

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

ROBERT WILTSHIRE, ANTHONY GALLIS,	:	
WILLIAM BOTT, and PETER NOVAJOSKY,	:	
	:	
Complainants,	:	Number: LGUDA-98
	:	
v.	:	
	:	
DICKSON CITY BOROUGH, FRED	:	
JOSEPH, PAUL KWEIC, BARBARA MECCA,	:	
REGINALD WROBEL,	:	
	:	
Respondents.	:	

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. Sections §8001-8271 (the "Debt Act" or "LGUDA"), governs the issuance of debt by local governments. This Debt Act is administered by the Department of Community and Economic Development (the "Department"). The Debt Act establishes procedures for the issuance of various kinds of debt, including "lease rental debt", which pledges the full faith, credit and taxing power of the local government unit in guaranty of an Authority's borrowing. §8002(a).

Taxpayers may contest the validity of the local government unit's actions related to the debt issue by filing a complaint or petition with the Department. §8211(b). The Department has exclusive, but limited, authority to review actions by local government units including:

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. §8211(d); see also Bundy v. Belin, 501 Pa. 254, 461 A.2d 197 (1983).

When a complaint or petition is filed under the Debt Act, it is assigned to a presiding officer who has been appointed by the Secretary to fulfill that role. 12 Pa. Code §11.14. The presiding officer administers the case and makes a report containing proposed findings of fact and conclusions of law to the Department's Secretary for the ultimate disposition of the matter. Id.

### **Background**

On August 22, 2003, Complainants filed a Petition for Declaratory Judgment and Complaint which has been docketed at LGUDA-98. The Petition incorporates a Complaint which alleges that the Borough of Dickson City, Respondent, has received a proposal for "another \$7.9 Million bond issue" for which it does not intend to seek an approval from the Department of Community and Economic Development. The Petition also incorporates a Complaint filed before the Court of Common Pleas of Lackawanna County in which Complainants have challenged the validity of the Borough's issuance of lease rental debt in the amount of \$7,900,000 authorized by Borough ordinance on March 18, 2003. The Complainants seek a determination by the Department of Community and Economic Development that various actions of the Respondents taken in the month of August 2003 relating to the \$7,900,000 debt obligation be declared null and void.

On August 25, 2003, Respondents filed an Answer with New Matter to the Petition and Complaint and a Motion to Dismiss. Respondents allege that there is only one debt issue, and that it has already been approved by the Department.

### **Findings of Fact and Conclusions of Law**

The Department makes the following findings of fact and conclusions of law based upon the respective pleadings and

exhibits submitted to the Department as well as from the Department's official debt records:

1. The subject matter of the Complaint and Petition is the \$7,900,000 lease rental debt issue which was authorized by the Borough by ordinance enacted on March 18, 2003.
2. The lease rental debt authorized by the Borough by ordinance enacted on March 18, 2003 was the subject of lease rental debt and exclusion proceedings filed with the Department on March 27, 2003.
3. A timely complaint was filed by Complainants to the March 27, 2003 debt proceedings. Said Complaint was docketed to LGUDA-93. By Department Order and Opinion dated May 15, 2003 the Complaint was dismissed.
4. The March 27, 2003 lease rental debt and exclusion proceedings of the Borough of Dickson City, in the amount of \$7,900,000, was approved by the Department on May 22, 2003.
5. Pursuant to Section 8211(b) of the Local Government Unit Debt Act, a complaint or petition challenging the validity of debt proceedings must be filed within fifteen days from the date of receipt by the Department of debt proceedings. There are currently no debt proceedings of the Borough of Dickson City pending before the Department
6. Pursuant to Section 8209 of the Local Government Unit Debt Act, once a Departmental approval is issued, the validity of the proceedings, the right of the local government unit to lawfully issue its lease rental debt, and enforceability of the instruments cannot be inquired into, directly or collaterally.
7. The Department of Community and Economic Development lacks jurisdiction to hear or determine any and all matters raised in the Complaint and Petition of the Complainants.

## **Conclusion**

Complainants, having unsuccessfully challenged the Respondent's debt proceedings by Complaint docketed at LGUDA-93, now argue, mistakenly, that the Department again has jurisdiction and authority to address this matter. Once the Department approved the debt proceedings on May 22, 2003, the Department relinquished its jurisdiction. Complainants argue that the debt issue (scheduled to close August 26, 2003), is, in effect, a new debt issue because of alleged changes to the underlying documents included in the debt proceedings submitted to the Department on March 27, 2003. Complainants have failed to identify specific material changes to the debt proceedings such that they would render the debt proceeding invalid, or constitute a new debt proceeding. Should the Respondents at some future date issue new debt proceedings, Complainants will have an opportunity to challenge at that time. Therefore, the Complaint docketed at LGUDA-98 relates to the same debt proceedings filed with the Department on March 27, 2003, and, accordingly, is untimely filed.

Dated this 25<sup>th</sup> day of August 2003.

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Dennis Yablonsky  
Secretary of Community and  
Economic Development

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ORDER

AND NOW, this 25th day of August, 2003, in consideration of the respective dates of the Complaint and the Answer and Motion to Dismiss, and pursuant to Section 8211(b) of the Local Government Unit Debt Act and 12 Pa. Code §11.7(c)(2), the Complaint in this matter was not timely filed, and pursuant to Section 8209 of the Local Government Unit Debt Act the approval by the Department of the lease rental debt issue of May 22, 2003 is final and conclusive, and the above-captioned matter is **DISMISSED**.

BY THE DEPARTMENT:

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Dennis Yablonsky  
Secretary

Order Entered: August 25, 2003