

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

ARLENE SCHINOSI, :
 :
 Complainant, :
 :
 v. : Number: LGUDA-106
 :
 SOUTH ALLEGHENY SCHOOL DISTRICT :
 :
 Respondent. :

ORDER

AND NOW, this 11th day of May, 2005, in consideration of the Complainant's withdrawal of the challenge contained in the Complainant, the new challenge in the Amended Complaint received by the Department on May 9, 2005, and the Motion to Dismiss filed by the School District, it is hereby determined that said Complaint is Dismissed and that the Amended Complaint is insufficient to meet the requirements of a complaint or petition pursuant to Title 12 of the Pa. Code §11.7. Said Motion to Dismiss is **GRANTED**. The Complaint and Amended Complaint are hereby **DISMISSED with prejudice**.

BY THE DEPARTMENT:

Dennis Yablonsky
Secretary

Order Entered: May __, 2005

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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. §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 of various kinds of debt, including general obligation nonelectoral debt. Nonelectoral debt is debt that the governing body is proposing to issue without submitting the question to the electorate. The Debt Act is administered by the Department of Community and Economic Development (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. §8211(d); see also Bundy v. Belin, 501 Pa. 254, 461 A.2d 197 (1983). The Department reviews the local government unit's debt proceedings to ensure that they do not violate the Pennsylvania Constitution or the Debt Act. 53 Pa. C.S.A. §§8211, 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, or five days following the last submission of any corrected document or certification to the Department, whichever occurs later. 53 Pa. C.S.A. §8211(b).

Title 12 of the Pennsylvania Code sets forth the rules and procedure that govern all adjudicatory proceedings related to complaints and petitions filed with the Department. 12 Pa. Code, Part I, §11.1.-11.15. Complaints to the Department shall contain, among other things, a statement of the facts and legal grounds which form the basis for the conclusion that there has been a violation of the Debt Act, and include an identification of the relief sought and the legal basis for the relief. 12 Pa. Code §11.7(1)(iii). Answers by the local government unit to complaints and petitions shall admit or deny specifically and in detail each material allegation of the pleading answered, and state clearly and concisely the facts and provisions relied upon. 12 Pa. Code §11.9(a)(3). The parties may within seven calendar days of the date of service file a responsive amendment, modification or supplement to a complaint, petition or answer or other pleadings. Id. at §11.9(4).

Upon the filing of a motion to dismiss by a local government unit, a 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 or petition, show that there is no genuine issue as to material fact and the moving party is entitled to a dismissal of the complaint or petition as a matter of law. 12 Pa Code 11.11 (a) & (b) (3).

Procedural History

On April 15, 2005, South Allegheny School District (the "School District") by and through its attorneys filed debt proceedings with the Department seeking approval of its proposed general obligation bond issue in the amount of \$7,500,000 (the "Debt Proceedings"). The stated purpose of the debt is the advance refunding of the School District's \$7,020,000 of outstanding debt from its General Obligation Bonds, Series 2001 (the "Prior Bonds"). On April 27, 2005, Arlene Schinosi (the "Complainant") filed a timely complaint challenging that the School District's advertisement notifying district residents of the date and time of the public meeting to address the debt ordinance (the "First Advertisement") was not properly advertised in advance of the April 7, 2005 public meeting (the "Public Meeting")¹. On May 3, 2005, the School District filed an Answer and Motion to Dismiss the Complaint denying all allegations of the Complaint, challenging that the Complaint fails to state a legal basis for relief pursuant to 12

¹The debt ordinance to incur the \$7,500,000 General Obligation Bond debt was passed at the April 7, 2005, meeting.

Pa. Code §11.7(a)(3), and averring that because there is no genuine issue as to the regularity of the proceedings, the validity of the nonelectoral indebtedness or the legality of purpose and that the School District is entitled to a dismissal of the Complaint as a matter of law. By letter dated May 9, 2005, the Complainant submitted an amendment to the Complaint (hereinafter, the "Amended Complaint") in which she conceded that the First Advertisement was published on April 4, 2005, within the time constraints set forth in the Debt Act. §§8003(a). Complainant, however, set forth a new challenge in the Amended Complaint that the First Advertisement was defective for failing to provide the required summary of the ordinance as required by §§8003(c) of the Debt Act. The School District filed a responsive pleading by letter received on May 10, 2005 (the "Responsive Pleading") arguing that the Complainant's Amended Complaint was a withdrawal of the Complaint, that the Amended Complaint raises a new issue that was not properly submitted in a timely fashion pursuant to §§12 Pa. C.S.A §11.7, and fails to state the facts and legal grounds which form the basis of the Amended Complaint.

Discussion

The single challenge to the Debt Proceedings in the (original) Complaint was that the School District's First Advertisement failed to provide the required minimum of three days advance public notice of the April 7th public meeting to enact the debt ordinance as required by §§8003(a) of the Debt Act. Through her Amended Complaint of May 5,

2005, Complainant withdrew her challenge of timeliness of the First Advertisement, and raised a new challenge to the sufficiency of the summary of the ordinance in the First Advertisement.

The School District challenges in its Responsive Pleading that the new challenge in the Amended Complaint is untimely filed. We agree. Notwithstanding the ease with which the Complainant could have verified the date of publication of the First Advertisement and reviewed its contents, she failed to do so. Complainant does not allege that The Daily News is not a proper medium for purpose of satisfying the notice requirements of the Debt Act, nor has she given any reason to justify why the original Complaint failed to include a challenge to the substance of the First Advertisement. The Department may, in its discretion, allow a Complaint additional time to raise a new issue in her Complaint beyond the time constraints of §§8211, where certain information was not available to him/her at the time of the original filing. In the instant matter, however, Complainant had access to all the information that forms the basis to her new allegation.

Accordingly, the new allegation contained in the Complainant's Amended Complaint is found to be untimely filed. 53 Pa. C.S.A. §§8211

Conclusion

As the Complainant has withdrawn her challenge to the timeliness of the School District's First Advertisement pursuant to §§8003(a) of the Debt Act, and the Complainant's challenge to the description of

the ordinance in the First Advertisement was not filed with the Department within the time limits for the filing of a complaint prescribed in §§8211 of the Debt Act, the School District's Motion to Dismiss the Complaint with prejudice should be granted.

Dated this 11th day of May, 2005

Dennis Yablonsky
Secretary of Community and
Economic Development