

**IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA**

**CASE NO.:
DIVISION:**

RONALD J. BYNUM, an Individual

Plaintiff,

vs.

**CITY OF DAYTONA BEACH,
FLORIDA, a Florida Municipality,**

Defendant.

_____ /

COMPLAINT

COMES NOW, the Plaintiff, RONALD J. BYNUM, a resident and taxpayer residing in the City of Daytona Beach, Florida, and brings this action against the Defendant, the City of Daytona Beach, Florida, an incorporated municipality of the State of Florida and alleges:

Personal Jurisdiction and Venue

1. The Plaintiff, RONALD J. BYNUM, resides at 2616 South Peninsula Drive, Daytona Beach, Florida 32118 and the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida has personal jurisdiction over him.

2. At all times material hereto, the Plaintiff was *sui juris*.

3. The Defendant, the City of Daytona Beach, Florida is a Florida municipality pursuant to Article VIII, Sections 2(b) and 6(b), Florida Constitution, as amended, and §166.021, Florida Statutes (2007), and the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida is the proper jurisdiction and venue for this action.

Subject Matter Jurisdiction

4. This is a Complaint for declaratory judgment concerning the Defendant's powers to undertake certain acts involving an amount which exceeds \$15,000.00 arising in Volusia County, Florida and is within the subject matter jurisdiction of the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida pursuant to §86.011(1), Florida Statutes (2007).

5. The Plaintiff is not required to have complied with §768.28(6)(a), Florida Statutes (2007) prior to commencing this action, as such action arises under § 86.011(1), Florida Statutes (2007).

Declaratory Relief Violation of the Florida Constitution

6. The Plaintiff re-adopts and re-alleges paragraphs 1-4 above.

7. Since 1986, the Central Florida Cultural Endeavors, Inc. (the "CFCE"), a Florida non-profit corporation has organized and presented the Florida International Festival (the "Festival") featuring the London Symphony Orchestra on a biannual basis in the City of Daytona Beach, Florida.

8. Based upon information and belief, during the period of time from 1986 until 2007 during which the CFCE's has organized and presented the Festival, it had received major financial support from *The Daytona Beach News-Journal* in order to break-even. The President, Chief Executive Officer, and Co-Editor of *The Daytona Beach News-Journal*, Tippen Davidson, was the founder of the Florida International Festival.

9. In January of 2007, Tippen Davidson, died.

10. Subsequent to the death of Mr. Davidson, a shareholder dispute arose concerning the continuation of funding by *The Daytona Beach News-Journal* for the Festival. Ultimately, the Court determined *The Daytona Beach News-Journal* was barred from donating further company funds to the Festival. This Court Order left the Festival

severely under funded for the 2009 and beyond Festivals.

11. Looking to replace the funding lost by the Court's Order, the CFCE submitted an initial funding request to the Defendant for Nine Million Dollars (\$9,000,000.00) over the next 10 years.

12. After a few hotly disputed public meetings on this issue, on August 15, 2007, the Defendant voted 5-2 to adopt Ordinance 07-284 approving a grant/loan to the CFCE in the amount of Five Hundred Thousand (\$500,000.00) for the Fiscal Year Budget of 2007-2008. The loan will be converted into a grant once certain easily obtained conditions are met. So, upon information and belief, it is the expectation that the "loan" will become a grant to the CFCE.

13. During this same Fiscal Year Budget period, the Defendant is in a severe budget shortfall. At a June 12, 2007, meeting of the Defendant, the proposed Fiscal Year 2007-2008 Budget reduced total expenditures by Eighteen Million Three Hundred Thousand (\$18,300,000.00) from the previous year and eliminated 74 positions. The proposed budget did not include the additional Five Hundred Thousand (\$500,000.00) loan/grant to the CFCE.

14. Currently the Defendant has two Bond issues, which are outstanding:

Capital Revenue Bonds

2001 C-1

FIFC, on behalf of the City of Daytona Beach, issued \$18,740,000 tax-exempt fixed rate bonds to refund unrated high coupon debt the City issued in 1999 and fund a variety of capital projects. The bonds mature 2003 - 2031. The bonds are secured by loan payments from the City. Loan Payments are backed by both the City's covenant to budget and appropriate from non ad-valorem tax revenue as well as Tax Increment District Revenues.

Capital Revenue Bonds

2001 C-2

FIFC, on behalf of the City of Daytona Beach, issued \$6,820,000 tax-exempt fixed rate bonds to refund unrated high coupon debt the City issued in 1999 and fund a variety of capital projects. The bonds mature 2003 - 2021. The bonds are secured by loan payments from the City. Loan Payments are backed by both the City's covenant to budget and appropriate from non ad-valorem tax revenue as well as Tax Increment District Revenues.

15. The bonds are secured by loan payments from the City and the loan payments are backed by both the City's covenant to budget and appropriate from non *ad valorem* tax revenue as well as Tax Increment District Revenues.

16. The Defendant, as municipality in the State of Florida, is subject to Article VII, Section 12 of the Florida Constitution, which states:

SECTION 12. Local bonds--Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from *ad valorem* taxation and maturing more than twelve months after issuance only:

- (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or
- (b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

17. The Defendant cannot do indirectly that which it cannot do directly¹. The Defendant has not directly pledged *ad valorem* taxes to the payment of its bonds, but its pledge of its other available revenues to the payment of its bonds may inevitably lead to higher *ad valorem* taxes, if it continues to fund non-budgeted expenditures such as the loan/grant to the CFCE².

18. Based upon information and belief, the Plaintiff believes the loan/grant to

¹ See, State v. Halifax Hospital District, 159 So.2d 231 (Fla. 1963).

² See, Strand v. Escambia County, Florida, Case No. SC06-1894, 12 (Fla. 2007)

the CFCE will result in higher *ad valorem* taxes to the landowners within the City of Daytona Beach, Florida in violation of Article VII, Section 12 of the Florida Constitution.

19. The Plaintiff brings this action for declaratory relief against the Defendant pursuant to Chapter 86, Florida Statutes, as he has a present need for a declaration of the Florida Constitutional rights under Article VII, Section 12 and there exists an actual, *bona fide* dispute with the Defendant concerning the interpretation of the Florida Constitution concerning the loan/grant to the CFCE.

20. An independent cause of action for declaratory judgment under Article VII, Section 12 of the Florida Constitution has previously been held to state a cause of action under Florida law³.

WHEREFORE, the Plaintiff, RONALD J. BYNUM, prays:

- A. That the Court will take jurisdiction over the parties and the subject matter hereof;
- B. That the Court will find that the Article VII, Section 12 of the Florida Constitution has been violated by the Defendant's loan/grant to CFCE;
- C. That the Court will grant all damages applicable and costs; and
- D. That the Court will award such other relief as the Court deems just in the premises hereto.

Respectfully submitted on this ____ day of October, 2007, by:

RONALD J. BYNUM
Plaintiff
2616 South Peninsula Drive
Daytona Beach, Florida 32118

³ Id.