

37. AUTHORIZATION OF THE EXECUTIVE OFFICER TO REQUEST THE ATTORNEY GENERAL TO TAKE ANY LEGAL ACTION DEEMED APPROPRIATE TO HAVE THE CITY OF LONG BEACH ACCOUNT FOR THE SUM OF \$1,306,347.42 WHICH WAS TRANSFERRED FROM THE TIDE-LAND OIL FUND TO THE GENERAL PURPOSE FUND - L.B.W.O. 10,098.

Commissioner Anderson asked for an explanation of Calendar Item 37 attached. The Executive Officer pointed out that the problem before the Commission was one of administering the trust provisions of the Long Beach tideland operations. Two opposing opinions have been issued, one by the City Attorney for the City Manager of Long Beach holding that the utilization of funds was proper and in accordance with statute, and one from the Office of the Attorney General to the State Lands Division holding that the amount in question should not have been expended and should be retransferred to the tideland trust funds.

In response to a question by Commissioner Anderson on the time limit under the statute of limitations, Assistant Attorney General Jay L. Shavelson explained that it was open to varying determinations, but, to be safe, he thought a proceeding should be on file prior to June 1, 1966, the anniversary date of the original transfer by the City of Long Beach.

Commissioner Anderson stated that, because of the record of good relations between the City of Long Beach and the State, he did not approve of the State suing Long Beach if this could be avoided, and would like to see the problem resolved otherwise.

Chairman Cranston suggested that possibly a waiver of the statute of limitations could be obtained from the City of Long Beach, to permit further discussions and negotiation.

The Executive Officer stated that, because of the two diametrically opposed legal opinions, the matter was now beyond the scope of the staffs of the City and the State, and that they could not proceed further until the legal question posed was resolved. For this reason, it had been recommended that the matter be referred to the Attorney General for appropriate action, not necessarily for the purpose of filing a legal action, but rather to allow the legal staffs of the City and the State to get together.

Mr. Shavelson was of the opinion that the State could postpone filing of an action, but that if an action was to be filed it should be filed prior to the anniversary date in June, and that the Attorney General should be authorized to take whatever action was necessary to protect the State's interests while discussions were being carried on.

Mr. H. A. Lingle, Chief Deputy City Attorney of the City of Long Beach, indicated that his office would be willing to confer with the Office of the Attorney General and attempt to work out a possible solution of the problem. Authorization from the City Council probably would be necessary to waive the statute of limitations, but Mr. Lingle was of the impression that upon recommendation of the City Attorney's office, this authorization would be given.

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

THE COMMISSION DEFERS ACTION ON THE QUESTION OF A RETRANSFER OF THE SUM OF \$1,306,347.42 FROM THE LONG BEACH CITY GENERAL FUNDS TO THE STATE TIDELANDS FUND UNTIL MAY 26, 1966, WITH THE UNDERSTANDING THAT IN THE INTERIM AN EFFORT WILL BE MADE TO OBTAIN A WAIVER OF THE APPLICABLE STATUTE OF LIMITATIONS, AND THAT NEGOTIATIONS WILL BE COMMENCED BETWEEN THE CITY OF LONG BEACH AND THE STATE OF CALIFORNIA LOOKING TOWARDS A SATISFACTORY RESOLUTION OF THE MATTER.

Attachment

Calendar Item 37 (1 page)

AUTHORIZATION OF THE EXECUTIVE OFFICER TO REQUEST THE ATTORNEY GENERAL TO TAKE ANY LEGAL ACTION DEEMED APPROPRIATE TO HAVE THE CITY OF LONG BEACH ACCOUNT FOR THE SUM OF \$1,306,347.42 WHICH WAS TRANSFERRED FROM THE TIDELAND OIL FUND TO THE GENERAL PURPOSE FUND - L.B.W.O. 10,098.

In June of 1962 the City of Long Beach transferred \$1,306,347.42 from the Tideland Oil Fund to the General Purpose Fund to cover expenses of beach operation and maintenance incurred during the period from February 1, 1956, to June 30, 1959. This amount was subsequently transferred to the Public Improvement Reserve Fund. The City of Long Beach contends that the funds transferred were not hydrocarbon revenues.

On May 11, 1964, the Attorney General advised the State Lands Commission that the City of Long Beach could not legally transfer trust moneys to its proprietary funds on this basis. The Attorney General further advised that if the City failed to retransfer said \$1,306,347.42, the Commission might request that the Attorney General institute legal proceedings to effectuate such retransfer. (A copy of said Attorney General's opinion is attached hereto as Exhibit "A".)

Pursuant to said opinion, the Executive Officer has made two written requests that such funds be retransferred, but the City of Long Beach has failed to comply. On March 1, 1965, John R. Maxwell, on behalf of the City of Long Beach, replied that the City Attorney had advised that "City General Funds were used to bear the costs of what were a proper trust expenditure". (A copy of said letter is attached hereto as Exhibit "B".) Legal action appears necessary to protect the interest of the State.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO REQUEST THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ANY LEGAL ACTION IT DEEMS APPROPRIATE TO OBTAIN A RETRANSFER OF THE SUM OF \$1,306,347.42 TO THE PROPER TIDELAND TRUST FUND, AND TO OBTAIN AN ACCOUNTING THEREFOR AND FOR ANY INTEREST EARNINGS AND PROFIT ATTRIBUTABLE TO SAID SUM DURING THE TIME THAT IT WAS WITHHELD FROM THE PROPER TIDELAND TRUST FUND.