

ORDINANCE #95

FIRST READING - December 13, 1994
SECOND READING - December 30, 1994

AUTHORIZING THE ISSUANCE OF TAX ANTICIPATION NOTES IN AMOUNTS NOT TO EXCEED OF \$3,000,000 IN AGGREGATE PRINCIPAL AMOUNT OUTSTANDING AT ANY GIVEN TIME; PROVIDING FOR THE DATE, DENOMINATION, INTEREST RATE, MATURITY DATE AND PLACE OF PAYMENT PROVISIONS IN RESPECT OF THE NOTES; ACCEPTING THE PROPOSAL OF A LOCAL LENDING INSTITUTION FOR THE PURCHASE OF THE NOTES; PROVIDING THE SECURITY FOR THE NOTES; AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING OF THE PROCEEDINGS WITH THE DEPARTMENT OF COMMUNITY AFFAIRS; ESTABLISHING A SINKING FUND IN RESPECT OF THE NOTES; PROVIDING FOR A SINKING FUND DEPOSITORY AND PAYING AGENT; SETTING FORTH A FORM OF NOTE; REPEALING INCONSISTENT ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County of Lackawanna (the "County") anticipates receiving, by March 31, 1995, tax revenues, such revenues being as yet unreceived.

WHEREAS, the County has estimated such expected tax revenues and expenditures for the fiscal year 1995 and, on a monthly basis, will experience a cashflow deficit during some portions of such quarter.

WHEREAS, the County has therefore determined to borrow for the purpose of meeting current expenses by issuing Notes to be repaid from said anticipated tax revenues, all in accordance with the Local Government Unit Debt Act (the "Debt Act") being Act No. 185 of the 1972 General Assembly of the Commonwealth of Pennsylvania, approved July 12, 1972, as amended and re-enacted by Act No. 52 of the 1978 General Assembly of the Commonwealth of Pennsylvania.

WHEREAS, the County has received an acceptable proposal for the purchase of its tax anticipation notes hereinafter described.

WHEREAS, as required by Section 506 of the Debt Act, the authorized officers of the County have heretofore made an estimate of the tax revenues during the period when the said tax anticipation notes will be outstanding and, by their execution of a certificate with respect thereto dated as of December 30, 1994, (the "Certificate as to Taxes and Revenues") have certified the said estimate.

WHEREAS, Section 501 of the Debt Act provides, with regard to tax and revenue anticipation notes, that "Such power to borrow from time to time shall include but not be limited to, the power to make a single authorization and then issue and sell portions of such amount of authorized notes whenever desired during the fiscal year."

WHEREAS, it is the intent of the County to authorize the issuance and sale of its tax anticipation notes in amounts not to exceed \$3,000,000 in aggregate principal amount outstanding at any given time, such Notes to be completely repaid on or before December 31, 1995.

WHEREAS, such tax anticipation notes shall be borrowed pursuant to and evidenced by Notes, the form which is as substantially specified herein.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of County Commissioners of the County of Lackawanna, Pennsylvania that:

SECTION 1. For the reasons and purposes recited above, the County hereby authorizes the issuance of its tax anticipation notes in amounts not to exceed \$3,000,000 in aggregate principal amount outstanding at any given time (the "Notes") in anticipation of the receipt of tax revenues, said Notes to be sold and delivered as hereinafter provided.

SECTION 2. At least two of the members of the Board of Commissioners, Administrative Director, Controller and/or Treasurer of the County, or any duly appointed successor, as the case may be, are hereby authorized and directed to prepare and verify a certified copy of this Ordinance and a true copy of the accepted proposal for the purchase of the Notes, all as required by Section 508 of the Debt Act and to file all of the above, together with an executed copy of the Certificate as to Taxes and Revenues, the contents of which are hereby approved, with the Department of Community Affairs of the Commonwealth of Pennsylvania.

SECTION 3. The Notes shall be designated "Tax Notes, Series A of 1995", shall be borrowed pursuant to and evidenced by Notes and shall be issued in denominations to be agreed upon by the County and the Purchaser (as hereinafter defined), shall be subject to prepayment prior to maturity, shall be payable to the registered owner thereof, shall be dated the date of delivery thereof, shall bear interest on the unpaid principal balance hereof from the date hereof at a rate of 4.85% fixed, per annum. Said principal and interest shall be payable on December 31, 1995 at the place in the manner and be otherwise in substantially the same form recited in Section 10 hereof. Until such time as the Bank demands payment, interest shall be payable monthly as billed. If the Bank has not received the full amount of the monthly payment by the end of the 10th calendar day after it is due, undersigned will pay a late charge to the Bank. The amount of the charge will be 5% of the overdue payment of principal and/or interest. Undersigned will pay this late charge promptly but only once on each late payment. The interest rate specified above is based on the assumption that interest income from this loan is exempt from federal income taxes and interest expense deductible on loans and deposits incurred to provide funds used by the Bank in making this loan is limited to 80%.

SECTION 4. The Note shall be executed by at least two members of the Board of Commissioners, the Treasurer and the Controller of the County and shall have the corporate seal of the County affixed thereto, duly attested by the Administrative Director. Those officers are further authorized and directed to deliver the Note to the Purchaser hereinafter named upon the terms and conditions hereinafter provided for such delivery and to execute and deliver such other documents and to take such other action as may be necessary or appropriate in order to effectuate the issuance and sale of the Notes, all in accordance with this Ordinance and the Debt Act.

SECTION 5. The Notes shall be secured by a pledge of, first security interest in, and a lien and charge on, the tax revenues received by the County during the period when the Notes are outstanding; and the Administrative Director is hereby authorized and directed to prepare and file such financing statements as may be necessary under the Pennsylvania Uniform Commercial Code and Section 505 of the Debt Act to fully perfect said pledge, security interest, lien and charge.

SECTION 6. There is hereby established a Sinking Fund to be known as "Sinking Fund, County of Lackawanna Tax Notes, Series A of 1995" into which the County covenants to deposit and into which the Treasurer is hereby authorized and directed to deposit, on or before December 31, 1995, from taxes and revenues received by the County, amounts sufficient to pay the interest due on that date and the principal on the Note as provided in Section 3 hereof. All sums in the Sinking Fund shall be applied exclusively to the payment of said principal and interest. Said Sinking Fund shall be kept in a separate account at the principal office of the Sinking Fund Depository provided for in Section 7 hereof, until such time as the County and the Treasurer thereof shall provide for a similar separate account in another bank, trust company or bank and trust company located and lawfully conducting a bank or trust business in the Commonwealth of Pennsylvania. The said Sinking Fund Depository, without further authorization than is herein contained, shall pay from all moneys in the Sinking Fund the interest on and the principal of the Notes, when the same shall become due.

SECTION 7. The Treasurer is hereby authorized and directed to contract with a commercial bank for its services as sinking fund depository (the "Sinking Fund Depository") and paying agent (the "Paying Agent") said bank being hereby appointed to such positions in respect to the County's Tax Notes, Series A of 1995.

SECTION 8. The Notes shall be sold at private, negotiated sale upon receipt of an acceptable proposal for the purchase thereof, which proposal shall be in compliance with the provisions of the Debt Act. The County Commissioners hereby find that such private, negotiated sale is in the best financial interest of the County.

SECTION 9. The proposal of the Fidelity Deposit & Discount Bank of Dunmore, PA, (the "Purchaser"), presented to the Board of Commissioners at a public meeting on the date of second reading of this Ordinance, such proposal being in conformity with the requirements of Section 8 of this Ordinance for the purchase at private sale by negotiation of the Notes, is hereby accepted and the Notes are hereby awarded to the Purchaser. The Administrative Director is hereby authorized and directed to notify the Purchaser of such action and to file the original of said proposal with the records of the County. The officers of the County are hereby authorized to deliver the Note to the Purchaser upon receipt of the principal amount thereof and upon compliance with all conditions precedent to such delivery required by the Debt Act, this Ordinance, the County Home Rule Charter and said proposal; and the officers of the County are hereby authorized and directed to prepare, verify and deliver to the Purchaser, concurrently with the delivery of the Note, the certificate required by Section 507 of the Debt Act, a copy of which certificate shall be retained in the records of the County until all tax and/or revenue anticipation notes issued by the County during the fiscal year ending on December 31, 1995, shall have been paid in full.

SECTION 10. The form of the Note shall be substantially as contained in Exhibit A attached hereto and made a part hereof (with necessary language changes, as approved by counsel), the terms and conditions set forth in such form being hereby incorporated by reference and enacted as if fully recited at length herein and said form is hereby approved.

SECTION 11. All prior ordinances or resolutions or parts thereof inconsistent herewith are hereby repealed.

SECTION 12. This Ordinance shall become effective ten days after enactment.

EXHIBIT A

(FORM OF NOTE)
 UNITED STATES OF AMERICA
 COMMONWEALTH OF PENNSYLVANIA
 COUNTY OF LACKAWANNA
 REVOLVING LINE OF CREDIT NOTE
 SERIES A OF 1995

The County of Lackawanna, Pennsylvania (the "County" or "Maker"), for value received, promises to pay to the order of _____ upon surrender hereof, on March 31, 1995 the principal sum of \$3,000,000 and to pay interest thereon from _____ until maturity at the rate specified herein.

Principal and interest will be payable in such coin or currency of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts at the principal office of the Bank, without deduction of, and the County assumes and agrees to pay, any tax or taxes which the County or the Treasurer thereof may be required to pay or retain therefrom under any present or future law of the Commonwealth of Pennsylvania except for gift, succession and inheritance taxes.

This Note evidences and secures the principal sum to be advanced by the Bank to Maker pursuant to a Revolving Line of Credit Loan Agreement (the "Loan Agreement") wherein it is provided that the Bank will be required to make future advances from time to time of a revolving loan, in accordance with the terms and provisions of the Loan Agreement, which is incorporated herein by reference.

The principal of the Note shall include and evidence all advances as provided in the Loan Agreement, upon which interest shall accrue at the rate as herein provided for the principal debt.

Each new advance from the date thereof, to the next succeeding monthly payment date and the total principal balance outstanding will bear interest payable monthly, to maturity on the unpaid principal balance hereof at a per annum, fixed, rate of _____. All payments received hereunder shall be applied first to outstanding interest and any balance to principal.

All principal of and interest on this Note shall be due and payable on or before December 30, 1995.

The Note is issued in accordance with the Local Government Unit Debt Act, Act. No. 185 of the 1972 General Assembly of the Commonwealth of Pennsylvania as amended and re-enacted by Act No. 52 of the 1978 General Assembly of the Commonwealth of Pennsylvania (the "Act"), and by virtue of an Ordinance (the "Ordinance") of the County Commissioners of the County of Lackawanna duly filed, together with other required documents in respect of the Note, with the Pennsylvania Department of Community Affairs. Reference is made to the Act and the Ordinance for a complete statement of the rights and limitations of the rights of the holders of the Note, to all of which the holder hereof by acceptance of this Note assents.

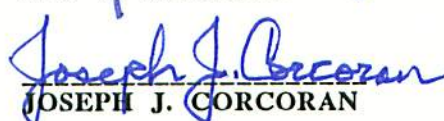
This Note is prepayable in full or in part prior to maturity without premium or penalty.

The indebtedness evidenced hereby is a borrowing in anticipation of certain current tax revenues to be received by the County during the fiscal year ending December 31, 1995, and is to be repaid from such other revenues received by the County during said fiscal year. As provided in the Ordinance, this Note shall be secured by a pledge of, first security interest in and first lien and charge on the taxes and/or other revenues of the County received during the period when the Note is outstanding, and for such purpose and to secure the payment of the indebtedness evidenced hereby and the interest thereon, the County hereby pledges to the holders hereof and grants to said holders a first security interest in and first lien and charge on such revenues to be received during the period during which this Note is outstanding.

It is hereby certified that all acts, conditions and things required to be done, occur or be performed precedent to and in the issuance of this Note, or in the creation of the debt of which this Note is evidence, have been done, occurred and been performed in regular and due form and manner as required by law, and that the debt represented by this Note, together with all other debt of the County is not in excess of any constitutional or statutory limitation.

COUNTY OF LACKAWANNA


RAY A. ALBERIGI


JOSEPH J. CORCORAN


JOHN SENIO

ATTEST:


GERALD L. STANVITCH,
ADMINISTRATIVE DIRECTOR

Approved as to form and legality:


JOSEPH A. O'BRIEN, ESQUIRE
COUNTY SOLICITOR