

ORDINANCE #63

FIRST READING - AUGUST 15, 1989
SECOND READING - September 12, 1989

AUTHORIZING AND DIRECTING THE INCURRING OF NON-ELECTORAL DEBT OF THE COUNTY OF LACKAWANNA, PENNSYLVANIA (THE "COUNTY") IN THE AMOUNT OF FOUR HUNDRED FIFTY THOUSAND (\$450,000) DOLLARS THROUGH THE ISSUANCE OF A GENERAL OBLIGATION NOTE, SERIES OF 1989, OF THE COUNTY IN SUCH PRINCIPAL AMOUNT (THE "NOTE"), FOR THE PURPOSE OF PROVIDING FUNDS FOR AND TOWARDS (1) THE FOLLOWING CAPITAL PROJECTS: VARIOUS RENOVATIONS TO THE LACKAWANNA COUNTY HEALTH CARE CENTER; (2) THE REFUNDING OF A PORTION OF THE 1986 GENERAL OBLIGATION NOTE ALLOCATED TO THE LACKAWANNA COUNTY HEALTH CARE CENTER, FORMERLY KNOWN AS THE MID-VALLEY LONG TERM CARE CENTER; AND (3) THE PAYMENT OF THE COSTS AND EXPENSES RELATED TO THE ISSUANCE OF SUCH NOTE; FIXING THE NUMBER, DATE, INTEREST RATES, MATURITIES, AND REDEMPTION FEATURES OF SUCH NOTE AND APPROVING THE FORM THEREOF; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE COUNTY TO EXECUTE THE NOTE; COVENANTING TO PAY DEBT SERVICE AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE COUNTY FOR THE PAYMENT THEREOF; ESTABLISHING A SINKING FUND IN RESPECT OF THE NOTE AND APPROPRIATING PAYMENTS INTO SUCH SINKING FUND; AUTHORIZING THE PROPER OFFICERS OF THE COUNTY TO CONTRACT WITH A LOCAL BANK FOR ITS SERVICES AS SINKING FUND DEPOSITARY AND PAYING AGENT; ACCEPTING THE PROPOSAL OF THE THIRD NATIONAL BANK AND TRUST COMPANY BANK FOR THE PURCHASE OF THE NOTES AT PRIVATE SALE AND AWARDING THE NOTE THERETO; AUTHORIZING THE FILING OF A DEBT STATEMENT WITH THE DEPARTMENT OF COMMUNITY AFFAIRS; AUTHORIZING OTHER NECESSARY ACTION; AND REPEALING INCONSISTENT ORDINANCES.

WHEREAS, the Board of County Commissioners (the "Board") of the County of Lackawanna, Pennsylvania, deems it in the best interest of the County that the County undertake a certain capital project (the "Project") consisting of various renovations to the Lackawanna County Health Care Center.

WHEREAS, the Board deems it in the best interest of the County that the County refund a portion of the 1986 General Obligations Note allocated to the Lackawanna County Health Care Center formerly known as the Mid-Valley Long Term Care Center (the "Refunding"), thereby reducing the total debt service over the life of the series.

WHEREAS, the County has determined to fund the cost of the Project and Refunding through the issuance of the Note authorized herein.

WHEREAS, the Board has heretofore obtained realistic estimates of the costs of the Project in accordance with Section 106 of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, Act of July 12, 1972, No. 185, as amended (the "Act"), and the total estimated cost of the Project, including the payment of interest and the payment of the costs and expenses related to the issuance of the Note, exceeds \$250,000.

WHEREAS, the Board proposes to finance the Project and the Refunding by an increase in the non-electoral debt of the County through the issuance of its General Obligation Note, Series of 1989, of the County in the aggregate principal amount of \$450,000 in accordance with the Act.

WHEREAS, the existing net non-electoral debt of the County, as determined under the provisions of Article II of the Act, including the increase of non-electoral debt authorized hereby, does not in the aggregate exceed the limitations of the Act.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LACKAWANNA, COMMONWEALTH OF PENNSYLVANIA, AS FOLLOWS:

Section 1. The Board hereby authorizes and directs the incurring of non-electoral debt of the County in the amount of \$450,000 through the issuance of a general obligation note of the County in the principal amount of \$450,000, to be known as the County of Lackawanna, General Obligation Notes, Series of 1989, for the purpose of providing funds for and towards the costs of the Project and the Refunding, and to pay the costs of issuance of the Notes.

Section 2. The Board hereby designates the Project as a capital project which it desires to combine with the Refunding for purposes of financing and for which it desires to incur the non-electoral debt authorized hereunder. The descriptions of the Projects set forth in the recitals of this Ordinance are hereby approved and incorporated herein by reference.

Section 3. Pursuant to Section 602(a)(2) of the Act, the useful life of the Project is 30 years. The Note providing funds for the Project will mature in five (5) years of the date of issuance.

Section 4. The County Commissioners, or any one of them, or the Controller or Administrative Director of the County, are hereby authorized and directed to prepare, execute, certify, verify under oath or affirmation, and file with the Department of Community Affairs of the Commonwealth, in accordance with the Act, a certified copy of the Debt Statement of the County, with an appended Borrowing Base Certificate, executed by any one of the foregoing County officers, as required by Section 410 of the Act.

Section 5. The Note shall be executed by at least two County Commissioners, the County Controller and the County Treasurer, and shall have the corporate seal of the County affixed thereto, duly attested by the Administrative Director of the County, and said officers are hereby authorized and directed to deliver the Note to The Third National Bank & Trust Company (the "Purchaser") upon receipt of the purchase price and to take any other necessary action relating to the Note, but only upon receipt of the approval of the Department of Community Affairs pursuant to the provisions of the Act, for which approval the aforesaid officers are hereby authorized and directed to apply.

Section 6. The Commissioners of Lackawanna County pursuant to Section 403 of the Act, as amended, do hereby find that it is in the best financial interest of the County to have a private sale by negotiation of the County's General Obligation Note, Series of 1989, in the principal sum of \$450,000 to provide funds for and towards; (1) the following project: various renovations to the Lackawanna County Health Care Center, formerly known as the Mid-Valley Long Term Care Center; (2) the refunding of a portion of the 1986 General Obligation Note allocated to the Lackawanna County Health Care Center, formerly known as the Mid-Valley Long Term Care Center; (3) the payment of costs and expenses related to the issuance of such notes. The action of the Administrative Director in negotiating the private sale of the Notes and in requesting the purchaser to submit a proposal is hereby approved, ratified and confirmed.

Section 7. The Commissioners of Lackawanna County do hereby find that it is in the best financial interest of the County to award the County's General Obligation Note, Series of 1989, in the principal sum of \$450,000 to The Third National Bank & Trust Company, Scranton, Pennsylvania.

Section 8. The Commissioners of Lackawanna County hereby authorize Gerald Stanvitch, Administrative Director, to designate the County's General Obligation Bonds, Series of 1989, as being Qualified tax-exempt obligations pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), for the purposes of complying with certain provisions of the Code, in the event it is determined that the debt of the County and its subordinate issuers, incurred or expected to be incurred during the calendar year 1989, will not exceed \$10,000,000. The foregoing designation may be set forth in the form of the bond and other documents as determined by Bond Counsel.

Section 9. The form of the Note shall be substantially as attached hereto.

Section 10. The Note shall be purchased at 100% of its principal amount and shall be paid in sixty (60) months as follows: Fifty-nine (59) monthly principal installments of Seven-Thousand Five-Hundred Dollars (\$7,500.) plus accrued interest and final installment of the remaining balance plus accrued interest. The loan will bear interest at the Reference Rate as announced from time to time by The Third National Bank & Trust Company, of Scranton, Pennsylvania, not, however, to exceed 14 percent per annum.

Section 11. The Note shall be subject to prepayment, without penalty, at any time prior to maturity.

Section 12. The Note shall be executed by each of the County Commissioners of the County, or any two of them, and by the County Controller and the County Treasurer, and shall have the corporate seal of the County affixed thereto and duly attested by the signature of the Administrative Director of the County, and said officers are hereby authorized and directed to execute the Note in such manner, and to cause the same to be delivered in accordance with the terms of this Ordinance and the terms of the Proposal referred to in Section 13 hereof. The County Commissioners, the County Controller, the County Treasurer and the Administrative Director, or any of them, are further authorized and directed 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 Note, and in accordance with this Ordinance, including, without further authorization, causing funds from the proceeds of the Notes to be paid at Closing for the costs of issuance of the Notes as set forth in a Closing Statement signed by any one of the foregoing County officials.

Section 13. Pursuant to Section 407 of the Act, the County hereby accepts the negotiated proposal of, and awards the Notes to The Third National Bank & Trust Company, in accordance with the terms set forth in the Proposal Letter dated July 31, 1989 (a copy of which is attached hereto), between the County and said Bank. The proper officers of the County are hereby authorized and directed to execute and deliver the Proposal Letter on behalf of the County.

Section 14. The County hereby covenants with the holders from time to time of the Note that the County shall include the amount of the debt service in respect of the Note for each fiscal year in which such sums are payable in its budget for that year, shall appropriate such amounts to the payment of such debt service, and shall duly and punctually pay or cause to be paid the principal of and interest on the Note at the dates and places and in the manner stated in the Note according to the true intent and meaning thereof, and for such budgeting, appropriation and payment the County does hereby pledge its full faith, credit and taxing power. This covenant shall be specifically enforceable.

Section 15. The County shall appoint a local bank as the Sinking Fund Depository and Paying Agent for the Note. The proper officers of the County are hereby authorized and directed to contract with such bank for its services as such Depository and Paying Agent.

Section 16. The Paying Agent is hereby authorized and directed to authenticate the Note and to deliver it upon the order of any one of the County Commissioners or the Administrative Director of the County, but only upon the written receipt by County of the proceeds of sale of the Note.

Section 17. There is hereby established a sinking fund to be held by the Sinking Fund Depository and known as "County of Lackawanna General Obligation Note-Series of 1989-Sinking Fund" (the "Sinking Fund"). The County covenants that it shall deposit into the Sinking Fund, on the business day immediately preceding each payment date of the Note an amount which, together with any other funds already on deposit in said Fund, will be sufficient to provide for the payment of the interest and principal becoming due on the Note on the next succeeding payment date. The moneys deposited in the Sinking Fund shall be applied exclusively to the payment of the principal and interest covenanted to be paid upon the Note and to no other purpose whatsoever, except as may be authorized by law, until the same shall have been fully paid. In each of the County fiscal years, beginning on the 1st day of January, 1990, a sufficient amount shall annually be appropriated to the Sinking Fund for the payment of the principal of and interest on the Note.

Section 18. The County Commissioners, or any one of them, or the Controller or Administrative Director of the County, are hereby authorized and directed to certify to and file with the Department of Community Affairs, in accordance with Section 411 of the Act, a complete and accurate copy of the proceedings undertaken in connection with the increase of debt authorized hereunder, including a certified copy of the Debt Statement hereinabove referred to, to pay the filing fees necessary in connection therewith, and to execute such other documents and take such other action as may be necessary or appropriate to apply for and receive approval from such Department under Article VIII of the Act.

Section 19. The County hereby covenants with the holders from time to time of the Note that it will not make or permit any use of the proceeds of the Note which, if such use had been reasonably expected on the date of issue of such Note, would have caused such Note to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations and rulings thereunder, and that it will comply with the requirements of said section and regulations throughout the term of the Note. No official of the County shall make or permit any investment of the proceeds of the Note inconsistent with the foregoing covenants. The proper officers of the County are hereby authorized and directed to execute and deliver upon the issuance of the Note the certificate setting forth their reasonable expectation regarding the use of "proceeds" of the Note (as that term is defined in Section 148 of the Internal Revenue Code of 1986, as amended and the regulations and rulings thereunder), and the facts and estimates upon which such expectations are based.

Section 20. The proper officers of the County are authorized and directed to execute the necessary certificates, receipts, affidavits and all such other documents as may be necessary or convenient to make settlement, including the preparation and filing with the Department of Community Affairs of any statements required by Article II of the Act which are necessary to qualify all or any portion of the debt of the County that is subject to exclusion as self-liquidating or subsidized debt for exclusion from the appropriate debt limit of the County as self-liquidating or subsidized debt and to do all other acts necessary or convenient to make settlement, or as may be required in connection with the issuance, sale and delivery of the Note.

Section 21. All ordinances and resolutions or parts of ordinances and resolutions insofar as they are inconsistent herewith are hereby repealed and rescinded.

Section 22. This Ordinance shall become effective ten (10) days after final adoption.

ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LACKAWANNA this 12th day of September, 1989.

COUNTY OF LACKAWANNA

By: Joseph J. Corcoran
Chairman

County Commissioners of the County of
Lackawanna

(SEAL)

Attest: _____
Administrative Director

(FORM OF NOTE)

UNITED STATES OF AMERICA
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LACKAWANNA
GENERAL OBLIGATION NOTE, SERIES OF 1989

\$450,000.

The County of Lackawanna, Pennsylvania (the "County") for value received, promises to pay to THE THIRD NATIONAL BANK & TRUST COMPANY, or its registered assignee, upon surrender hereon, on _____, 1994, unless this Note shall have been previously called for prepayment, the principal sum of Four Hundred Fifty Thousand Dollars (\$450,000) in monthly installments of Seven Thousand Five Hundred Dollars (\$7,500.) plus interest thereon from the date hereof until maturity or prepayment in full, at the Reference Rate of The Third National Bank & Trust Company, such interest rate not at any time to exceed _____ percent per annum.

Principal and interest shall be payable in such coin or currency of the United States of America as, at the respective time of payment, shall be legal tender for the payment of public and private debts at the principal office of THE THIRD NATIONAL BANK & TRUST COMPANY, Scranton, Pennsylvania, 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 thereon or retain therefrom under any present or future law of the Commonwealth of Pennsylvania except gift, succession and inheritance taxes, and other taxes not levied or assessed directly on the Note or the income therefrom.

This Note is issued in accordance with the Local Government Unit Debt Act, Act of July 12, 1972, No. 1875, as amended and by virtue of an Ordinance (the "Ordinance") of Board of County Commissioners of the County of Lackawanna duly filed, together with all other proceedings in respect of the Note, with the Pennsylvania Department of Community Affairs.

This Note is prepayable, without premium at any time pursuant to the provision of the Ordinance.

In the Ordinance, the County has covenanted with the holders from time to time of the Note that it shall include the amount of debt service on the Note for each fiscal year in which such sums are payable in its budget for that year, shall appropriate such amounts to the payment of such debt service and shall duly and punctually pay or cause to be paid the principal of the Note and the interest thereon at the dates and place and in the manner stated in the Note according to the true intent and meaning thereof, and for such budgeting, appropriation and payment, the County of Lackawanna has pledged its full faith, credit and taxing power. The Ordinance provides that this covenant is specifically enforceable.

No transfer of this Note shall be valid unless made at the aforesaid office of the Paying Agent appointed by the County.

It is hereby certified that all acts, conditions and things required to be or 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 is evidence have been done, occurred and have 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.

IN WITNESS WHEREOF, the County has caused this Note to be executed and delivered in its name and behalf.

LACKAWANNA COUNTY

Attest: David J. Stouffer
Administrative Director

By: Joseph J. Corcoran
Ray C. Allmeyer

(SEAL)

BOARD OF COMMISSIONERS

Controller

Treasurer

Approved as to Form:

[Signature]
County Solicitor