

# MARKS & WEINBERG, P.C.

## Frankenmuth Mutual Insurance Company v. Magaha 2000 WL 1354234 (Fla. 9/21/00)

Absent prior approval from the Board of Commissioners (the "Board"), the Comptroller of Escambia County entered into several unauthorized computer lease-purchase arrangements. The Supreme Court of Florida, however, determined that the Board had the power to ratify those agreements through later approval. The court defined "approval" to include either formal or informal expressions of assent, without the need for formal resolution, unless "such a resolution is required by the governing law of the county." The approval, however, must also be made in compliance with Florida's Sunshine Law, which stems from both constitutional and statutory law and provides that "any meeting at which official acts are to be taken must be open to the public, and no resolution, rule or formal action shall be considered binding except as taken or made at such meeting."

In particular, the Florida Supreme Court held that "a board of county commissioners may approve a lease-purchase agreement under section 125.031, Florida Statutes (1999), even absent formal resolution, if such board is not required by local ordinance or charter to take action by formal resolution." Accordingly, the court provided a three-prong test to instruct courts in determining whether such "approval," or ratification, has occurred. The three-prong test requires a board of county commissioners to: (1) have the power to approve the agreement in the first place, (2) ratify the agreement in the same manner as



required to initially approve it, and (3) ratify the agreement based on the full knowledge of material facts associated with the agreement. Finally, the court held that the non-substitution clause contained in the underlying lease-purchase agreement, "which requires up to a two-year lapse in computer services upon non-appropriation," violates Article VII, Section 12 of the Florida Constitution despite the fact that "the agreement also expressly disclaims use of revenues from ad valorem taxation." The court further stated that the non-substitution clause rendered the non-appropriation clause illusory, thus transforming "the agreement into a long-term certificate of indebtedness pledging ad valorem taxes."

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit [leaselawyer.com](http://leaselawyer.com) or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

