

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: : COMPLAINTS UNDER SECTION 901 OF
: THE LOCAL GOVERNMENT UNIT DEBT ACT
BENSALEM TOWNSHIP AUTHORITY :
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: :
George and Betty Monaghan, et al., :
TRAC, :
: :
: :
v. : DOCKET NOS. LGUDA-20
: LGUDA-21
TOWNSHIP OF BENSALEM, Bucks County :

REPORT OF HEARING OFFICER

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INTRODUCTION

This proceeding involves a request by Bensalem Township, Bucks County, for the approval of two (2) proceedings submitted to the Department of Community Affairs under the Local Government Unit Debt Act, 53 Purdon's Statutes §6780-1 et seq. One proceeding sought the approval of the Department to issue bonds in the principal amount of \$27,802,096.90, and to exclude that debt from the nonelectoral debt of the Township as self-liquidating debt. The second proceeding requested approval of a Limited Guaranty Agreement with respect to those bonds, and exclusion of any obligations created by that Agreement as self-liquidating debt. The purpose of the proceedings was to enable the Township to assume the obligations of the Bensalem Township Authority in connection with a proposed takeover of the Authority by the Township.

Objections to the approval of the proceedings were filed by the Bensalem Township Authority, as well as by a number of residents and taxpayers of the Township.

In response to the pleadings filed, the Secretary of Community Affairs designated a hearing officer. Five (5) hearings were held: on April 22, 1985, and May 10, 1985 in Doylestown; on May 30, 1985, and October 10, 1985, in Harrisburg; and on October 25, 1985, in Philadelphia. Except for the May 30 hearing, testimony was received on three occasions. At the conclusion of the hearings, briefs were submitted by both sides, accompanied by proposed findings of fact and conclusions of law. The findings of fact of the Department will be made initially, followed by its conclusions of law. A discussion of the reasons for its decision will ensue.

FINDS OF FACT

1. Bensalem Township Authority (hereinafter referred to as the "Authority") is a municipal authority organized and existing pursuant to the Municipal Authorities Act, Act of May 2, 1945, P.L. 382, as amended (hereinafter referred to as the "Municipal Authorities Act").

2. Bensalem Township is a Second Class Township located in Bucks County, existing under and pursuant to the Second Class Township Code, Act of May 1, 1933, P.L. 103, as re-enacted and amended.

3. The Authority owns and operates a water and sewer system within the proximity of Bensalem, Pennsylvania.

4. In conjunction with the Authority's ownership and operation of its water and sewer system facilities (hereinafter referred to as the "Authority's facilities"), the Authority has incurred various obligations including, but not limited to, the obligations incurred with respect to the Authority's "Water and Sewer Revenue Refunding Bonds, 1978 Series" (hereinafter referred to as the "1978 Authority Bonds").

5. The 1978 Authority Bonds are outstanding as of the date of this decision.

6. The Township, on March 6, 1984, enacted an ordinance pursuant to §18(A) of the Municipal Authorities Act, and signified its desire to acquire the assets and assume the obligations of the Authority with respect to the Authority's facilities, and operations.

7. After the Authority refused to transfer its facilities to the Township, the Township, on March 22, 1984, instituted an action in mandamus against the Authority seeking to compel the Authority to transfer its facilities—Bensalem Township v. Bensalem Township Authority, Court of Common Pleas, Bucks County, No. 84001866 (hereinafter referred to as the "Mandamus Action").

8. The Mandamus Action was voluntarily discontinued by the Township on or about March 4, 1985.

9. On February 4, 1985, the Township enacted an ordinance authorizing and directing the issuance of a series of Water and Sewer Revenue Bonds, Series of 1985, in the aggregate principal amount of \$27,802,096.90 (hereinafter referred to as the "Township Bonds"), for the purpose of defeasing the 1978 Authority Bonds, so as to enable the Township to acquire the assets and facilities of the Authority.

10. Pursuant to these proceedings (hereinafter referred to as the "Revenue Bond Proceedings"), the Township seeks approval of the issuance of Sewer and Water Revenue Bonds, Series of 1985, in the aggregate principal amount of \$27,802,096.90, by the Township, and the exclusion of the Township Bonds from the nonelectoral debt of the Township, pursuant to Section 205 of the Debt, as constituting self-liquidating debt.

11. On February 4, 1985, the Township enacted an ordinance (hereinafter referred to as the "Limited Guaranty Proceedings") authorizing and directing the Township to execute and deliver a Limited Guaranty (hereinafter referred to as the "Limited Guaranty") between the Township, as guarantor, and Frankford Trust Company, as paying agent under the Bond Ordinance. The Limited Guaranty is to be executed and delivered in connection with the Bond Ordinance and the issuance of the Township Bonds.

12. Pursuant to these proceedings, the Township is seeking approval of the issuance of a Limited Guaranty of the Township with respect to the Township Bonds, and the exclusion of the Limited Guaranty from the nonelectoral debt of the Township, pursuant to Section 206 of the Debt Act, as constituting self-liquidating debt.

13. On February 13, 1985, the Revenue Bond Proceedings and the Limited Guaranty Proceedings were filed with the Department of Community Affairs (hereinafter referred to as the "Department.")

14. The Township's Revenue Bond Proceedings consisted of the following documents:

- (a) Transmittal letter to the Department dated February 11, 1985;
- (b) Applications to the Department for (1) approval of revenue bonds, and (2) exclusion of nonelectoral debt under §205 of the Debt Act;
- (c) Proof of first advertisement of the Township ordinance dated February 4, 1985, authorizing issuance of the Township Bonds (hereinafter referred to as the "Bond Ordinance");
- (d) the Bond Ordinance;
- (e) Proof of second advertisement of the Bond Ordinance;
- (f) Township Ordinance No. 323;
- (g) Advertisement of Ordinance No. 323;
- (h) Bond Purchase Contract between the Township and Butcher & Singer, Inc., Underwriter;
- (i) Letter of Butcher & Singer, Inc., included as part of the Bond Purchase Contract;

- (j) Debt Statement and Borrowing Base Certificate;
- (k) Escrow verification;
- (l) Section 205(1) certification of the Township Board of Supervisors;
- (m) Section 205(2) certification of Butcher & Singer, Inc.; and
- (n) Section 205(3) Opinion of Robert H. Long, Jr., Esquire, Bond Counsel.

15. The Township's Limited Guaranty Proceedings consisted of the following documents:

- (a) Transmittal letter to the Department dated February 11, 1985;
- (b) Application to the Department of (1) approval of Limited Guaranty, and (2) exclusion of nonelectoral debt under §206 of the Debt Act;
- (c) Proof of first advertisement of Township ordinance dated February 4, 1985, authorizing issuance of the Limited Guaranty (hereinafter referred to as the "Limited Guaranty Ordinance")
- (d) Limited Guaranty Ordinance;
- (e) Proof of second advertisement of Limited Guaranty Ordinance;
- (f) Limited Guaranty;
- (g) Debt Statement and Borrowing Base Certificate; and
- (h) Section 206 certificate of Township Engineer.

16. On March 1, 1985, the Township filed and certified amended Debt Statements and Borrowing Base Certificates.

17. On February 27, 1985, the Bensalem Township Authority and George and Betty Monaghan, et al., (hereinafter referred to as the "citizens" each filed Complaints with the Department pursuant to Section 901 of the Debt Act, challenging the Township's Proceeding.

18. On March 18, 1985, on request of the Complainants, the Department permitted discovery to be conducted in accordance with the Rules of Administrative Practice. The Department subsequently issued subpoenas directing certain individuals to appear for depositions.

19. Depositions were taken by both parties.

20. On or about April 12, 1985, the Township filed with the Department a "Consulting Engineer's Financial Report," dated February 1985, as part of its Proceedings.

21. On April 16, 1985, the Complainants filed with the Department Amended Complaints asserting an additional cause of action sounding in fraud and misrepresentation.

22. Formal hearings were conducted, pursuant to the Pennsylvania Rules of Administrative Practice, on April 22, 1985, and May 10, 1985, in Doylestown, Pennsylvania, on May 30, 1985, and October 10, 1985, in Harrisburg, Pennsylvania, and on October 24, 1985, in Philadelphia, Pennsylvania, after which the record was closed. No testimony was taken at the May 30 hearing.

23. The following persons testified during the course of the hearings:

- (a) James N. Darrah, Township Engineer;
- (b) Thomas D. Zoidis, Butcher & Singer, Inc., Underwriter;
- (c) Mary Komada, Township Supervisor;
- (d) George Ciotti, Township Supervisor;
- (e) G. Roger Bowers, Esquire, member of the Authority;
- (f) J. R. Hanna, CPA, Authority Accountant;
- (g) Emil F. Toften, Esquire, Township Solicitor;
- (h) Margaret Francano, Complainant and taxpayer of Bensalem Township;
- (i) Dodie Rahill, Complainant and taxpayer of Bensalem Township;
- (j) Robert A. Dewey, Complainant and taxpayer of Bensalem Township;

24. The following exhibits were admitted into evidence as part of the instant record:

<u>Designation</u>	<u>Description</u>
A-1	Section 205 Certificate
A-2	Section 206 Certificate
A-3	Carroll Engineering Report
A-4	Personal Notes of James Darrah
A-5	1985 Authority Annual Budget
A-6	1983 Authority Financial Statement
A-7	Consulting Engineer's Financial Report
A-8	Trust Indenture of Authority (1978)
A-9	Agreement with Union Planters National Bank
A-10	Agreement with Bucks County Sewer & Water Authority
A-11	Agreement with City of Philadelphia
A-16	Minutes of March 11, 1985, meeting of the Township Board of Supervisors
A-17	Minutes of March 18, 1985, meeting of the Township Board of Supervisors
A-18	Minutes of February 4, 1985, meeting of the Letter dated March 8, 1984
A-20	Letter dated March 8, 1984
A-21	Township Ordinance No. 323
A-27	Preliminary Official Statement
A-28	Authority Letter
A-29	Curriculum Vitae of John Hanna

A-30	Chart
A-31	Declaratory Judgment Complaint
A-32	Petition
A-33	Tape of February 4, 1985, meeting of the Township Board of Supervisors
A-34	Amplified Tape of February 4, 1985, meeting of the Township Board of Supervisors
A-35	Transcript of portion of the February 4, 1985, meeting of the Township Board of Supervisors
T-1	Township Proceedings (Consolidated)
T-2	Curriculum Vitae of James N. Darrah
T-3	Letter from Bucks County Sewer & Water Authority's Solicitor

25. The Complainants have alleged that the two (2) Proceedings filed by the Township are invalid for the following reasons:

- (a) That the bonds are not being issued for a proper public purpose;
- (b) That the Debt Act does not confer upon the Township the power to "refund" the 1978 Authority Bonds and, therefore, that the bonds are not properly issued under the Act;
- (c) That the Limited Guaranty Agreement is invalid under the Debt Act;
- (d) That the debt evidenced by the Township Bonds, as well as the Limited Guaranty Agreement, is not excludable as self-liquidating debt;
- (e) That the Bond Ordinance was procured by fraud; and
- (f) That the Bond Ordinance imposes an unlawful and unconstitutional tax.

26. The Complainants have also argued that the action of the Proceedings should be delayed so that Stephen Kelly, former Chairman of the Bensalem Township Commissions, can be located to testify.

27. The purpose for the issuance of the Township Bonds and the Limited Guaranty is the acquisition of the facilities from the Authority pursuant to Section 18(A) of the Authorities Act.

28. The Township Bonds were not procured by fraud.

29. The Township Bonds and the Limited Guaranty constitute self-liquidating debt within the meaning and intent of the Debt Act.

30. The Township Bonds and the Limited Guaranty are in accord with the requirements of the Debt Act.

31. The Complainants had ample opportunity over a period in excess of seven (7) months, to produce the testimony of Stephen Kelly, either in person, by telephone, or by deposition.

CONCLUSIONS OF LAW

1. The Department has subject matter jurisdiction over the instant administrative proceedings pursuant to Section 901 of the Debt Act; 53 P.S. §6780-401 (Supp. 1985).

2. The Department has exclusive jurisdiction to hear and determine all procedural and substantive matters arising from the Proceedings of the Township taken pursuant to the Debt Act, including without limitation, the regularity of the Proceedings, the validity of the Township Bonds, and the legality of the purpose for which the Township Bonds are to be issued. Section 901(b) of the Debt Act; 53 P.S. §6780-401(b) (Supp. 1985).

3. The Department has the power to approve or disapprove the Proceedings of the Township or to direct correction as provided in Section 805 of the Debt Act. Section 901(b) of the Debt Act; 53 P.S. §6780-401(b) (Supp. 1985).

4. A determination by the Department is conclusive and binding as to all procedural and substantive matters which were, or could have been, presented to the Department in these Proceedings. Section 901(b) of the Debt Act; 53 P.S. §6780-401(b) (Supp. 1985).

5. Complainants have the burden of asserting the invalidity of the Township's Proceedings. Section 901(a) of the Debt Act; 53 P.S. §6780-401(a) (Supp. 1985).

6. The documents constituting the Township's Proceedings were properly admitted into evidence. 1 Pa. Code §35.161, §35.162 and §35.164.

7. The Township is empowered and authorized to issue the Township Bonds and the Limited Guaranty to provide funds for and towards the cost of any project which the Township is authorized to acquire, own or operate. Section 105(c) of the Debt Act; 53 P.S. §6780-5(c) (Supp. 1985). Section 102(c)(12) of the Debt Act; 53 P.S. §6780-2(c)(12) (Supp. 1985).

8. The Township is authorized and empowered to acquire, own and operate sewer and water facilities pursuant to the relevant sections of the Second Class Township Code. 53 P.S. §65101 *et seq.*

9. Pursuant to Section 18 of the Municipal Authorities Act, 53 P.S. §321, a municipality that created an authority may lawfully direct that authority to convey its project to the municipality if the project is of a character which the municipality is empowered to establish.

10. The Township has agreed to assume all of the obligations incurred by the Authority with respect to the facilities by virtue of the provisions of Township Ordinance Nos. 322 and 323 and the balance of the Proceedings. *Id.*; Exhibit T-1; Exhibit "A" of the Authority's Complaint.

11. For purposes of the Debt Act, the acquisition of the Authority's facilities by the Township is a valid and legal purpose for the issuance of the Township Bonds and the Limited Guaranty. Section 901(b) of the Debt Act; 53 P.S. §6780-401(b) (Supp. 1985). Section 18(A) of the Authorities Act; 53 P.S. §321(A) (1974).

12. The Department has jurisdiction to determine whether the Bond Ordinance, as alleged in the Complainants' Amended Complaint, is invalid as having been procured through fraud.

13. The legal elements of a cause of action in fraud consist of:

- (a) A false representation of a material fact, Shane v. Hoffman, 227 Pa. Superior Ct. 176 (1974);
- (b) A fraudulent utterance thereof, Savitz v. Weinstein, 395 Pa. 173 (1959);
- (c) Intent to induce reliance upon the representation, Thomas v. Seaman, 451 Pa. 347 (1973);
- (d) Actual knowledge of the falsity of such statement or reckless ignorance thereof, Shane, *supra*;

(e) Justifiable reliance, Shane, supra;

(f) Actual damages, Savitz, supra;

14. Evidence of fraud must be clear, precise and indubitable. Laughlin v. McConnel, 201 Pa. Superior Ct. 180, 191 A.2d 921 (1963).

15. A municipal ordinance is presumed valid and constitutional. Judd v. Zoning Hearing Board of Middletown Township, 74 Pa. Commonwealth Ct. 535, 460 A.2d 404 (1983).

16. Complainants have not demonstrated that the Bond Ordinance or other portions of the Proceedings are invalid on the basis of fraud or misrepresentation.

17. The Bond Ordinance is valid and constitutional.

18. The Township Bonds constitute self-liquidating debt. Sections 102(b)(1) and 205 of the Debt Act; 53 P.S. §6780-102(b)(1) and §6780-55 (Supp. 1985).

19. The Limited Guaranty constitutes self-liquidating debt. Sections 102(b)(1) and 206 of the Debt Act; 53 P.S. §6780-102(b)(1) and §6780-56 (Supp. 1985).

20. The Proceedings comply with the legal requirements of Section 205 of the Debt Act. 53 P.S. §6780-55 (Supp. 1985).

21. The Proceedings comply with the legal requirements of Section 206 of the Debt Act. 53 P.S. §6780-56 (Supp. 1985).

22. The Bond Ordinance does not impose an illegal or unconstitutional tax.

23. Complaints challenging the proceedings of a local government unit may not be filed with the Department at any time later than fifteen (15) days after the date of the submission of such proceedings, or five (5) days after the date of the last submission of any corrected document or certification to the Department. Section 901(a) of the Debt Act; 53 P.S. §6780-401(a) (Supp. 1985).

24. The issue of whether or not Stephen Kelly was not a resident of the Township, invalidating his vote relative to the Bond Ordinance and the Limited Guaranty Ordinance, is an entirely new cause of action or "complaint," raised for the first time in Complainants' Brief filed several months after the last submission of the Township's Proceedings.

25. The issue described above is barred as untimely in accordance with Section 901 of the Debt Act. 53 P.S. §6780-401(a) (Supp. 1985); In re: Borough of Blakely, 41 Pa. Commonwealth Ct. 1, 398 A.2d 237 (1979).

DISCUSSION

After a thorough review of the voluminous record in this matter, it is the conclusion of the Department that approval should be given to the two (2) sets of Proceedings that were filed by the Township of Bensalem. Although the Complainants have alleged a number of grounds upon which these Proceedings should be disapproved, it is the conclusion of the Department that none of those bases warrants a withholding of approval.

First, Complainants have alleged that the Proceedings filed with the Department were improperly admitted into evidence. Simply stated, these Proceedings are the subject of the controversy. Those were the subjects on which the Complaints were filed, leading to the scheduling of hearings and the receipt of testimony and evidence.

By raising an issue as to the admissibility of the two (2) sets of Proceedings, the Complainants are in effect addressing the issue of burden of proof. The Department imposed upon the Complainants the burden of coming forward with reasons why the instant Proceedings should not be approved.

Since the defects alleged to exist in the Proceedings were not apparent on their face, this action was correct.

It is clearly contemplated in the Debt Act, as well as the Rules of Administrative Practice, that the burdens of production and proof are on the complainants in an action brought pursuant to Section 901 of the Debt Act. Section 901(a) provides that there may be filed "a complaint asserting the invalidity of such proceedings." The Complainants must, therefore, assert and demonstrate the alleged "invalidity of such [P]roceedings." The Rules of Administrative Practice also provide that the "complainant" shall proceed to establish its case as before any other tribunal. "In hearings upon applications, formal complaints, or petitions, the complainant, petitioner, or other party having the burden of proof, as the case may be, shall open and close, unless otherwise directed by the presiding officer." 1 Pa. Code §35.125(a).

Furthermore, as in judicial forums, the actions of a municipality are presumptively valid, and the burden of overcoming that presumption is always upon the complainant. See, e.g., Weber v. Philadelphia, 437 Pa. 179, 262 A.2d 297 (1970); Glen Riddle Park, Inc. v. Middletown Township, 11 Pa. Commonwealth Ct. 574, 314 A.2d 524 (1974); SICA V. Philadelphia, 30 Pa. D. & C. 3d 371 (C.P. Phila. 1982).

Second, the Complainants have contended that the original Township Bond issue is not being issued for a proper public purpose.

Although a great deal of time was devoted in this matter to issues relevant to the proposed "takeover" of the Authority by the Township, it is not necessary to decide the validity of that proposed action in order to grant approval to the instant proceedings. It is clear, under Section 18(A) of the Municipal Authorities Act, 53 P.S. 321(A), as well as Sections 501 and 730 of the Second Class Township Code, that Bensalem Township is legally authorized to own and operate a water and sewer system. It is also legally authorized to acquire one from a municipal authority that it created.

The power of a municipality to assume the assets and obligations of an authority has been recognized by Commonwealth Court. Clearfield Borough v. Clearfield Park Authority, 40 Pa. Commonwealth Ct. 191, 285 A.2d 532 (1971), affd. per curiam 451 Pa. 585, 301 A.2d 372 (1978). The existence of such power has also been acknowledged by the Court of Common Pleas of Bucks County, Lower Southampton Township v. Lower Southampton Municipal Authority, 39 Bucks Co. L.R. 74 (1982).

Therefore, the law in this Commonwealth is sufficiently clear that the purpose for which the Township bonds are proposed is a proper public one to warrant approval of the present proceedings. It is not necessary for the Department to address any reasons why the takeover in this particular case should not occur in order to conclude that the Township's Proceedings are legally sufficient.

In this regard, Complainants have also argued that the bonds are not being issued for a proper public purpose because revenues from the project will be available for general Township purposes.

A review of the Township Ordinance makes it clear that such an event could occur, if at all, only after all other obligations of the bond issue are met. In that event, questions of legality would have to be determined by the Township Solicitor and Bond Counsel.

Although this issue was the subject of extensive discussion on the record, there is no substantial evidence, as Complainants have implied, that the Township intends to acquire the Authority to enhance its own revenues. The speculative possibility that at some future point the project may generate surplus revenues for Township coffers is not, at this time, an appropriate or relevant issue with respect to the Department's approval of the present proceedings. Under any circumstances, the Township has taken the position

that such a usage of revenues would be impermissible.

Third, Complainants have argued that the debt represented by the Township Bonds and by its Limited Guaranty is not self-liquidating. In this regard, it is essential to note that the primary purpose of the Township Bonds is to provide funds to defease outstanding bonds of the Authority. The Township Bonds would then be paid from revenues of the Authority. Despite extensive testimony on the subject, the Complainants have not demonstrated that these revenues are inadequate to meet debt service. To the contrary, debt service on the Township Bonds is very close to existing Authority debt service. Further, the Authority's own witness, Mr. Hanna, produced a chart (EXHIBIT A-30) that indicated that the Authority had accumulated substantial reserves which would be available in the future, if needed, to meet debt service.

Self-liquidating debt is defined by Section 102(b)(1) of the Debt Act. That section reads as follows:

"Self-liquidating debt" means debt payable solely from rents, rates or other charges to the ultimate users of the project, to be financed in whole or in part by such debt, or payable solely from special levies or assessments of benefits lawfully earmarked exclusively for the purpose. The term also includes debt or any portion thereof at the time qualified as self-liquidating pursuant to this act, whether or not solely payable from such sources. The term "ultimate users" includes the local government unit itself only where its use of the project is incidental to the use of the project by other users.

53 P.S. §6780-2(b)(1) (Supp. 1985) (emphasis added). Pursuant to this definition, debt is "self-liquidating" if it is payable from all sources other than, perhaps, general tax revenues. Complainants have challenged the proposed utilization of interest earnings to pay debt service on the proposed Township bonds. However, the use of debt service reserve funds, construction funds, escrow funds, etc., is a common practice in municipal finance. The use of earnings from such funds to pay debt service is also common. It is clearly not prohibited by the Debt Act.

Similarly, the Township's Limited Guaranty should be treated as self-liquidating. Such an obligation is payable from bond proceeds held in escrow, and accumulated earnings, until defeasance of the Authority Bonds. Subsequently, any claim that may arise out of that Guaranty will be satisfied by revenues from the project.

The Township Bonds standing alone are "revenue bonds," as defined in Section 102(C)(13), meaning "a bond or note payable solely from user charges, rates, revenues, rentals, fees, special assessments and receipts pledged for the purpose." 53 P.S. §6780-2(c)(13) (Supp. 1985). Nowhere in the Bond Ordinance authorizing the Township Bonds is there a pledge of taxing power or tax revenues, attributes of a general obligation bond. The security for the Township Bonds is the rate covenant. Hence, the opinion of bond counsel pursuant to Section 205(3) of the Debt Act is correct: "[T]he bonds or notes have no claim upon the taxing power or tax revenues of the local government unit issuing the bonds or notes . . ." 53 P.S. §6780-55(3) (Suppl. 1985). Moreover, because the Township Bonds are "revenue bonds," Section 205 was the correct means of excluding same from nonelectoral debt.

Likewise, the Limited Guaranty is a separate obligation, authorized by a separate Township legislative enactment—the Guaranty Ordinance. The status of the Limited Guaranty is covered by Section 206, which authorizes such a contingent claim upon tax revenues to be excluded from nonelectoral

debt. This is a separate proceeding under the Debt Act, wholly separate from, although related to, the Township Bonds.

Simply put, in the case of pure "revenue bonds," the Debt Act contemplates only Section 205 proceedings. For a "guaranty" only, such as in the case of a guaranty of the debt of a municipal authority or of a separate local government unit, Section 206 proceedings along are appropriate. In the case of "guaranteed revenue bonds," in which the bonds are the guaranty are issued by the same municipality, both Section 205 and Section 206 proceedings must be submitted. This was precisely what was done in the instant Proceedings.

Otherwise, giving a literal interpretation to the Complainants' argument, guaranteed revenue bonds could never be self-liquidating, for neither Section 205 nor Section 206 specifically mentions "guaranteed revenue bonds." The practical result would be to emasculate those portions of the Debt Act authorizing the guaranty of one's own revenue issue, if insufficient borrowing capacity was available. Small municipalities either would be unable to undertake utility projects themselves, or they would be prohibited from providing additional security in the form of a guaranty, saddling them with higher interest rates, if a pure revenue issue would be saleable at all. Neither result is reasonable nor consistent with hundreds of approvals previously issued by the Department.

Further, the Complainants have contended that the Township Bonds represent an impermissible "refunding" of the existing Authority bonds.

Although the Township Bonds may be appropriately regarded as "refunding" bonds for purposes of the Internal Revenue Code, they are not such for purposes of the Debt Act.

The purpose of the Township Bonds is to defease Authority debt and to acquire the project now owned by the Authority. The bond issue in question is an acquisition project and not a refunding one. Article XI of the Debt Act, entitled "Refunding of Debt" is clearly inapplicable to the present proceedings.

Fifth, Complainants have alleged that fraud and/or misrepresentation occurred in connection with the passage of the Ordinance authorizing the Township Bonds. Suffice it to say that the evidence of fraud and misrepresentation presented in this matter fell far short of establishing the "clear, precise and indubitable" facts necessary to sustain a finding of fraud under Pennsylvania law. Rather, the evidence seems to indicate at most a misunderstanding as to the implications of the Ordinance underlying the Township Bonds on the part of some Township residents. There is no evidence in this regard that would warrant the Department's withholding its approval.

Sixth, it has been alleged that the Ordinance of the Township authorizing the Township Bonds constitutes an illegal and unconstitutional tax. This assertion is not supported by the record.

Seventh, the Authority has raised two (2) issues with respect to the involvement of Stephen Kelly, former Chairman of the Bensalem Township Commissioners, in this matter.

The issue of Mr. Kelly's role in the decision-making process was not raised in a timely fashion. It was raised in an Amended Complaint, as a new issue, considerably after the fifteen (15) day period for filing objections to a proceeding that is authorized by Section 901(a) of the Debt Act.

In addition, a request was made to delay closing of the record until some further efforts could be made to compel Mr. Kelly to testify (Mr. Kelly is now apparently residing in Florida). The processes of the Department in reviewing the Complaints filed in this matter occurred over a period of many months. There was ample opportunity during that period for Complainants to elicit testimony from Mr. Kelly for production into evidence. Further delay was simply not justified.

Finally, the Department has been requested to reopen the record in view of the results of the recent election in Bensalem Township. Three (3) newly-elected commissioners have submitted statements to the Department indicating their respective opposition to the takeover of the Township Authority by the Township. However, the instant proceedings should be considered on their own merits. There is no indication that the present Board of Commissioners intends to change its position with regard to this matter. Therefore, the Department has the obligation to give consideration to the two (2) sets of Proceedings that are now before the Department without speculation as to what newly-elected local officials may do once they assume the responsibilities of their respective offices. Complainants' Petition on this point must be denied.

Date: December 3, 1985

MICHAEL A. DONADEE, ESQUIRE
Hearing Officer
Chief Counsel
Department of Community Affairs