

#### MINUTE ITEM

10. (1957 LEGISLATION - ASSEMBLY BILL 2073 (BROWN AND OTHERS) - ASSEMBLY BILLS 40, 47, 2237, AND 3869 (MILLER, SHELL AND BRUCE ALLEN) - W. O. 2115.)

Following consideration of the legislative items (see Minute Item 9 immediately preceding), the Assistant Executive Officer presented the attached unnumbered supplemental calendar item covering Assembly Bill 2073, which would add Section 6109 to the Public Resources Code to require that all meetings of the State Lands Commission be public; and Section 6110, to make all records of the Commission open to public inspection. Further, in response to a request by the Chairman for any highlights of bills pending before the Legislature that should be called to the Commission's particular attention, he referred to bills introduced by Assemblyman Miller, by Assemblyman Shell, and by Assemblyman Bruce Allen which relate to the phase of setting royalty rates under the Cunningham-Shell Act and which will be heard by the Assembly Committee of Manufacturing, Oil and Mining Industry the evening of April 16. These are Assembly Bills 40, 47, 2237, and 3869. The Executive Officer informed the Chairman that he and the Assistant Executive Officer proposed to attend the session the evening of the 16th, but that they would discuss the matter only factually inasmuch as Commission approval in any form had not been given.

Mr. Kirkwood suggested that, if possible, an item be included on the agenda for the next Commission meeting that would explore the possibility of a recommendation by the Commission on the subject of amendment of the Cunningham-Shell Act. He expressed the thought that the Commission should take a position as to whether the act needs amendment, and, if so, the type of amendment that would be satisfactory, pointing out that the Commission went on record two years ago with the Legislature as supporting and asking for legislation, and that the Legislature was entitled to know whether the Commission was satisfied or what changes should be proposed. He stated that his own thinking was that the Commission cannot be satisfied with the existing law for the reasons that it has been too restrictive and is difficult to administer. He further commented that if the Commission must continue to act with the present provisions, the only way to protect the State might be to restrict wildcat areas to three miles and to checkerboard them. He also indicated that he felt the Commission did not have adequate discretion as far as royalty rates are concerned, and that it should have exactly the same discretion as the Federal Government has.

Lieutenant Governor Powers stated that he would be willing to review the matter, but that he did not want to tell the Legislature what to do, in response to which Mr. Kirkwood stated that it was not a question of telling the Legislature what to do, but of giving them information to which they are entitled. The Chairman had no objection, and felt that if the Commission were invited to comment by the Legislature, it would be its duty to speak up and give the Legislature the benefit of its views.

Following further brief discussion, it was informally requested that, as soon as the legislative hearing is completed on April 16, a progress report be made by the staff to the Commission on Assembly Bills 40, 47, 2237, and 3869, and that an item covering this legislation be included in the agenda for the next Commission meeting.

Assembly Bill 2073, referred to in the first paragraph above, was then discussed in considerable detail by the members of the Commission and by the Executive Officer and Assistant Executive Officer. The questions of whether the proposed requirement that all meetings of the Commission be public would prevent executive sessions, and of the effects of having all Commission records made public, were reviewed. Lieutenant Governor Powers stated that he was opposed to any legislation which would affect the right of the Commission to hold executive sessions, whereas the Chairman stated that he could not recall any instance where the Commission had found it either desirable or necessary to go into executive session, and indicated that he gained certain comfort out of having representatives of the public and other interested groups present so that the Commission could have the benefit of their counsel whenever matters involving the public interest were being considered.

The Assistant Executive Officer pointed out that although the bill requiring that meetings be public, as it is written, apparently does not require any public notice or written notice, there is an inference that a meeting is not public unless a certain extensive amount of notice is given, which, as long as it isn't defined, is always subject to attack.

Mr. Kirkwood stated that he couldn't see where there would be any occasion for executive, non-open sessions, unless perhaps it would be from the standpoint of protection of individuals dealing with the Commission where there should perhaps be a confidential relationship. Mr. Powers pointed out that in cases of hiring personnel an executive session might be in order, and that he did not want to sacrifice a right.

Mr. Kirkwood didn't see how the Commission could run into trouble by moving along with the spirit of the proposed law, but indicated that there should be exploration with Attorney General Edmund G. Brown on the amount of notice required for public meetings, and on what he has developed as to other commissions.

The Executive Officer reminded the Commission of a recent emergency case which had arisen, on which it was necessary to hold a meeting quickly and without any notice being given, stating this was almost equivalent to executive action, except that all conclusions were confirmed at the next open meeting of the Commission.

Mr. Kirkwood stated that the problem of notice of a meeting was something different from having an open meeting, and that he did not believe that it was contemplated that no supplemental matter could be put on the agenda.

The Chairman could not see any practical difficulty with regard to public meetings (Section 1 of the recommendation made by the staff on the attached calendar item), but indicated that the question of whether records were confidential or semi-confidential (Section 2 of the recommendation) was a very serious matter. However, Mr. Powers indicated that he wanted to be on record as being opposed to a law that would prohibit the Commission from doing something it had never done, and stated that he would recommend a "no" vote.

UPON MOTION DULY MADE BY MR. KIRKWOOD, AND SECONDED BY THE CHAIRMAN, WITH A "NO" VOTE BEING CAST BY MR. POWERS, A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE STAFF TO INFORM ASSEMBLYMAN RALPH BROWN AND THE ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY OF THE FOLLOWING RECOMMENDATION ON ASSEMBLY BILL 2073:

IN PROPOSED SECTION 6109 OF THE PUBLIC RESOURCES CODE, CONSIDERATION SHOULD BE GIVEN TO THE OCCASIONAL NECESSITY FOR STATE LANDS COMMISSION ACTION WITHOUT COMPLETE ADVANCE PUBLIC NOTICE.

The question of whether the Commission's records should be public records was then reviewed fully, the Executive Officer reporting that if all of the records of the Commission were to be made public, this would put a terrific burden on the staff and the Chairman indicating that he could not recall any instance in the Department of Finance where having the records public had created a problem. Mr. Powers felt that the records should be made available to anyone. Mr. Kirkwood pointed out that the question was complicated, depending on whether one was talking of confidential papers of an individual citizen, or about some action taken by the Commission.

During the discussion it was brought out that under the proposed change in the Code, the State Lands Commission would be required to make public information which the Division of Oil and Gas kept as a confidential record, and that it would not appear to be consistent to have the records of one department public when exactly the same information was kept on a confidential basis in another department.

The question of whether the requirement that records of the Commission be made public would affect competitive bidding on school land applications was discussed, and it was the consensus of the Commission that it was not the intent of the Legislature to change the bidding procedure, that such information would not be considered a record.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE COMMISSION AUTHORIZED THE EXECUTIVE STAFF TO INFORM ASSEMBLYMAN RALPH BROWN AND THE ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY OF THE FOLLOWING RECOMMENDATION ON ASSEMBLY BILL 2073:

INDIVIDUAL OIL, GAS, AND OTHER MINERAL-LEASE AND EXPLORATION-PERMIT OPERATING AND ACCOUNTING RECORDS SHOULD BE EXCLUDED FROM THE RECORDS TO BE MADE AVAILABLE FOR PUBLIC INSPECTION UNDER SECTION 6110 OF THE PUBLIC RESOURCES CODE.

Following completion of the foregoing item at about 11:05 a.m., the Chairman called a recess, indicating that the next item to be discussed was the Santa Barbara annexation question, and that the representatives who were to be present had been informed that this presentation would be made at 11:30 a.m.

The meeting was reconvened at 11:30 a.m.

Attachment:

Unnumbered Calendar Item (1 page)

(Assembly Bill 2073 (Brown and others) W. O. 2115)

Assembly Bill 2073 to be heard by the committee on Governmental Efficiency and Economy on April 16, 1957 would add Section 6109 to Public Resources Code to require that all meetings of the State Lands Commission be public and Section 6110 to make all records of the Commission open to public inspection.

While all sessions of the Commission have been held heretofore as public meetings, the necessity for prompt action in a few instances has not permitted the giving of substantial advance notice as to such meetings. Therefore, it is suggested that consideration might be given in the proposed addition of Section 6109 to the occasional necessity for Commission action without complete advance public notice.

Proposed Section 6110 would open State oil, gas and other mineral lease operating and accounting records to public inspection. Oil, gas and other mineral lease bids and lease documents have been considered as public records by the State Lands Division. However, the operating records are required by Division 3 of the Public Resources Code to be filed as confidential information with the Division of Oil and Gas. Such records cannot be obtained by the public from that Division, even by subpoena. Lease accounting records have been made public by the State Lands Division only in the form of reports of total activity in a specific oil and gas field or total activity as to a particular type of mineral. It has not been felt to be in the interest of the public (including the State's lessees) to publicize financial data of individual competitive lessees.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE STAFF TO INFORM ASSEMBLYMAN RALPH BROWN AND THE ASSEMBLY COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY OF THE FOLLOWING RECOMMENDATIONS ON ASSEMBLY BILL 2073:

1. IN PROPOSED SECTION 6109 PUBLIC RESOURCES CODE CONSIDERATION SHOULD BE GIVEN TO THE OCCASIONAL NECESSITY FOR STATE LANDS COMMISSION ACTION WITHOUT COMPLETE ADVANCE PUBLIC NOTICE.
2. INDIVIDUAL OIL, GAS, AND OTHER MINERAL LEASE AND EXPLORATION PERMIT OPERATING AND ACCOUNTING RECORDS SHOULD BE EXCLUDED FROM THE RECORDS TO BE MADE AVAILABLE FOR PUBLIC INSPECTION UNDER SECTION 6110 PUBLIC RESOURCES CODE.