

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY AFFAIRS

In re:

Carl A. Belin, Jr.	:	COMPLAINT UNDER SECTION 901
	:	OF THE LOCAL GOVERNMENT
v.	:	UNIT DEBT ACT
	:	
Kenneth A. Bundy, Richard	:	
Lininger and Mark Vrahas,	:	
Clearfield County Board of	:	
Commissioners	:	LGUDA Docket No. 11

DEPARTMENT'S OPINION AND ORDER

## INTRODUCTION

Before the Department of Community Affairs (hereinafter the Department) is a Petition for Declaratory Order filed by a taxpayer, Carl A. Belin, Jr., challenging the validity of a resolution enacted by the Clearfield County Board of Commissioners, Kenneth A. Bundy, Richard Lininger and Mark Vrahas. The Petition was filed pursuant to section 901 of the Local Government Unit Debt Act, the act of April 29, 1978, P.L. 124, No. 52, as amended, 53 P.S. § 6780-1 et seq.

The Petition for Declaratory Order was filed with the Department on January 20, 1982 and challenged the validity of a resolution adopted on January 11, 1982 by the Clearfield County Board of Commissioners expressing their intent to issue bonds in the amount of \$850,000. The resolution was a preliminary authorization to incur debt and was enacted pursuant to Section 402 of the Local Government Unit Debt Act. A Respondents' Answer and New Matter to Petitioner's Complaint and Petition for Declaratory Order was filed with the Department on behalf of the Clearfield County Commissioners on February 8, 1982. The Respondents' Petition for Declaratory Order requested the Department to issue a declaratory order stating that the proposed bond issue would be valid general obligation nonelectoral debt of the County pursuant to the Local Government Unit Debt Act. On February 16, 1982, the petitioner submitted a Reply to New Matter and Answer to Petition for Declaratory Order to the Department.

The hearing for this case was held before the Department on March 4, 1982. Counsel for the parties have submitted briefs and reply briefs in support of their positions.

## FINDINGS OF FACT

- A. Counsel for the parties stipulated to the following facts:
1. The Clearfield County Jail ("Jail") was authorized in 1979, and was built from the \$1,900,000 fund derived from a general obligation Bond issue and \$2,500,000 of the cost was derived from revenue-sharing funds on hand. At that time, the Board of County Commissioners of the County of Clearfield was composed of Harris Breth, Richard Lininger, and Kenneth Bundy.
  2. The Jail was built and paid for with the proceeds of the \$1,900,000 general obligation bond issue and the \$2,500,000 of revenue-sharing funds on hand, as of April, 1981, with a few exceptions not here relevant.
  3. After the monies were expended, as described above, discussions between the Commissioners and their advisors as to consideration of financing a portion of the cost already paid with revenue-sharing monies began within the next several months.
  4. After budget hearings for the 1982 budget were held in November, 1981, it was apparent that the Commissioners faced an \$850,000 revenue shortfall.

A decision was made to float a \$850,000 bond issue to otherwise cover the revenue shortfall for current expenses for 1982 and, if funds remain available from this source, for current expenses of 1983.

5. The County's Local Government Unit Debt Act ("Debt Act") purpose for floating the \$850,000 bond issue was to restore revenue-sharing funds expended earlier in the construction of the Jail.
  6. The general obligation bond issue of \$850,000 will not be used to retire or refund any County bonds or notes within the meaning the (sic) Section 1110 of the Debt Act.
  7. The general obligation bond, issue is intended to have a term of twenty ( 20) years.
  8. The Board of County Commissioners of the County of Clearfield have not secured the approval of the Court of Common Pleas of Clearfield County to fund the bond issue under Section 510 of the Debt Act.
- B. The County intends to place the proceeds from the bond issue in a Federal Revenue Sharing Fund account.
- C. Presently, there are no funds in the Federal Revenue Sharing Fund account.
- D. The Department takes notice of the ordinance enacted by the Clearfield County Commissioners on March 24, 1979 authorizing the incurrence of non-electoral debt by the issuance of general obligation bonds in the amount of \$1,900,000 for the construction of a correctional facility.
- E. The ordinance referred to in preceding paragraph D specifically stated that Clearfield County determined to provide funds toward the costs of the project by utilizing approximately \$2,500,000 of federal revenue sharing funds.
- F. The revenue sharing funds were not intended to be advances from an account which was to be repaid later with the proceeds of a bond issue.

#### CONCLUSIONS OF LAW

The purpose of the proposed issuance of General Obligation bonds in the amount of \$850,000 to restore funds to a Revenue Sharing Fund Account is not an authorized purpose under the Local Government Unit Debt Act.

#### DISCUSSION

In 1979, the Clearfield County Board of Commissioners (the "Commissioners") authorized the financing and construction of the Clearfield County Jail. The Commissioners financed the jail's construction by authorizing a \$1.9 million bond issue and by utilizing \$2.5 million of federal revenue sharing funds. Now, in 1982, the Commissioners want to restore \$850,000 to the Revenue Sharing Fund account by the issuance of general obligation bonds in the amount of \$850,000.

The issue is whether under the Local Government Unit Debt Act Clearfield County has the authority to issue general obligation bonds for the purpose of restoring monies to a Revenue Sharing Fund account when the revenue sharing funds had been used towards financing the construction of the County's correctional facility.

The County receives its general authority to borrow under the County Code. However, the Local Government Unit Debt Act provides the methods, procedures, and limitations which a County must adhere to in order to borrow. Section 105(c) of the Act provides that a local government has the

"...power and authority to issue bonds or notes and make guaranties) leases) subsidy contracts or other agreements evidencing the acquisition of capital assets payable out of taxes and other general revenues) to provide funds for and towards the cost of or the cost of completing any project or combination of projects which such local government unit is authorized to own, acquire, subsidize, operate or lease, or to participate in owning, acquiring, subsidizing, operating or leasing with others, to issue tax anticipation notes and funding bonds or notes as herein provided, and to contract insurance covering the risks of nonpayment of principal) interest and premium of bonds, notes, tax anticipation notes and guaranties." (Emphasis added.)

Considering the foregoing categories, the only category which may be applicable to the proposed borrowing is to provide funds towards the cost of a project. The question then is whether restoring funds to the Revenue Sharing Fund account is being used towards the cost of a project.

First, "project" is defined in section 102 (c) (12) of the Act as follows:

"'Project' means (i) any item of construction, acquisition, extraordinary maintenance or repair which has been undertaken by a local government unit, (ii) any preliminary studies, surveying, planning, testing or design work for any such, (iii) any lands or rights in land to be acquired, (iv) any furnishings, machinery, apparatus or equipment normally classified as capital items, but such items must have a useful life of five years or more if financed separately and not as a part of a construction or acquisition project, (v) the local government unit's share of the cost of a project undertaken jointly with one or more other local government units or the Commonwealth or one of its agencies, (vi) funding or refunding of debt incurred for any or all of the foregoing purposes, or (vii) any combination of any or all of the foregoing, as any or all of the above may be designated as a project by the governing body for the financing of which it desires to incur debt. The term shall also include any deficit to be funded by bonds or notes as provided herein, or the

creation of a revolving fund for specific improvements. Where a local government unit has adopted a capital budget, the term project shall mean any unfunded portion of the capital budget selected by ordinance for current refunding.

The purpose of the proposed bond issue does not on its face fall within the scope of the foregoing definition of "project".

However, for the sake of argument let us assume the County's position that the "project" is the construction of the correctional facility for purposes of section 102(c)(12) is correct. Then, the issue narrows to whether the purpose of the proposed bond issue falls within the definition of "cost of a project".

The cost of a project" is defined in section 107:

"...The cost of a project shall include the amount of all payments to contractors or for the acquisition of a project or for lands, easements, rights and other appurtenances deemed necessary for the project, fees of architects, engineers, appraisers, consultants, financial advisors, and attorneys incurred in connection with the project financing costs, costs of necessary printing and advertising, the costs of preliminary feasibility studies and tests, cost estimates, and interest on money borrowed to finance the project, if capitalized, to the date of completion of construction and, if deemed necessary, for one year thereafter, amounts to be placed in reserve funds, if any, a reasonable initial working capital for operating the project and a proper allowance for contingencies."

The proposed restoration of funds to a Revenue Sharing Fund account does not qualify as a "cost" under section 107. For example, the proceeds of the proposed bond issue are not going to be used for the actual construction of the correctional facility or towards preliminary studies as the facility is already built. The proceeds are not going to be used for funding or refunding ,of any debt or interim financing incurred in the construction of the jail. The proceeds are actually intended to be used to cover a shortfall in the County's 1982 operating budget. In addition, the proposed bond issue is not a situation where the proceeds are to be used for replacing advances from other funds which were used for the costs of the project. The County has specifically stated that the revenue sharing funds were not advances. Furthermore, the proposed bond issue and the restoration of funds is not a temporary moving of funds from one account to another during the same budgetary and same fiscal year.

The County contends that the finance structure for the correctional facility is being changed from a higher ratio of "pay-as-you-go" financing to a higher ratio of "pay-as-you-use" financing. This new structure is supposed to be more equitable to present taxpayers. The County proposes that such change is within the County's responsibility and discretion in handling its fiscal affairs.

The Department recognizes that the County has the discretion and duty to determine its fiscal policy and perhaps a change in

the finance structure would be more equitable to the present taxpayers. However, the County has authority to issue bonds and notes only under the requirements and procedures of the Local Government Unit Debt Act (sections 105 and 1304); and the Local Government Unit Debt Act does not allow borrowing on a long term basis for the purpose of the proposed bond issue.

ORDER

AND NOW, this 13th day of April, 1982, the Department of Community Affairs hereby declares that the purpose of the proposed \$850,000 bond issue, preliminarily authorized by a resolution enacted by the Clearfield County Commissioners on January 11, 1982, is not valid under the Local Government Unit Debt Act.

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SHIRLEY M. DENNIS  
Secretary  
Department of Community Affairs

Date Issued: April 13, 1982