

File # 15
Commissioner by a vote of 3
to 2 at its 1/26/77
meeting.

MINUTE ITEM

1/26/77
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15. HARBOR REVENUE FUND - CITY OF LOS ANGELES - G05-04.

During consideration of Calendar Item 15, attached, Assemblyman Vincent Thomas, 52nd District, appeared. As the Calendar Item was originally to be heard at 11:30 a.m., Chairman Cory felt that Assemblyman Thomas should wait on his presentation until that hour to allow the representatives from the City of Los Angeles to appear, delayed because of bad weather. The meeting was adjourned until 11:30 a.m.

When the meeting reconvened Assemblyman Thomas proceeded with his presentation. The Harbor Department, the City of Los Angeles and the City Council had made a request to the Commission to delay the item for 120 days to negotiate this matter; Assemblyman Thomas asked if these representatives were present to state their views. At this point Glen Hughes, representing the Los Angeles Harbor Department, appeared. He stated that the Los Angeles Board of Harbor Commissioners would like the State Lands Commission to approve Alternate 2. Chairman Cory stated possibly #2 could be approved but for 60 days rather than 120 days. Mr. Ray Corley, representing the Los Angeles City Council in Sacramento, then appeared stating that Mr. Tom Shields was delayed due to weather conditions and that he was the one who could debate the 120 to 60 day delay. Assemblyman Thomas then briefly outlined the tidelands grant and explained how the City of Los Angeles and surrounding areas were annexed and when the tidelands became a grant, and that Los Angeles had no right to take any monies out of the trust fund violating the trust agreement. Whatever the figure is that the City owes the Harbor Department should be brought back before the Commission in 60 or 65 days not 120. Chairman Cory wanted to know what the amount was due from the City or the Harbor Department. Mr. James F. Trout, Manager, Land Operations, stated \$2.5 million. Assemblyman Thomas went on to say that Los Angeles should admit they have never lived up to their trust. He closed his presentation by telling how staff was very cooperative and appreciated all that was done.

Mr. Tom Shields, representing the City of Los Angeles, appeared at this time. Mr. Sid McCausland then made a proposal, not in the form of a motion, to insert in Alternate 2 with the insertion of #3 from Alternate 1 which says: "Direct the Board of Harbor Commissioners to refrain from transferring surplus Harbor revenue to the City General Fund until such interests have been accounted for and credited". Chairman Cory then asked Mr. Shields if the new proposal agreed with him. Mr. Shields felt that 60 days was not enough time. Chairman Cory told the representatives from Los Angeles that 60 days was ample time to negotiate with their staff and come up with a solution; he then entered a motion to the Commissioners. Mr. McCausland then moved for adoption of Alternate 2 with the insertion of #3 from Alternate 1, and amended the time for 60 days. Ms. Betty Jo Smith, Commission-alternate for Lieutenant Governor Dymally, seconded the motion, by unanimous decision it was adopted.

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It was decided that the matter would appear in the March Commission Meeting and negotiations should be concluded by that time and staff should confer with the Harbor Department and the City of Los Angeles so everybody clearly understands what is before them.

UPON MOTION DULY MADE AND CARRIED, THE FOLLOWING RESOLUTION IN CALENDAR 15 WAS ADOPTED BY A VOTE OF 3-0:

ALTERNATE NO. 2.

1. AUTHORIZE STAFF OF THE STATE LANDS DIVISION AND THE ATTORNEY GENERAL TO COMMENCE NEGOTIATIONS WITH REPRESENTATIVES OF THE LOS ANGELES CITY COUNSEL, THE LOS ANGELES BOARD OF HARBOR COMMISSIONERS AND THE LOS ANGELES CITY ATTORNEY'S OFFICE IN AN EFFORT TO REACH A SETTLEMENT AGREEMENT REGARDING: (A) THE MAXIMUM SUM THAT MAY BE TRANSFERRED FROM THE HARBOR REVENUE FUND TO THE CITY GENERAL FUND TO REPAY THE CITY FOR EXPENDITURES MADE IN CONNECTION WITH GENERAL OBLIGATION BONDS ISSUED FOR HARBOR IMPROVEMENT PURPOSES; (B) THE AMOUNT AND TREATMENT OF INTEREST MONIES OWING TO THE HARBOR REVENUE FUND BY THE CITY GENERAL FUND; AND (C) SUCH OTHER COLLATERAL MATTERS AS MAY BE WITHIN THE PURVIEW OF THE STATE LANDS COMMISSION.
2. DIRECT THAT SUCH NEGOTIATIONS COMMENCE PRIOR TO FEBRUARY 7, 1977, AND CONTINUE AT MEETINGS TO BE HELD AT LEAST SEMI-MONTHLY THEREAFTER UNTIL SUCH TIME AS AN AGREEMENT HAS BEEN SUBMITTED TO THE COMMISSION FOR APPROVAL, OR UNTIL THE MARCH 31, 1977 MEETING OF THIS COMMISSION, WHICHEVER IS SOONER. IN THE EVENT NEGOTIATIONS CEASE PRIOR TO THAT DATE ALTERNATE RECOMMENDATION NO. 1 SHALL BE CALENDERED FOR THE NEXT COMMISSION MEETING.
3. DIRECT THE BOARD OF HARBOR COMMISSIONERS TO REFRAIN FROM TRANSFERRING SURPLUS HARBOR REVENUES TO THE CITY GENERAL FUND UNTIL SUCH INTEREST HAS BEEN ACCOUNTED FOR AND CREDITED TO THE HARBOR REVENUE FUND.
4. AUTHORIZE THE STAFF OF THE STATE LANDS DIVISION AND THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE FOREGOING.

Attachment: Calendar Item 15 (4 pages)

CALENDAR ITEM

15.

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HARBOR REVENUE FUND - CITY OF LOS ANGELES

BACKGROUND:

On August 25, 1976, Assemblyman Vincent Thomas requested the State Lands Division and the Office of the Attorney General to review certain documents concerning the operations of the Los Angeles Harbor to determine whether the terms and conditions of the grant to the City of Los Angeles are being complied with in good faith. (Ch. 656, Stat. 1911, as amended.) Said documents primarily concern the utilization of harbor revenue funds by the City of Los Angeles as set forth in the 1974 Report of the Auditor General. Staff and the Attorney General's office have completed a review of said documents and made further investigation in an effort to determine whether there is any evidence of a violation of the terms or conditions of said grant. This study did not indicate the necessity of making a complete audit of the Los Angeles harbor operations at this time. However, Commission action is indicated by virtue of the following:

The Los Angeles Harbor District is comprised of trust and non-trust lands. The harbor revenue fund consists of all moneys received or collected or arising out of the operation of the harbor. Thus, harbor revenues are derived from trust and non-trust property. Unless the source of such revenues can be specifically traced to non-trust property, they are presumptively trust funds. The City charter § 145 treats all harbor revenues as trust revenues. If the City wishes to expend harbor revenues for non-trust purposes it should amend its charter and it must segregate the revenues from trust and non-trust property.

Between the fiscal years 1924-1925 to 1959-1960, interest earned on the harbor revenue fund was credited to the city general fund. Further, the City Treasurer invested harbor revenue fund money with other funds under his control. The proportionate share of interest earned by the harbor revenue fund has not been accounted for

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nor has it been credited to the harbor revenue fund. In August 1972, the Harbor Department Chief Accountant concluded that the total amount owing to the harbor revenue fund was \$7,117,708.71. The Auditor General has fixed the amount at \$3,832,441.50. This difference is due to methods of compounding the interest.

CURRENT SITUATION:

Presently, the Board of Harbor Commissioners is transferring surplus harbor revenues to the city general fund to reimburse the City for the payment of principal and interest on general obligation bonds issued to finance the construction of harbor improvements. As of June 30, 1976, \$5,580,000.00 had been transferred pursuant to City Charter § 145(4). The maximum amount that may be so transferred has not been agreed upon between the City and the Board. The propriety of such transfers has been the subject of numerous opinions by the Legislative Counsel, the Los Angeles City Attorney, and the Attorney General. All the opinions conclude that the City may properly be reimbursed for the amounts of principal and for interest contributed to redeem the \$10,000,000 worth of bonds sold after the adoption of § 145(4), of the Charter on May 6, 1924. However, because the right of a trustee to be reimbursed is conditioned upon the state of its accounts, the Board should not proceed with such transfers until the City Treasurer has accounted for the interest monies owing to the harbor revenue fund and credited such moneys thereto. In addition, the maximum amount of money that may be transferred pursuant to Charter § 145(4) should be agreed upon by the City and the Board of Harbor Commissioners.

Pursuant to Chapter 1046, Statutes of 1970, § 11, the details of this matter should be reported to the Chief Clerk of the Assembly and the Secretary of State Senate on or before December 31, 1977.

RECENT DEVELOPMENTS:

This item was originally scheduled for the December Meeting. Pursuant to the request of the City, the matter was put over until the January meeting to enable the City to conduct further research. Thereafter the City Administrator's Office submitted a preliminary report to staff with its conclusions. As a result of discussions between staff,

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the Office of the Attorney General, the City Administrator's Office, the Harbor Department, and the City Attorney's Office, it appears that resolution of this matter may be reached by negotiated settlement, subject to Commission approval. Therefore, staff makes the following alternate recommendations.

ALTERNATE NO. 1

IT IS RECOMMENDED THAT THE COMMISSION:

1. DECLARE AND RESOLVE THAT:

(A) ALL MONEYS IN THE HARBOR REVENUE FUND ARE PRESUMED TO BE TIDELANDS TRUST FUNDS.

(B) THE CITY OF LOS ANGELES IS IN VIOLATION OF ITS GRANT BY RETAINING PRE-1961 INTEREST EARNED ON HARBOR REVENUES IN THE CITY GENERAL FUND.

2. DIRECT THE CITY TO ACCOUNT FOR AND CREDIT PRE-1961 INTEREST EARNED ON HARBOR REVENUES TO THE HARBOR REVENUE FUND.

3. DIRECT THE BOARD OF HARBOR COMMISSIONERS TO REFRAIN FROM TRANSFERRING SURPLUS HARBOR REVENUES TO THE CITY GENERAL FUND UNTIL SUCH INTEREST HAS BEEN ACCOUNTED FOR AND CREDITED TO THE HARBOR REVENUE FUND.

4. DIRECT THE BOARD OF HARBOR COMMISSIONERS AND THE CITY TO DETERMINE THE MAXIMUM SUM THAT MAY BE TRANSFERRED FROM THE HARBOR REVENUE FUND TO THE CITY GENERAL FUND PURSUANT TO CITY CHARTER § 145(4).

5. AUTHORIZE THE EXECUTIVE OFFICER TO REPORT THIS MATTER TO THE CHIEF CLERK OF THE ASSEMBLY AND THE SECRETARY OF THE SENATE ON OR BEFORE DECEMBER 31, 1977.

6. AUTHORIZE STAFF AND THE ATTORNEY GENERAL TO TAKE ALL ACTION NECESSARY TO IMPLEMENT THE FOREGOING INCLUDING, BUT NOT LIMITED TO LITIGATION.

ALTERNATE NO. 2

IT IS RECOMMENDED THAT THE COMMISSION:

1. AUTHORIZE STAFF OF THE STATE LANDS DIVISION AND THE ATTORNEY GENERAL TO COMMENCE NEGOTIATIONS WITH REPRESENTATIVES OF THE LOS ANGELES CITY COUNSEL, THE LOS ANGELES BOARD OF HARBOR COMMISSIONERS, AND THE LOS ANGELES CITY ATTORNEY'S OFFICE IN AN EFFORT TO REACH A SETTLEMENT AGREEMENT REGARDING: (A) THE MAXIMUM SUM THAT MAY BE TRANSFERRED FROM THE HARBOR REVENUE FUND TO THE CITY GENERAL FUND TO REPAY THE CITY

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FOR EXPENDITURES MADE IN CONNECTION WITH GENERAL OBLIGATION BONDS ISSUED FOR HARBOR IMPROVEMENT PURPOSES; (B) THE AMOUNT AND TREATMENT OF INTEREST MONIES OWING TO THE HARBOR REVENUE FUND BY THE CITY GENERAL FUND; AND (C) SUCH OTHER COLLATERAL MATTERS AS MAY BE WITHIN THE PURVIEW OF THE STATE LANDS COMMISSION.

2. DIRECT THAT SUCH NEGOTIATIONS COMMENCE PRIOR TO FEBRUARY 7, 1977, AND CONTINUE AT MEETINGS TO BE HELD AT LEAST SEMI-MONTHLY THEREAFTER UNTIL SUCH TIME AS AN AGREEMENT HAS BEEN SUBMITTED TO THE COMMISSION FOR APPROVAL, OR UNTIL THE JUNE 1977 MEETING OF THIS COMMISSION, WHICHEVER IS SOONER. IN THE EVENT NEGOTIATIONS CEASE PRIOR TO THAT DATE ALTERNATE RECOMMENDATION NO. 1 SHALL BE CALENDERED FOR THE NEXT COMMISSION MEETING.
3. AUTHORIZE THE STAFF OF THE STATE LANDS DIVISION AND THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE FOREGOING.