

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

BERNARD V. O'HARE, III, :  
JOSEPH S. DE RAYMOND, :  
BERNARD J. BERG, :  
NANCY R. DIENEL, :  
EUGENE K. NAGY, and :  
SARAH E. SNIDER, :  
:   
Complainants, :  
:   
v. : Number: LGUDA-89  
:   
COUNTY OF NORTHAMPTON, :  
:   
Respondent. :

OPINION AND ORDER

Statutory Background

The Local Government Unit Debt Act, Part VII of Act 177 of 1996, P.L. 1158, as amended, 53 Pa.C.S.A. Sections 8001 - 8271 (the "Debt Act" or "LGUDA"), governs the issuance of debt by local government units. The Debt Act establishes certain procedures for the issuance or incurrence of various types of debt obligations, including guaranties by local government units.

See 53 Pa.C.S.A. Sections 8002(c), 8005(d), 8006, 8022 (1997 & Supp. 2000). The Debt Act is administered by the Department of Community and Economic Development ("DCED" or the "Department").

The Department has

exclusive jurisdiction to hear and determine all procedural and substantive matters arising from the

proceedings of a local government unit . . . including the regularity of the proceedings, the validity of the . . . obligations of the local government unit and the legality of the purpose for which the obligations are to be issued.

53 Pa.C.S.A. Section 8211(d); see also Bundy v. Belin, 501 Pa. 254, 461 A.2d 197 (1983). As such, the Department reviews the debt proceedings of local government units to ensure that the proceedings do not violate the Pennsylvania Constitution or the Debt Act. 53 Pa.C.S.A. Sections 8111, 8204. Taxpayers of a local government unit that has submitted debt proceedings to the Department for review may contest the validity of the proceedings by filing a complaint with the Department within fifteen days after the proceedings have been filed. 53 Pa.C.S.A. Section 8211(b).

### **Background**

The matter before the Department is a taxpayer challenge to debt proceedings filed by Northampton County (the "County") on July 23, 2001. The taxpayer complaint (the "Complaint") was filed on August 7, 2001. On August 27, 2001, the County filed a Motion to Dismiss the Complaint (the "Motion to Dismiss"). This Opinion and Order resolve the Motion to Dismiss. The disposition of this matter is made on the pleadings, affidavit and documents submitted in this adjudication, including the application for approval of lease rental debt (the "2001 Debt Proceedings") filed

by the County; however, the instant dispute is but the current chapter in an ongoing saga, the origins of which were first manifest in connection with a similar bond issue proposed in 2000, to be issued by the Northampton County General Purpose Authority (the "Authority") and guaranteed by the County. Like the instant proceedings, the proceedings for the 2000 bond issue (the "2000 Debt Proceedings") were the subject of a taxpayer challenge. The players in both actions are fundamentally the same.<sup>1</sup> To place the instant matter in context, it is appropriate to include a brief description of the 2000 Debt Proceedings and related adjudications.

#### The 2000 Debt Proceedings

On July 10, 2000, Northampton County, filed the 2000 Debt Proceedings with the Department relevant to the County's proposed guaranty of up to \$125,000,000 of bonds to be issued by the Authority. On July 24, 2000, the Department received a complaint filed by five Northampton County citizens, which contained eight counts and was docketed at LGUDA-85. The County filed an answer on August 7, 2000. On September 8, 2000, the Department dismissed two of the eight counts for lack of jurisdiction, dismissed two additional counts as a matter of law, and retained

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<sup>1</sup>Three of the Complainants in this matter were Complainants in the challenge to the 2000 Debt Proceedings.

four counts for review. See O'Hare v. County of Northampton, LGUDA-85, Opinion and Order (DCED September 8, 2000). The Department held two days of evidentiary hearings on the remaining counts and also accepted deposition testimony into the record. On March 20, 2001, the undersigned Secretary of Community and Economic Development Samuel A. McCullough disapproved the County's debt proceeding based on Northampton County Council's failure to obtain realistic cost estimates as required by section 8006 of the Debt Act.<sup>2</sup> See O'Hare v. County of Northampton, LGUDA-85, Order and Opinion (DCED March 22, 2001), rev'd on other

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<sup>2</sup>Northampton County is organized pursuant to a Home Rule Charter, 348 Pa. Code " 1.1-101 - 1.13-1311, adopted April 27, 1976, effective January 2, 1978. County Council "shall be the governing body of the County which shall exercise all the legislative power of the County . . . ." 348 Pa. Code Section 1.2-201. Council's powers include the ability to levy taxes, which fulfills the definition of the "governing unit" under the Debt Act. 348 Pa. Code Sections 1.2-202(5); 53 Pa.C.S.A. Section 8002.

grounds, 763 C.D. 2001 (Pa. Cmwlth. Oct. 30, 2001) [hereinafter "DCED 2000 Bond Opinion and Order"].<sup>3</sup>

### The 2001 Debt Proceedings

Following DCED's rejection of the 2000 Debt Proceedings, the Authority continued to pursue financing for many of the projects.

Northampton County Council ("Council") held a series of public hearings to gather information and public opinion about what would become a proposal for a revised bond issue similar in scope to the 2000 issue. On July 19, 2001, Council passed an ordinance (the "Ordinance") to incur lease rental debt of an amount not to exceed \$125,000,000 as a guaranty of the Authority's bond issue.

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<sup>3</sup>Commonwealth Court reversed the Department's order after it concluded that the Department erred by holding an evidentiary hearing in the absence of well pleaded allegations of fraud. County of Northampton v. Dep't of Cmty. and Econ. Dev., 763 C.D. 2001 at 4 (Pa. Cmwlth. Oct. 30, 2001). The error found by the court was procedural, not substantive. Based on the pleadings and documents submitted to the Department before the hearing, the County failed to successfully rebut the allegations in the complaint that realistic cost estimates had not been obtained. The hearing did not change the result, it merely gave the County an additional opportunity to show that Council had complied with the Debt Act. The Commonwealth Court determined that this was procedural error. The substantive result, however, would have been the same had there been no hearing.

The Ordinance included the following description of projects to be funded by the bond issue:

County General Improvement Projects

County Court system: construction, equipping, furnishing and related improvements of a new courthouse ("Courthouse") \$ 43,000,000

County Prison: construction, equipping, furnishing and related improvements of a new addition to the County Prison ("Prison") \$ 22,780,000

Gracedale County Home for the Aged: renovation and rehabilitation ("Gracedale") \$ 3,083,000

Open space land acquisition and farmland preservation, including but not limited to acquisition of parcels of land in Plainfield; Lake Minsi, Bear Swamp, Weaversville; adjacent to Louise Moore Park; and recreational improvements to, including but not limited to Louise Moore Park, Wy-Hit-Tuk Park, Weaversville Park, and parks maintenance facility (includes approximately \$3,500,000 in grants to Northampton County Municipalities) ("Open Space") \$ 12,986,460

Fire School: construction, equipping, furnishing and related improvements of a fire tower and restroom facilities ("Fire School") \$ 314,000

Total \$ 82,163,460

Authority Economic Development Projects

Bethlehem City: Parking structure, infrastructure and related improvements ("Bethlehem City") \$ 5,000,000

Bethlehem Commerce Center: infrastructure and related improvements ("Commerce Center") \$ 13,150,000

City of Easton: streetscaping and site improvements on Third Street	\$ 200,000
State Theater [sic] for the Arts, Inc., Easton: structural renovations and upgrading of restroom facilities ("State Theatre")	\$ 700,000
Lehigh Valley Industrial Park facility: infrastructure and related improvements ("LVIP")	\$ 1,000,000
Northampton county municipalities: grants for infrastructure and related improvements ("Municipal Grants")	<u>\$ 8,966,540</u>
Total	<u>\$ 29,016,540</u>

Ordinance, Exhibit AA@ (short forms added). The total for all proposed projects was \$111,180,000.<sup>4</sup>

On July 23, 2001, the County filed proceedings with the Department seeking approval of its new bond issue (the "Proceedings"), in a principal amount not to exceed \$111,175,000.

Proceedings, Paragraph 2. On August 7, 2001, DCED received a complaint (the "Complaint", filed by six Northampton County residents (the "Complainants"), including three who had filed the challenge to the 2000 Debt Proceedings. Complainants also filed a motion asking DCED to transfer its jurisdiction to the Court of Common Pleas (the "Motion to Transfer"). The County filed an

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<sup>4</sup>Many of the projects included in the 2001 Ordinance were the same as those included in the 2000 bond issue; however, the estimated costs for most projects had changed. See DCED 2000 Bond Opinion and Order at 13-14. The total proposed costs in the 2000 bond issue were \$110,000,000. Id.

answer and a memorandum opposing the Motion to Transfer on August 20, 2001, as well as its Motion to Dismiss on August 27, 2001. Attached to the Motion to Dismiss were (i) an affidavit by James Hickey, Director of Administration, and Wayne Grube, President of Northampton County Council, supporting the Respondent's position (the "Hickey-Grube Affidavit"); (ii) a copy of what appears to be the title page of a Facility Master Plan, dated June 4, 1997, on cover stock of Alvin H. Butz, Inc., Construction Manager; (iii) an unidentified preliminary budget estimate page headed "Alternate II: Construct a New Courthouse"; (iv) a letter dated April 3, 2000 from Ricci Associates, Architects and Planners, to James Onembo, Northampton County Court Administrator, discussing costs and plans for a new court facility; (v) a letter dated April 7, 2000 from The Sheward Partnership, LLP, Architecture, Planning and Urban Design, to James Onembo, discussing costs and plans for a new court facility; and (vi) a document titled "Suggestions for a New Courthouse," dated April 7, 2000, by MGA Partners, Architects, including floor plans and cost estimates for a new court facility.

Complainants' Motion to Transfer was denied by the Presiding Officer, DCED Chief Counsel George Michak, on November 2, 2001, pursuant to LGUDA regulations. See O'Hare v. County of Northampton, LGUDA-89, Opinion and Order of Presiding Officer on Motion to Transfer Jurisdiction to the Court of Common Pleas

(DCED November 2, 2001); 12 Pa. Code Section 11.14(a)(7). The Department will, therefore, now rule on Respondent's Motion to Dismiss.

### **Scope and Standard of Review**

The General Assembly has conferred on the Department exclusive jurisdiction over the procedural and substantive matters arising from the proceedings of a local government unit under the LGUDA. 53 Pa.C.S.A. Section 8211(d). The Department's scope of review is limited to those issues within the stated grant of jurisdiction of the Act, i.e., to those issues "involving (1) the regularity of proceedings; (2) the validity of the bonds; and (3) the legality of the purpose for which such obligations are issued." McMaster v. Dep't of Cmty. Affairs, 610 A.2d 525, 528 (Pa. Cmwlth. 1992); see also Bundy, 501 Pa. at 260-61, 461 A.2d at 199-200; Allegheny Inst. Taxpayers Coalition v. Allegheny Reg'l Asset Dist., 556 Pa. 102, 112, 727 A.2d 113, 118 (1999).

When considering a motion to dismiss a complaint, the complaint

shall be dismissed if the pleadings, together with affidavits or documents, if any, and the proceedings of the local government unit which are the subject matter of the complaint . . . show that there is no genuine issue as to a material fact and that the moving party is entitled to dismissal of the complaint . . . as a matter of law.

12 Pa. Code Section 11.11(a)(3).

### **Discussion**

A local government unit, in this case Northampton County, "may borrow money on bonds or notes, including tax anticipation notes, only as provided in [the Debt Act]. [The Debt Act] provides an exclusive and uniform system on the subjects covered by [the Debt Act]." 53 Pa.C.S.A. Section 8001(d). The Debt Act's provisions include the guaranty by a local government unit of the debt of an authority. Sections 8002(c), 8005(d).

While the Debt Act is the exclusive avenue for local government unit debt, the Department has very limited jurisdiction for the review of challenges, including the regularity of the proceedings, the validity of the obligation of the County, and the legality of the purpose. 53 Pa.C.S.A. Section 8211(d). That limited review does not include passing judgment on the decisions made by the local government unit, but only on the procedure it used to make those decisions. "Administrative and judicial authorities will neither invade nor supplant the legislative competence of the local government unit, absent a showing of fraud or abuse." Borough of Brentwood v. Dep't of Cmty. Affairs, 657 A.2d 1025, 1028 (Pa. Cmwlth. 1995) (citing Bethel Park Citizens for Better Educ. Less Taxes (BELT) v. Dep't of Cmty. Affairs, 563 A.2d 969 (Pa. Cmwlth. 1989)). As

suggested in the DCED 2000 Bond Opinion and Order, the Department will not substitute its judgment for that of a local government unit that has properly discharged its duties under the Debt Act.

Complainants have neither pleaded nor shown fraud or abuse of the LGUDA process. The Department's review does not include a substantive review of the decisions of Council, but rather a procedural review of the following seven counts:

Count 1

Count 1 of the Complaint challenges the Ordinance as seeking funds beyond those required for the proposed projects.

Complaint, paragraphs 18 - 25. This challenge is without merit.

In the Proceedings, the County has asked for approval of "lease rental debt of the County, as defined in the Act . . . in a principal amount not to exceed \$111,175,000." Proceedings, paragraph 2. A local government unit can only issue debt for the amount that is approved by the Department pursuant to the Debt Act. See 53 Pa.C.S.A. Section 8201(a). Any debt issued without compliance with the procedures in the Debt Act is invalid. 53 Pa.C.S.A. **Section** 8208(a). While Council's Ordinance provided for a debt ceiling of \$125,000,000, the Proceedings requested approval for only \$111,175,000. On the Department's approval of the Proceedings, the County will only be permitted to guaranty \$111,175,000 of debt, which, in this case, is actually less than

the budgeted projects in the Ordinance. The so called "slush fund" purportedly feared by Complainants is a legal impossibility. This count fails to raise a cognizable claim under the Debt Act and is, therefore, dismissed.

#### Count 2

Count 2 returns to the issue that ultimately proved fatal to the 2000 Debt Proceedings, i.e., the requirement of the Debt Act that the governing body obtain realistic cost estimates before adopting its ordinance. Complaint, paragraphs 26-11 (citing 53 Pa.C.S.A. Section 8006); see DCED 2000 Bond Opinion and Order at 25-31. Complainants allege that Council has failed to obtain the required estimates, specifically for the Courthouse project, and that the 2001 Debt Proceedings are, thus, fatally deficient. Complainants' allegations, however, are not compelling. Respondent has provided the Department with a series of estimates related to the Courthouse, on the letterhead of architectural firms. Motion to Dismiss at [16] et seq. Respondent attests that each member of Council received these estimates before the Ordinance was introduced, and that they were made a part of the public record during Council's public hearings. Hickey-Grube Affidavit, paragraph 1. This is all that section 8006 of the Debt Act requires, and all that we have ever required to meet those provisions.

Complainants continue to question the quality of any estimates that Council may have obtained. Complaint, paragraphs 30-34. We have, on numerous occasions, stated that we will not - in fact, cannot - "substitute [our] judgement as to the sufficiency of realistic cost estimates for that of the responsible local government unit . . . ." DCED 2000 Bond Opinion and Order at 27. "The purpose of the Debt Act is to require disclosure of a project in order to ensure lawfulness and public notice, while respecting the discretion and latitude necessary for a governmental body to pursue a major construction project in a reasonable and business-like way." Brentwood, 657 A.2d at 1027 n.5. Whether the multiple estimates provided to Council meet a common usage meaning of the word "realistic," i.e., whether they will ultimately be shown to have accurately and precisely predicted the costs of the Courthouse, is beyond DCED's review. It is enough that Council obtained them "through actual bids, option agreements or professional estimates from registered architects, professional engineers or others qualified by experience." 53 Pa.C.S.A. Section 8006. This meets the "realistic" definition of the Debt Act.

In paragraph 35 of the Complaint, it appears that Complainants are attempting to suggest that fraud occurred in relation to the Courthouse estimates. It is well established that the pleading of fraud must be done with particularity, and

requires specific allegations. See Chatham Racquet Club v. Zimmerman, 561 A.2d 354, 356 (Pa. Cmwlth. 1989); Brentwood, 657 A.2d at 1027 n.4. Complainants' allegations do not meet the required standard. Moreover, the alleged falsity relates not to whether the cost estimates satisfy the Debt Act's requirement to be "realistic," but to the organic quality of the estimates themselves, which is a matter squarely within the province of County Council and beyond the jurisdictional reach of the Department.<sup>5</sup>

Based on Council's affirmative representations in the proceedings, the Hickey-Grube Affidavit and its attachments, there is no genuine issue as to whether Council obtained realistic cost estimates for the Courthouse. This count is without merit and is, therefore, dismissed.

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<sup>5</sup>Complainants and Respondent have suggested that the presiding officer, during his brief introduction to the County's meeting with technical staff for LGUDA, approved estimates for the Courthouse. During that meeting, the Presiding Officer made clear to the County representatives, including attorney Jeffrey Blumenfeld, that the DCED 2000 Bond Opinion and Order spoke for itself, and that, if a new bond issue came before the Department, the estimates would require new review. It should be noted that the project costs for the Courthouse were revised from the 2000 ordinance to the 2001 ordinance, reinforcing the need for a fresh review by DCED.

Count 3

Complainants allege in count 3 that section 3(e) of the Ordinance would permit the County to arbitrarily change the use of the bond proceeds at any time. Complaint, paragraphs 36-40. This count is, for all intents and purposes, a repeat of the challenge to the 2000 Debt Proceedings, which was dismissed. See DCED 2000 Bond Opinion and Order at 23-25. The challenge is as lacking in merit today as it was then. The challenged language provides a necessary option for a local government unit, should anticipated projects become unfeasible or impracticable. The language of 3(e) is express in requiring "an ordinance adopted by County Council amending this ordinance for such purpose." Ordinance Section 3(e). If changes are made to the use of proceeds, appropriate future ordinances will need to be enacted, which would necessarily include public notice and readings of the new ordinance pursuant to the County's Home Rule Charter. See 348 Pa. Code Sections 1.6-601 - 1.6-602. Whether Council will follow its own rules in future actions is beyond the scope of the Proceedings and, therefore, beyond the scope of the Department's review in this matter. This count is dismissed.

Counts 4 and 7

Counts 4 and 7 are duplicative and suggest that the Department should not review the Proceedings currently before it

while the DCED 2000 Bond Opinion and Order was the subject of an appeal before Commonwealth Court. Complaint, **paragraphs** 41-53, 84-87; see County of Northampton v. Dep't of Cmty. and Econ. Dev., No. 763 C.D. 2001 (Pa. Cmwlth. Oct. 30, 2001). This premise is fundamentally flawed. The Department's Opinion and Order of March 20, 2001 disapproving the 2000 Debt Proceedings was a final agency decision in accordance with Pennsylvania Rules of Appellate Procedure 341 and 1501. The 2000 Debt Proceedings are no longer pending before the Department, and DCED has no further jurisdiction over that matter, under either its adjudicative or its administrative functions.<sup>6</sup> Nothing in section 8110, section 8211, or any other section of the Debt Act remotely suggests that DCED is not free to review new debt proceedings submitted by local government units when it has disapproved previous proceedings. For the purposes of the Department's review of the 2001 Debt Proceedings, the 2000 Debt Proceedings are simply irrelevant.

Both Complainants and the County have misinterpreted DCED's role in the appeal. While the County named DCED as respondent in its Commonwealth Court petition, the Department is a

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<sup>6</sup>Commonwealth Court's October 30, 2001 decision to reverse the Department's decision did not return jurisdiction to the Department. See County of Northampton v. Dep't of Cmty. and Econ. Dev., No. 763 C.D. 2001 (Pa. Cmwlth. Oct. 30, 2001).

disinterested party to the appeal, pursuant to the Pennsylvania Rules of Appellate Procedure, and does not participate in the appeal, just as the State Civil Service Commission or the Environmental Hearing Board would not participate in appeals from their decisions. See Pa.R.A.P. 1513(b) and note.

Regardless, however, of the Department's position in the appeal of its adjudicative decision, the County provided for the contingency that both bond proceedings could be in an approved status at the same time. The Ordinance provides for the cancellation of any ordinance to the extent that it is inconsistent with the currently adopted Ordinance. Ordinance Section 10. Even though Commonwealth Court has reversed the Department's order relative to the 2000 Debt Proceedings, the original ordinance should be "repealed, rescinded, canceled and annulled" by Council's July 19, 2001 Ordinance, to the extent it is inconsistent with the 2001 Ordinance. Id. The Commonwealth Court appeal of the Department's 2000 Bond Opinion and Order raises no cognizable legal challenge and, thus, counts 4 and 7 are dismissed.

#### Count 5

Count 5 is a further attempt to attack realistic cost estimates for their quality, not their existence, and is without merit or foundation. Complaint, paragraphs 54-58. Complainants

have relied on a selective reading of section 1 of the Ordinance, while ignoring adjacent text that belies their argument. The complete relevant subsections of section 1 read as follows:

(d) County Council has reviewed and analyzed the Preliminary Cost Estimates and found them to be realistic, and, accordingly, hereby accepts the Preliminary Cost Estimates.

(e) County Council hereby finds and determines, in part on the basis of information contained in the Preliminary Cost Estimates, that the components of the Project described in Exhibit "A" as [Open Space] and [Municipal Grants] are based upon appraisals where appropriate and the total costs thereof are greater than the amounts to be financed with the proceeds of the Series 2001 Authority Bonds; County Council further determines that prior to the disbursement of any proceeds of the Series 2001 Authority Bonds for acquisition of real property, the County Office of Economic Development must have received an appraisal of such property.

Ordinance, Sections 3(d) and (e) (emphasis in original). The plain language and import of the 2001 Ordinance could not be clearer. Council has obtained preliminary cost estimates and appraisals, on which it has relied to fashion this Ordinance. That Council has expressed its desire to reinforce estimates already obtained with additional appraisals before spending County funds is to be lauded as an appropriate exercise of the public trust, not criticized. This allegation is without foundation and is, therefore, dismissed.

Count 6

Count 6 of the Complaint is, yet again, a reworked challenge to the Ordinance as being unconstitutional, almost identical to the challenge made against the 2000 Debt Proceedings. Complaint, paragraphs 59-83; see DCED 2000 Bond Opinion and Order at 18-20.

This count is based on the contention that the intended economic development projects will benefit private, rather than public, interests. As with Complainants' challenge to Council's cost estimates, this count challenges Council's discretion and is without merit.

There is no doubt that, when public bodies build infrastructure, it benefits all in the community, including private businesses. There is also no doubt that, when private business thrives in a community, the citizens benefit through the attraction of private capital, the creation of jobs, a broader tax base, improved services and a growing economy. This principle is at the very heart of public-assisted economic development. See, e.g., 73 P.S. **Section** 302(1) (Findings and declaration of policy of the Pennsylvania Industrial Development Authority Act. "[B]y increasing the number of community industrial building projects presenting attractive opportunities for private investment in [underdeveloped] areas, a larger portion of the private capital available in Pennsylvania for investment can be put to use in the general economic development of the Commonwealth.").

Complainants challenge these projects as being in violation of the Pennsylvania Constitution, Article IX, Section 9, and rely on Giordano v. Ridge, 737 A.2d 350 (Pa. Cmwlth. 1999). Their reliance on Giordano is, however, misplaced. Giordano arose from a challenge to a specific statute that provided funding of grants to a municipality or authority in order to build or renovate a qualifying sports facility. Giordano, 737 A2.d at 351 (citing The Capital Facilities Debt Enabling Act, 72 P.S. Sections 3919.101-3919.5102). This is factually inapplicable to the current situation. Moreover, and more important, Giordano involved a challenge not to Article IX of the Constitution, but to Article VIII, which prohibits the Commonwealth from becoming an owner in a company, corporation or association. Id. at 352.

More relevant to this discussion is the line of well-established parking authority cases, cited by the Department in its 2000 Bond Opinion and Order. See DCED 2000 Bond Opinion and Order at 18-20. The accepted proposition that public money may be spent for projects that may, in the process, benefit private enterprise is nowhere more obvious than in these cases. See Ward v. Commw. of Pennsylvania, Dep't of Cmty. Affairs, 685 A.2d 1061 (Pa. Cmwlth. 1996) ("even if a private company would gain by the construction of the parking garage, that fact alone would not serve to change the character of the garage as having a basic public purpose," which could be funded under LGUDA); see also

Campbell v. The Bethlehem Parking Auth., 342 A.2d 114 (Pa. Cmwlth. 1975); Seligsohn v. Philadelphia Parking Auth., 412 Pa. 372, 194 A.2d 606 (1963).

The Department shall dismiss a complaint if "the pleadings, together with affidavits or documents, if any, and the proceedings of the local government unit . . . show that there is no genuine issue as to a material fact and that the moving party is entitled to dismissal . . . as a matter of law." 12 Pa. Code Section 11.11(a)(3). While Respondent has suggested that the testimony from the record of the challenge to the 2000 Debt Proceedings be incorporated in its motion, there is no need to go that far to dismiss this count.

The plain language of the Proceedings indicates that the money for these projects will be spent for "infrastructure and related improvements." Ordinance at A-2. Respondent has averred that this section means exactly what it says, that "bond proceeds will be applied to publicly owned projects, acquisitions and infrastructure." Hickey-Grube Affidavit, paragraph 3. There is, in the pleadings, affidavit and documents before the Department, nothing that raises a genuine issue of material fact; therefore, this count will be dismissed.

**Conclusion**

Complainants have been vocal in their opposition to the substance of the Authority's bond issue, and have fought the Authority and the County each step of the way. Their battle here, however, is misplaced. Whatever differences Complainants may have with the County Administration or Council, their appropriate battlefield is not the administrative process of the Debt Act. Having found each and all counts of the Complaint to fail to raise genuine issues of material fact, and holding that Respondent is entitled to dismissal as a matter of law, the Department hereby grants Responden's Motion to Dismiss and dismisses the Complaint.

Dated this 2nd day of November, 2001.

\_\_\_\_\_/s/\_\_\_\_\_  
Samuel A. McCullough  
Secretary of  
Community and Economic Development

COMMONWEALTH OF PENNSYLVANIA  
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ORDER

AND NOW, this 2nd day of November, 2001, on review of the pleadings, affidavit and documents presented, as well as applicable law, IT IS ORDERED that the Commonwealth of Pennsylvania, Department of Community and Economic Development, pursuant to the Local Government Unit Debt Act, 53 Pa.C.S.A. Sections 8001 - 8271, grants Respondent's Motion to Dismiss and dismisses the Complaint in this matter.

\_\_\_\_\_/s/\_\_\_\_\_  
Samuel A. McCullough  
Secretary of Community and Economic  
Development

Order Issued: November 2, 2001