

ORDINANCE #121

FIRST READING - August 29, 2000
SECOND READING - September 26, 2000

APPROVING A CERTAIN CAPITAL IMPROVEMENT PROJECT AND THE FINANCING THEREOF, BRIEFLY DESCRIBING THE SAME AND SETTING FORTH THE REALISTIC ESTIMATED USEFUL LIFE THEREOF; STATING THE PRINCIPAL AMOUNT OF A PROMISSORY NOTE TO BE ISSUED BY THE LACKAWANNA COUNTY PERFORMING ARTS AUTHORITY (THE "AUTHORITY") TO BE SECURED BY A CERTAIN GUARANTY AGREEMENT DESCRIBED HEREIN AND STATING THAT THE DEBT IS TO BE INCURRED AS LEASE RENTAL DEBT AS DEFINED IN THE PENNSYLVANIA LOCAL GOVERNMENT UNIT DEBT ACT; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE COUNTY TO CERTIFY AND TO FILE WITH THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT CERTIFIED COPIES OF THE NECESSARY PROCEEDINGS AND TO PAY ANY NECESSARY FILING FEES; APPROVING THE FORM, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY, OF THE GUARANTY AGREEMENT AMONG THE COUNTY, THE AUTHORITY AND THE BANK; STATING THE ANNUAL AMOUNTS OF PRINCIPAL AND INTEREST TO BE PAID UNDER THE GUARANTY AGREEMENT, COVENANTING THE PAYMENT THEREOF AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE COUNTY THEREFORE; AUTHORIZING THE OFFICIALS OF THE COUNTY TO TAKE OTHER APPROPRIATE ACTION; REPEALING ALL ORDINANCES INCONSISTENT HEREWITH

WHEREAS, the Lackawanna County Performing Arts Authority (the "Authority") is a municipality authority created and existing under the Pennsylvania Municipality Authorities Act of May 2, 1945, P.L. 382, as amended, pursuant to an ordinance duly enacted by this Board of Commissioners (the "Governing Body") of the County of Lackawanna, Pennsylvania, (the "County"); and

WHEREAS, the Authority has undertaken the acquisition, construction and equipping of a performing arts center to serve the residents of the County (the "Performing Arts Center"); and

WHEREAS, the Authority has determined to issue its Promissory Note in an aggregate principal amount of \$4,500,000 (the "2000 Note") in order to finance the payment of the costs of completing the Performing Arts Center, and the payment of the costs incidental to the issuance of the 2000 Note (collectively, the "2000 Project"); and

WHEREAS, in order to secure the payment of the principal of, and interest on, the 2000 Note, the Governing Body of the County has determined to authorize, execute and deliver an agreement as authorized by the Pennsylvania Local Government Unit Act, 53 Pa, Cons. Stat. §8001 et seq., as amended (the "Act") providing for the unconditional guarantee by the County of the timely payment of the principal of, and interest on, the 2000 Note and the pledge by the County of its full payment of the principal of, and interest on, the 2000 Note and the pledge by the County of its full faith, credit and taxing power to discharge all of its obligations under the Guaranty Agreement; and

WHEREAS, the execution of the Guaranty Agreement constitutes the incurrence of lease rental debt by the County within the meaning of the Act;

NOW, THEREFORE, The Governing Body of the County, pursuant to the Act, hereby **ORDAINS AND ENACTS** as follows:

Section 1. Approval of Project; Realistic Estimated Useful Life. The County hereby approves the 2000 Project, as described above. The realistic estimated useful life of the Performing Arts Center is hereby determined to be in excess of 30 years.

Section 2. Promissory Note Secured by Guaranty Agreement; Incurrence of Lease Rental Debt. The principal amount of the 2000 Note to be issued by the Authority and secured by the Guaranty Agreement is \$4,500,000.

This Governing Body hereby authorizes and directs the incurring of lease rental debt of the County, pursuant to the Act, in the maximum aggregate principal amount of \$4,500,000, to be evidenced by the Guaranty Agreement among the County, the Authority and the Bank.

Section 3. Debt Statement and Borrowing Base Certificate. The Chairman or Vice Chairman of the Governing Body, the County Treasurer and the Administrative Director of the County, or any one of them, and/or any other duly authorized or appointed officer of the County, are hereby authorized and directed to prepare and certify a debt statement required by Section 8110 of the Act and a Borrowing Base Certificate, and the Administrative Director of the County is hereby authorized and directed to certify to the Pennsylvania Department of Community and Economic Development a transcript of the proceedings as required by Section 8111 of the Act, and to pay any filing fees required under Section 8203 of the Act.

Section 4. Guaranty Agreement. The form of the Guaranty Agreement as presented to this meeting (copies of which shall be filed with the records of the County) is hereby approved. The Chairman or Vice Chairman of this Governing Body (or such other officer or official of the County as may be duly authorized) is hereby authorized and directed, upon receipt of approval from the Pennsylvania Department of Community and Economic Development, to execute the Guaranty Agreement in such form, subject to such changes and modifications, if any, as may be approved by such officer or officers, the execution of the Guaranty Agreement to be conclusive evidence of such approval, and the Administrative Director of the County is hereby authorized and directed to affix thereto the corporate seal of the County, to attest the same and to deliver the Guaranty Agreement to the Bank.

Section 5. Annual Amounts Payable Under Guaranty Agreement; Covenant to Pay Such Amounts. The annual amounts of principal and interest covenanted to be paid by the County under the Guaranty Agreement are as set forth in Schedule I attached hereto and made a part hereof.

It is covenanted with the registered owners of the 2000 Note that the County shall (i) include the amount payable in respect of its guaranty for each fiscal year in which such sums are payable in its budget for that year, (ii) appropriate such amounts from its general revenues, for the payment of the amounts payable in respect of its guaranty, and (iii) duly and punctually pay, or cause to be paid from such revenues, to the extent of its obligations under the Guaranty Agreement, the amounts payable in respect of its guaranty, at the dates and places and in the manner stated in the Guaranty Agreement according to the true intent and meaning thereof. For such budgeting, appropriation and payment in respect of its guaranty of the 2000 Note, the County pledges its full faith, credit and taxing power. This covenant shall be specifically enforceable; subject, however, as to the enforceability of remedies, to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally. Nothing in this Section shall be construed to give the County any taxing power not granted by another provision of law.

Section 6. Incidental Actions. The proper officers of the County are hereby authorized, directed and empowered on behalf of the County to execute any and all papers and documents and to do or cause to be done any and all acts and things necessary or proper for the carrying out of the provisions of this Ordinance.

Section 7. Repealer. All ordinances or parts of ordinances inconsistent herewith be and the same hereby are repealed.

SCHEDULE I

Annual Amounts Payable Under Guaranty Agreement

<u>Year</u>	<u>Amount</u>
2001	\$560,020.44
2002	560,020.44
2003	560,020.44
2004	560,020.44
2005	560,020.44
2006	707,369.88*
2007	707,369.88
2008	707,369.88
2009	707,369.88
2010	707,369.88
2011	707,369.88
2012	707,369.88
2013	707,369.88
2014	707,369.88
2015	707,369.88

*Assuming 15% maximum interest rate in year 2006-2015

COUNTY OF LACKAWANNA

Joseph J. Corcoran
JOSEPH J. CORCORAN

Randy A. Castellani
RANDY A. CASTELLANI

Robert C. Cordaro
ROBERT C. CORDARO

ATTEST:

William A. Jenkins
WILLIAM A. JENKINS,
ADMINISTRATIVE DIRECTOR

Approved as to form and legality:

Joseph A. O'Brien
JOSEPH A. O'BRIEN, ESQUIRE
COUNTY SOLICITOR