

4. (MINOR STRUCTURE PERMITS, LAKE TAHOE, PLACER AND EL DORADO COUNTIES, DIVISION PROJECT - W.O. 1124.)

The staff presented what had transpired since the meeting of the State Lands Commission on July 28, 1954, at which meeting the Commission received a request from Mr. Marion B. Plant, Attorney-at-Law, representing Mrs. Eather Dollar, one of the pier owners at Lake Tahoe, to submit an additional brief in an attempt to rebut the Attorney General's Opinion No. 54/105 of June 30, 1954, concerning the right of the owner of land abutting on a navigable lake to wharf out to navigable water. Mr. Plant was authorized to submit such a brief, and did so within the period allotted to him. His brief was referred to the Attorney General for further consideration. The staff reported that the opinion of the Attorney General in this instance was to the effect that the California law with regard to wharfing-out rights in nontidal waters was identical with those rights as applied to tidal waters, and that the State Lands Commission had full jurisdiction over any wharfing-out beyond low-water mark on nontidal waters.

The staff called attention to Mr. Plant's statement to the effect that the law was not mandatory in so far as the State Lands Commission was concerned, in requiring fees or rentals to be paid for the occupation of sovereign lands. The staff indicated that they agreed with that position, but that if the Commission should exercise its discretion and arrive at a decision that in the future no fees or rentals would be charged for recreational piers constructed by riparian owners out into the waters of Lake Tahoe beyond the low-water mark, in all equity some adjustment would appear to be necessary on behalf of those upland owners who had constructed piers of the character mentioned and had paid the requisite permit fees. The Chairman indicated that he knew of cases where changes in tax rates had been made without giving the benefit of any reductions to those who had paid previously at former rates. Assemblyman Doyle indicated that he did not feel that those pier owners at Lake Tahoe who had paid permit fees and rentals would demand generally a return of the sums they had paid.

Mr. Marion B. Plant reiterated his previous position with regard to his claimed differentiation between the issuance of permits and the rights of upland owners on tidal waters and those located on nontidal waters. He further stated that the engineers for the State Lands Commission had made a determination of what constituted the low-water elevation for Lake Tahoe, and that he had information which would tend to indicate a different elevation for low water. He did not substantiate this statement by any evidence. Mr. Plant further disputed the right of the State Lands Commission to assert conditions in permits issued which would be for the benefit of navigation, explaining that the State Lands Commission had no authority under the law with respect to the protection and furtherance of navigation.

Assemblyman Doyle indicated that he would be willing to introduce a skeleton bill on the matter of issuance of permits of the character under consideration, and arranged with the help of Mr. J. Stuart Watson to do so.

The Commission directed the Executive Officer to defer all action on the issuance of new permits or the renewals of permits pertaining to piers constructed or to be constructed for recreational purposes by upland property owners, no matter where they might be located, i.e., either on tidal or non-tidal waters. The Executive Officer was further instructed to prepare a memorandum setting forth the existing provisions of the law, the Rules and Regulations of the State Lands Commission, and actions taken by the Commission with respect to conditions of permits and rates of fees and rentals. This memorandum is to be submitted to appropriate members of the Legislature, with copies to the chairmen of any appropriate committees, for the purpose of acquainting them with the problems involved.