, as expressed in the ordinance and ballot question approving the surtax referendum, is unambiguous and clearly defined by

reference to the authorizing statute, a reviewing court will not attempt to delve into the legislative intent behind the individual members who voted on the decision. It also would not engage in any other form of statutory interpretation, as there would be no ambiguity to resolve. That a member or members of the board express a policy preference that the ballot question expressly prohibit the use of the tax for a new sports stadium, absent a formal approving vote on a seconded motion to amend the question to add such limitation, no such limitation exists.

Interlocal Agreement and Infrastructure Projects List

We reviewed the Interlocal Agreement between the County, the School Board and the municipalities (recorded in the public records of Hillsborough County on July 19, 2024). The only limitation on expenditure of CIT proceeds set forth therein is a certification by each party to the other parties thereto that "all CIT Proceeds received by such Party, including any interest earnings and bond proceeds generated therefrom, shall be expended by that Party only as permitted by this Agreement, the State Surtax Law, the Ordinance and the ballot language of the November 5, 2024 referendum provided for in the Ordinance." The Interlocal Agreement therefore does not include an express prohibition against use of CIT revenues by the County to fund a ballpark.

The CIT Project Resolution adopted by the County following its July 17, 2024 public hearing approved the Infrastructure Projects List to be funded with revenue from the County's share of the CIT, and such project list was published before the hearing as required by the Ordinance. The initial list of projects included under the "Public Facilities" section of the projects list did not include any reference to construction of a new ballpark. However, the resolution and project list were designed to be modified by the County, subject to a noticed public hearing. Any use of the CIT revenues for purposes of a new ballpark should therefore be preceded by a noticed public hearing to consider amendment of the CIT Project Resolution and Infrastructure Projects List to include the ballpark.