

MINUTE ITEM

27. ADVANCE RENTALS POLICY - GRANTEEES OF TIDE AND SUBMERGED LANDS - GEN. DATA.

After consideration of Calendar Item 22 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE COMMISSION ADOPTS THE FOLLOWING POLICY: IN ALL INSTANCES WHERE AN AREA OF TIDE AND SUBMERGED LANDS GRANTED TO A POLITICAL SUBDIVISION OF THE STATE CONTAINS LEASES LET BY THE STATE PRIOR TO THE EFFECTIVE DATE OF THE GRANT, ANY RENTALS APPLYING TO FUTURE LEASE PERIODS WHICH HAVE BEEN PAID OR WHICH ARE PAST DUE TO THE STATE BY THE LESSEE PRIOR TO THE EFFECTIVE DATE OF THE GRANT SHALL BE RETAINED BY THE STATE UNLESS THERE ARE SPECIFIC PROVISIONS IN THE GRANTING STATUTE REGARDING THE LEASES BEING TRANSFERRED AND THE DISPOSITION OR PRORATION OF SUCH PREPAID RENTALS ARE DEFINED THEREIN.

Attachment

Calendar Item 22 (2 pages)

CALENDAR ITEM

22.

ADVANCE RENTALS POLICY - GRANTEEES OF TIDE AND SUBMERGED LANDS.

At recent general sessions of the Legislature there have been introduced an increasing number of bills providing for grants of tide and submerged lands to political subdivisions of the State. At the 1961 session 14 statutes were enacted which provided for the granting of tide and submerged lands or the amendment of a previous grant of such lands. Under the provisions of Section 6359, Public Resources Code, such grants do not become effective until such time as the State Lands Commission has surveyed, monumented, platted, and recorded a plat of the granted area. Upon the effective date of the grant, the State's title to the lands is transferred to and becomes vested in the grantee.

In past instances it has been found frequently that leases issued by the State Lands Commission prior to the effective date of the grant are included within the granted area. This has created a recurrent problem respecting the entitlement between the State and the political subdivision to rentals prepaid by the lessee, i.e., the last year's rent paid in advance or a pro-rata portion of a rental received by the State for the year in which the grant became effective. The question is whether such monies should be retained by the State, or paid over to the political subdivision.

The problem posed is threefold: (1) the question of legal entitlement; (2) the matter of equity between the parties; (3) the matter of the mechanics of such a payment.

With respect to the last point, the State has collected and remitted such advance rentals to the State Treasury for credit to the General Fund. To pay these amounts over to a political subdivision requires: (1) obtaining a claim for the money from the grantee; (2) Commission approval of the claim under the provision of 6816(a), Public Resources Code; (3) approval of the claim by the State Board of Control; (4) appropriation to pay the claim through inclusion in the next forthcoming Governor's budget; (5) finally, payment of the claim by the Secretary of the Board of Control at such time as the appropriation becomes effective.

In view of the steps to be taken, the procedure is costly to the State as well as being slow and cumbersome. The staff has made a study of this problem with the following results:

1. Legal Entitlement: There is sound legal authority for the State either to retain such prepaid rentals or to pay them over to the political subdivision.
2. Equity: The staff suggestion in this respect is that such prepaid rentals should be retained by the State. Though it may be argued that such rentals are properly payable to the grantee since they cover a period when title will be vested in the latter, it is also true that:

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- (a) The advance payment was made and received by the State in accordance with the terms of a contract and hence should be retained.
- (b) The revenue from the property was developed by the State prior to the time that the grantee had an interest in the lands, i.e., the State's and not the grantee's effort or administrative costs expenditures resulted in the development of the revenue.
- (c) The grants of land by the State Legislature (especially in recent years) provide for a broader spectrum of localized purposes, uses and benefits as of the effective date of the grant. In the absence of specific provisions in the granting statute, it does not appear that it was the intent to make a gift of rentals previously established and collected by the State for statewide general funding.

In summary, it appears equitable that the State retain such rentals as may have been received or which are past due for payment, under leases being transferred; the grantee to receive future rentals payable effective with the transfer of the property.

- 3. Mechanics of Payment: This problem is solved, ipso facto, if the State retains the rentals under discussion.

In view of the foregoing, it appears appropriate that a policy be established respecting prepaid lease rentals where tide and submerged lands are being transferred to a political subdivision as a result of a grant of the lands by the legislature.

IT IS RECOMMENDED THAT THE COMMISSION ADOPT THE FOLLOWING POLICY:
IN ALL INSTANCES WHERE AN AREA OF TIDE AND SUBMERGED LANDS GRANTED TO A POLITICAL SUBDIVISION OF THE STATE CONTAINS LEASES LET BY THE STATE PRIOR TO THE EFFECTIVE DATE OF THE GRANT, ANY RENTALS APPLYING TO FUTURE LEASE PERIODS WHICH HAVE BEEN PAID OR WHICH ARE PAST DUE TO THE STATE BY THE LESSEE PRIOR TO THE EFFECTIVE DATE OF THE GRANT SHALL BE RETAINED BY THE STATE UNLESS THERE ARE SPECIFIC PROVISIONS IN THE GRANTING STATUTE REGARDING THE LEASES BEING TRANSFERRED AND THE DISPOSITION OR PRORATION OF SUCH PRE-PAID RENTALS ARE DEFINED THEREIN.