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Venue Law is a monthly column that addresses issues of interest and compelling concern for venue owners and operators. We identify an issue, examine the circumstances and suggest the actions you might consider for your venue. We welcome your suggestions.

2004: A Year of Wardrobe Malfunctions, Venue Security Issues, & The Ongoing Debate of Public vs. Private Financing of Venues

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This year has certainly been an interesting time for the entertainment and sports venue industry. It has seen everything from "wardrobe malfunctions," bullpen brawls between athletes and fans, to the ongoing debate on whether or not the public should finance the development of state-of-the-art venues.

For the teams, managers, partners, sponsors, and even patrons of venues these issues are real and can create unwanted and unneeded challenges.

These challenges give some insight into what to be wary about in 2005.

Performer Control

In many ways Janet Jackson's shocking or surprising (depending on your outlook) "wardrobe malfunction" during halftime of Super Bowl XXXVIII at Reliant Stadium in Houston, overshadowed the entertaining and well-played game between the New England Patriots and the Carolina Panthers. While the game is still remembered by football fans, Ms. Jackson's performance has worked its way into the lexicon of American Society. Not only did the malfunction cause a stir amongst the nation, it brought to light serious issues for venue owners and operators including the potential liability of the venue for the indecent acts of the performer and a facility owner's ability to control an artist's performance.

In order to help limit the possible exposure to liability issues, venue managers, owners, partners and sponsors should consider:

- Carefully choosing the artists who will be performing at the venue
- Negotiating the engagement contract such that the performance is defined as to content and prohibits specific activities
- Requiring the artist provide insurance and agree to indemnify the facility for any activities falling outside the scope of the defined performance.

Venue Security

Since the September 11th terrorist attacks, the focus of security at stadiums, arenas, and convention centers has been, as it should be, on protection alert from terrorist attacks. However, incidents that took place at sporting events this year, most notably the Texas Rangers bullpen brawl with fans at Oakland's Network Coliseum during the regular Major League Baseball season, has created renewed interest in protecting fans from each other as well as from the individuals they have paid to see perform. In providing a secure environment for fans, venue managers and owners must walk a fine line—create a safe environment and a pleasurable fan experience without alienating fans by subjecting them to a "police state" of intolerance, or denying them their First Amendment rights. What is the best way to provide a paying customer with a secure environment in which to enjoy an event and not impinge on the customer's

freedoms, while at the same time guard the venue, its management, owners and sponsors from liability for contributing to the hostile environment or for a claimed failure to protect the customer?

Many commentators suggest that violent fan-fan and fan-player incidents can be lessened by limiting alcohol sales. Suggestions include permitting the sale of only one alcoholic beverage per customer per trip to the concession stand, eliminating alcohol sales at seats and stopping the sale of alcohol at an earlier time during the event. While these suggestions may curb some unruly behavior, not all incidents will be eliminated and some may have a regressive effect on the venue's bottom line.

Some "best practice" security measures venue managers may consider implementing include:

- Establishing a central command center for the fielding of complaints re: security and the effective distribution of security personnel throughout the venue as the environment changes during the course of an event
- Coordinating security efforts among city, county and state police along with venue security patrols
- Effectively training security to recognize rising levels of disharmony within the venue
- Once an area of discord has been recognized, create a visible presence of security in the area
- Supervise security personnel such that post-incident and post-game briefings are made to all personnel
- Place undercover security in positions within arena/stadium where fans have close access to players and vice-versa, and where incidents have occurred in the recent past
- Train venue concession personnel in alcohol management
- Provide venue concession personnel with access to security personnel for the reporting of rowdy behavior

Public vs. Private Financing of Venues

The debate over whether the public should finance the building of stadiums and arenas to host professional sports franchises, concerts, and conventions has been a hot topic for taxpayers for a number of years. As the need to build new facilities and to renovate existing facilities continues, battles over who should pay for the buildings grow. Many of these battles played out on the ballots this November while some were waged in courtrooms across the United States.

On election day, over 11 measures affecting financing for new venues or repairs and renovations for existing structures were on ballots across the United States. Of these 11 referendums six met with voter approval, four failed to secure a majority of votes, and one is not yet final. These measures included:

Passed

- Increase sales and use taxes to fund building of Dallas Cowboys stadium in Arlington, Texas (an effort in which our firm was proud to play a role)
- Prevention of bonds sold last year to fund St. Louis Cardinals new ballpark in St. Louis, Missouri
- Increase in sales tax to fund renovation of Wichita Arena in Wichita, Kansas
- Bond to fund renovations to Orange Bowl in Miami, Florida
- Banning the selling of future naming rights to Candlestick Park at Candlestick Point

Failed

- Increase in sales tax to fund arena in Augusta, Georgia
- Issuance of bond to fund improvements for sports facilities at Southern Mississippi University
- Increase in sales tax to provide renovations to Arrowhead and Kauffman Stadiums in Kansas City,

Missouri

The highest profile of these referendums, the financing of a new stadium for the Dallas Cowboys in Arlington, Texas, passed by a strong 55 percent to 45 percent margin. The fact that the citizens of Arlington were favorably supportive of the Cowboys venue project is a direct response of Dallas's political leadership's refusal to provide the support or public leadership for the public financing for a Cowboy's new stadium in Dallas, which is Dallas's loss and Arlington's gain.

Another high profile proposition, proposition H in San Francisco, California, passed by a 54 percent to 45 percent margin. This proposition bans the city of San Francisco and the San Francisco 49ers from selling the naming rights to Candlestick Park located at Candlestick Point, which is owned by the city of San Francisco. Although the proposition passed by a wide margin, it is not clear how this will impact a naming rights agreement which was reached between the city and Monster Cable Products, Inc. in late September 2004. However, San Francisco City Attorney's office claims that Proposition H cannot invalidate the existing agreement between the 49ers and Monster Cable Products which has been approved by the mayor and the city's board of supervisors.

Obviously, in the future cities negotiating with teams for the public funding of stadiums, arenas, and public venues need to be aware of and pay attention to the possibility that taxpayers in their community may attempt to limit their ability to sell the naming rights to the new stadium. Thereby, potentially costing the owner and the city millions in advertising revenues. Politicians should learn from these elections that leadership on such issues is fundamental to their success.

As 2004 comes to a close, this year like so many years in the past will go down in history as one of the most exciting, yet challenging years in the entertainment and sports venue industry. As the industry prepares for 2005, there are sure to be several new challenges that will emerge. However one thing is certain, the number one goal of every venue manager and owner will be to provide a safe and enjoyable patron environment, maintain the profitability of operations, and prevent unwanted liabilities from unforeseeable or uncontrollable events.

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***Venue Law** is a monthly column written by Winstead Sechrest & Minick P.C. attorneys experienced in the full range of issues related to venue ownership, management and operation. This column provides a perspective on current issues and the law but does not constitute specific legal advice or counsel. For more information on the monthly topics discussed in Venue Law, the authors or firm, please visit www.winstead.com/sportsvenuepractice.*