MINUTE ITEM 4/28/69

56. SALE OF VACANT SCHOOL LAND IN TRINITY COUNTY TO R. M. MOORE - S.W.O. 8356, W.O. N-0387.

During consideration of Calendar Item 53 attached, the rights in equity of Mr. R. M. Moore, the original applicant for the land, were discussed, and it was reported that an opinion had been received from the Office of the Attorney General recommending that the sale be authorized to Mr. R. M. Moore as the high bidder.

Counsel for Trin-Co Forest Products was not present, but at the request of Mr. Rose, Manager for Trin-Co, a letter was read into the record that had been sent to the Division by Mr. Alfred S. Wilkes, Attorney, on behalf of Trin-Co. In this letter, Mr. Wilkes made the claim that his client was the only bidder that had met the time requirements for submitting offers, and asked for a full explanation of the staff's recommendation (which explanation appears in Calendar Item 53). It was indicated in Mr. Wilke's letter that any further action in the matter by Trin-Co would be based on the explanation given.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION:

1. FINDS THAT SECTION 16, T. 32 N., R. 9 W., M.D.M. (PARCEL NO. 1), CONTAINING 640 ACRES MORE OR LESS, IN TRINITY COUNTY, IS NOT SUITABLE FOR CULTIVATION WITHOUT ARTIFICIAL IRRIGATION; AND

2. AUTHORIZES THE SALE OF SAID PARCEL, SUBJECT TO ALL STATUTORY AND CONSTITUTIONAL RESERVATIONS INCLUDING MINERALS AND GEOTHERMAL RESOURCES TO THE HIGHEST QUALIFIED BIDDER, R. M. MOORE, AT THE CASH PRICE OF $69,224.05.

Attachment
Calendar Item 53 (4 pages)

A 1
S 1

SUPPLEMENTAL CALENDAR ITEM

4/69
S.W.O. 8356
W.O. N-0387

53.

SALE OF VACANT SCHOOL LAND
TRINITY COUNTY

LOCATION: Indian Creek near Douglas City, California 1¼ airline miles south of Highway 299.

APPRAISAL AND BID INFORMATION:

Parcel No.	Acreage	Appraised Value Per Acre	Appraised Value Total	Applicant	Bid
1	640 m/l	$98.25 (av.)	$62,880.00	R. M. Moore	$69,224.05
1	640 m/l	$98.25 (av.)	$62,880.00	Victor A. Rose and Wallace E. Baker, dba Trin-Co Forest Products	$64,064.00

DESCRIPTION:

Legal Description: As in recommendation

Suitability for Cultivation:
Not suitable for cultivation without artificial irrigation.

			Appraised Value
Total Land Value:	640 acres	at $40.87 per acre	$26,160.00
Total Timber Value:	(all species) 1,685 M.B.M	at $21.79+ per M.B.M.	$36,720.00
Total Value:	640 acres	at $98.25 per acre	$62,880.00

Access: Two routes: one travelling south from Highway 299 two miles east of Douglas City; the other travelling east from Hayfork Road two miles south of Douglas City.

Water: Two year-around streams, plus several intermittent streams.

Terrain: Moderate to steep slopes (10% to 50%).

Elevation: Low, 1,900'; high, 3,859'

Cover: Merchantable stands of Ponderosa Pine, Douglas Fir and Sugar Pine. Non-merchantable stands of Digger Pine and Black Oak. Remainder in Manzanita Brush.

Highest and Best Use:
Forestry

STATUTORY AND OTHER REFERENCES:

a. Public Resources Code: Div. 6, Pt. 3, Chs. 1 & 2, Sec. 7301
b. Administrative Code: Title 2, Div. 3, Secs. 2300-2303
c. Commission policy: Minute Item 11, Meeting of 9-16-63

OTHER PERTINENT INFORMATION:

The bid of Trin-Co Forest Products was received in response to a standard advertisement. R. M. Moore was the original applicant.

Mr. Moore, who was the high bidder and the original applicant, sent his bid by an agent. The agent had car trouble and called the Lands Division office asking what to do as he probably would be late for the 4:00 p.m. bid opening. He was informed that "his best bet would be to get the bid in the mail prior to 4:00 p.m." He did so, and the postmark shows December 23, 1968, at 2:40 p.m., Yuba City. By letter of December 27, 1968 from the Division, Mr. Moore was informed that his was "the highest qualified bid received, that all bids were required to be submitted to the Commission for review and consideration of the award to the highest qualified bidder, and that following approval and acceptance of his bid by the Commission, he would be issued a notice and given fifteen days thereafter to deposit the remainder of the purchase price."

The staff acted under a long-standing opinion that land sale bids should be treated as remittances, which become effective when committed to the mails.

When informed that its bid was low, Trin-Co Forest Products (whose bid was on hand at 4:00 p.m.) said it would contest any award made to R. M. Moore.

It is claimed that Mr. Moore has relied on the staff representations by making contractual commitments for the sawing and marketing of the timber that is on the land. Mr. Moore further claims that his agent could have made it to Sacramento in time if he had not stopped to mail the bid.

The Attorney General has been consulted on the matter and has given the opinion that bids received in response to the advertised notice of sale are not remittances and are not effective upon mailing. The Attorney General also concluded that Section 2302(a) of the California Administrative Code may reasonably be construed as rendering the original applicant's bid by letter effective when mailed. The following is a summary of the Attorney General's comments.

The higher bid was mailed by the original applicant, who is expressly authorized by Rule 2302(a) to amend his application by letter. Furthermore, the bid was mailed at the express suggestion of a member of your Staff, and it is claimed that timely physical delivery would have been possible if the applicant had been told that this was essential. This telephone communication tends to counteract the implication from the advertisement that the bids were required to be in the actual possession of the Division at the date and time specified.

Since the Moore bid was mailed before the time of opening he had no knowledge as to the amount or existence of other bids and hence derived no competitive advantage from the method by which his bid was submitted. Furthermore, since his was the higher bid, its acceptance may be considered in the best interest of the State. The case of Townsend v. McCall, 262 Ala. 554, 80 So. 2d 262 (1955) involved an advertisement which provided that no bids would be accepted after 10:00 a.m. The low bidder submitted his bid at 10:20 a.m. and the bids were opened at 10:45. The court upheld an award to the low bidder stating (80 So. 2d at 265):

"The provision for letting the contract to the lowest responsible bidder is for the benefit of the public and does not confer on a bidder any right enforceable at law or in equity."

The court went on to state that taxpayers had standing to prevent misappropriation of municipal funds or the abuse of corporate powers; but that while the discretion with regard to competitive bidding cannot be exercised arbitrarily, the courts would not interfere in such exercise in the absence of fraud or gross abuse. As stated in 10 McQuillan, Municipal Corporations, pp. 321-23 (3d Ed. 1966):

"The provisions of statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagence, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest."

We believe that applying these rules to the present case, an ward to the highest bidder, Mr. Moore, under circumstances which conferred upon him no competitive advantage

would not be subject to successful attack in the courts. However, the ambiguity and possible conflict between the Rules and the advertisement may result in litigation, and this possibility may lead the Commission to reject all bids and readvertise these lands in the best interests of the State.

Under authorization of the Public Resources Code and by terms of the published notice, the Commission may reject both of the bids and re-advertise the lands. It is likely that this also would lead to litigation.

EXHIBIT: A. Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

(1) FIND THAT SECTION 16, T. 32 N., R. 9 W., M.D.M. (PARCEL NO. 1), CONTAINING 640 ACRES, MORE OR LESS, IN TRINITY COUNTY, IS NOT SUITABLE FOR CULTIVATION WITHOUT ARTIFICIAL IRRIGATION; AND

(2) AUTHORIZE THE SALE OF SAID PARCEL, SUBJECT TO ALL STATUTORY AND CONSTITUTIONAL RESERVATIONS, INCLUDING MINERALS AND GEOTHERMAL RESOURCES, TO THE HIGHEST QUALIFIED BIDDER, R. M. MOORE, AT THE CASH PRICE OF $69,224.05.