

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE:

SUSQUEHANNA COUNTY
\$2,500,000.00 Obligation
Guaranteed Hospital Revenue
Bonds, Series of 1995
*****:
R. LEE SMITH, et. al.,
Complainants

vs.

LOCAL GOVERNMENT UNIT
DEBT ACT - NOS. 73 & 75

SUSQUEHANNA COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY and COUNTY
OF SUSQUEHANNA,
Respondents

ORDER

AND NOW, this 29th day of April, 1996, in
consideration of the pleadings, and the Reports of the Presiding
Officer filed February 15, 1996, and this date, the Petitions of
the Complainants in the above entitled matter are DENIED.

BY THE DEPARTMENT

David Black
Acting Secretary

Date Mailed: APR 30,1996

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REPORT OF THE PRESIDING OFFICER
JOEL WEISBERG, ESQUIRE
Presiding Officer
Department of Community Affairs
Room 334 Forum Building
Harrisburg, PA 17120 ,
Telephone: (717) 783- 8027

INTRODUCTION

The County of Susquehanna filed an Application for Approval of a \$2,500,000 guaranteed hospital revenue bond issue. Within the period provided by law, two complaints were filed asserting the invalidity of those proceedings. The first Complaint filed on behalf of petitioner, R. Lee Smith, was received on December 14, 1995, and was docketed as LGUDA-73. A second complaint was received on December 22, 1995, and was filed on behalf of the same R. Lee Smith, and a number of other individuals. The second complaint was docketed as LGUDA-75. Both complaints raised substantially the same issues. The County filed Motions to Dismiss both complaints, and, in addition, requested that the matters be consolidated. The Motion to Consolidate was granted.

Oral argument on the Motions to Dismiss was held on February 13, 1996. In an Order dated February 15, 1996, the Motions to Dismiss were granted as to all matters raised in the complaints, except as to the question of the legality of the publication of the notice of the meeting at which the bond guarantee ordinance was passed. In addition, the Order of February 15, dismissed the complaints as against the Susquehanna County Industrial Development Authority, since this Department only has authority to decide issues involving the party filing with the Department. An explanation of the actions taken in the Order is set forth in a Report attached to said Order.

A Hearing on the remaining issue was held at 2:00 p.m., on March 12, 1996, in the Susquehanna County Courthouse. All parties were represented by counsel.

DISCUSSION

The Complaints were properly and timely filed under the provisions of section 901 of the Local Government Unit Debt Act (hereinafter "Act"} , Act of July 12,1972, P.L. 781, as amended, 53 P.S. Sec. 6780-401. All matters, except for the question of the legality of the publication of the notice of the meeting of the commissioners passed an ordinance agreeing to guarantee the bond issue in question, were dismissed in the earlier Order in this matter.

At the time of the hearing, counsel for complainants filed a Motion for Summary Judgment arguing that no genuine issues of fact remain to be decided. An earlier report discusses the denial of the Motion to Dismiss filed on behalf of the County with reference to the issue of the newspaper publication. The grant of complainants present Motion also requires that no genuine issue of fact remain. Fact issues did remain before the hearing and the Motion for Summary Judgment should be denied.

At the close of the Complainants' case, counsel for the County made an oral motion demurring to the case presented. The motion was taken under advisement at that time. As a Motion that would terminate the case it can only be decided by the Secretary of the Department. Unfortunately, with the hearing already completed, that question is now moot.

Section 103 of the Act states:

Notwithstanding any other law to the contrary, an ordinance required to be adopted by this act shall be advertised not less than three nor more than thirty days prior to enactment. The advertisement shall appear once in a newspaper of general circulation, published or circulating in the area of the local government unit. ...

It is acknowledged that the County published notice of the meeting in more than one newspaper. The County agrees, however, that no other publication took place "not less than three" days prior to the meeting.

The parties agree that the only publication that met the requirements of the three and thirty day time frame, was in the Binghamton Press and Sun Bulletin. A newspaper that is published within the State of New York.

Section 103 specifically only requires that the newspaper "circulate" in the area of the local government unit. There is no requirement that it also be published in the area. Therefore, the only issue to be decided is whether the Binghamton Press and Sun Bulletin is a newspaper "in general circulation" in Susquehanna County.

The definitions set forth in the Newspaper Advertising Act, 45 Pa.C.S. §101, answers a portion of that question. It defines a "newspaper of general circulation: as one which is: issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers without regard to business, trade, profession or class. Although, Section 103, specifically states that its requirements apply, "notwithstanding any other law to the contrary" clearly, that section of the Newspaper Advertising Act that defines a newspaper of general circulation is not contrary to the

requirements of Section 103, and serves only to set forth a reasoned definition of the words "general circulation". It is clear that the Press and Sun Bulletin meets all of the requirement for a newspaper of general circulation and no testimony to the contrary was presented at the hearing.

The ultimate question, therefore, is whether the newspaper is not only one of general circulation, but if it is in general circulation "in the area of the local government unit." Complainants' first witness, Mr. Robert Chamberlain, the county jury commissioner testified as to numerous newsstands in the County that did not carry the Press and Sun Bulletin. He also indicated that newspapers published in the City of Scranton, approximately 45 miles from the County Seat, could be obtained, but not those from, Binghamton, only approximately 25 miles away. On cross examination Mr. Chamberlain stated his belief that the newspaper was available in "probably maybe 60 percent of the county" (Notes of Testimony, p. 25), and later indicated "maybe even 65." (Notes of Testimony, p. 26. On direct examination the Complainant, Raymond Lee Smith, a County Commissioner, testified that in his opinion the 60 to 65 percent figure was probably a little high, and should be about 50 percent. (Notes of Testimony, p. 47).

Bruce Klink, the controller for the Press and Sun Bulletin, a witness for the Respondent, agreed that the newspaper was not available in all parts of the county. (Notes of Testimony, p. 103) Mr. Klink further testified that the paper had a County circulation of over 3,000 week day newspapers. (Notes of Testimony, p. 83) In addition, he indicated that each newspaper on an average was read by two and one half individuals. (Notes of Testimony, p. 96) Jury Commissioner, Robert Chamberlain, testified to a County occupation listing over 27,000 individuals. (Notes of Testimony, p. 13)

Our State Supreme Court discussed the question of general circulation in a 1939 opinion in the case of Matter v. Swissvale Borough, 335 Pa. 345, 8 A.2d 167 (1939). The case included testimony that " they had inquired at certain newsstands seeking the purchase of the 'Pitcairn Express' and were unable to purchase the same." 335 Pa. at 350. The record also indicated that the newspaper was not published in the borough, but that it was sold therein through mail subscriptions and otherwise. The high court held that notwithstanding the lack of publication within the area of the government unit, and unavailability at some locations, the newspaper was clearly one of general circulation within the area. It was found to be sufficient that the newspaper was sold through mail subscriptions and a distribution agent.

As was true in the Matter case, there is little doubt that the newspaper here in question, while not read by every member of the community, or available at each newsstand, is in general circulation within the County of Susquehanna. Although it would have better if the County had been successful in its attempts to secure publication in other papers published in the County, this failure does not cause the advertising of the meeting to be illegal under the Local Government Unit Debt Act.

Testimony by complainants own witness shows availability to sixty to sixty-five percent of the population. Circulation records at the newspaper show a circulation of over \$3,000 daily papers in the County, with readers in most areas of the County proposed resolution. Newspapers in a large rural

county, such as Susquehanna County, are rarely read by, or even available to, the entire population of the County. Although not published within the County, the Binghamton Sun Bulletin is clearly generally distributed and available in the County.

CONCLUSION

The Complainants have failed to show evidence that the publication of the notice of the meeting at which the bond issue was approved fails to meet the requirements of Section 103 of the Local Government Unit Debt Act. The complaints should be dismissed and the bond issue approved.

Joel Weisberg, Esquire
Presiding Officer

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DEBT ACT - NO.73 & 75

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DEVELOPMENT AUTHORITY and COUNTY
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Respondents

ORDER

AND NOW, this 25th day of January, 1996, Local Government Unit Debt Act Complaints Number 73 and 75 are hereby consolidated. Argument on the Motion to Dismiss filed by the Respondents as to Complaint Number 75 in the above entitled matter is scheduled for Wednesday, January 31, 1996, at 2:00 p.m. in Room 321 Forum Building, Harrisburg, Pennsylvania, to argued with the Motion to Dismiss filed as to Complaint Number 73.

Either party may file briefs before or at the time of Oral Argument. No briefs will be received after the time set for Argument.

BY THE DEPARTMENT:

Joel Weisberg, Esquire
Presiding Officer