

MINUTE ITEM

21. (PROPOSED ANNEXATION BY THE CITY OF SANTA BARBARA - W. O. 2400.3.)

The Executive Officer, in presenting Calendar Item No. 25 attached, pointed out that in Exhibit "B" the answer from the Attorney General to the Commission's first question -- Does the State Lands Commission qualify as an owner of lands within the area proposed to be annexed, so as to be able to file an effective protest within the applicable Government Code provisions? -- was definitely "Yes", and that the answer to point number two -- What would be the nature and scope of the city's jurisdiction to regulate and tax within the State-owned tidelands proposed to be annexed? -- was to the effect that the City could tax any oil development in the area under the proposed annexation. He reported that the staff had made a study of the possible potential oil value of the area, and had arrived at a figure of approximately \$40,000,000 as being the total potential value of the area, but indicated that this would probably have to be justified before the City Council. It was further found that there was a small corridor about 800 feet in width belonging to the University of California between the tide and submerged land area proposed to be annexed at the westerly end and the airport.

The Executive Officer pointed out that the power of the City of Santa Barbara to tax could at some time in the future affect the income to the State.

Deputy Attorney General Jay L. Shavelson indicated that the Attorney General's office felt that the taxing power of the City as against private citizens would be the same as for regular taxes, but that no city could prevent drilling, as that would be against State policy; however, a charter city such as Santa Barbara might have even greater discretion than a non-charter city such as Seal Beach would have; at least a charter city would have certain important regulatory powers. He pointed out the language of the resolution of the City of Santa Barbara to the effect that the City would aid the State in carrying out the purpose of the "sanctuary", stating that the main purpose of the sanctuary was to exclude oil operations therefrom, which the office of the Attorney General felt was a matter of State policy, and that the existence of City ordinances could have a hindering effect if the policy of the State should ever change about leasing the lands for oil and gas development.

The Chairman asked who, under the law, was responsible for determining the value of the lands to be annexed, and Mr. Shavelson informed him that it was the responsibility of the City of Santa Barbara; however, if the City's findings were not supported by substantial evidence, the State probably could request a court review.

Assemblyman Holmes inquired as to the basis on which the State was making the \$40,000,000 evaluation of the sanctuary area. The Executive Officer explained that this was based on experience on leases in the Summerland area which is to the East, and also on experience in the Elwood area to the West. Assemblyman Holmes said this was purely an intangible valuation, whereupon the Executive Officer referred to the large bonuses that had been received by the State on comparable areas, plus the real estate value of the area. The Assistant Executive Officer called attention to the fact that the land was available for lease for picnic and various types of commercial and recreational structures and could be of considerable value from that standpoint. Assemblyman Holmes

countered with a remark that the opinion of the Attorney General was informal rather than formal, and that the Commission in taking action under such an opinion would be voting on something that was indefinite.

Mr. Kirkwood asked whether, if there should be a protest on the evaluation, the amount of land included in the proposed annexation could then be cut down so that the value of the State land included would be less than half that of the total value. Deputy Attorney General Shavelson thought a new proceeding would have to be started, but did not want to give an "off-the-cuff" answer.

Senator Hollister indicated that the legislative bill he had in mind would control and limit the size of annexations by cities, but stated that he did not have anything pertinent to add to the question under discussion.

Mayor John T. Rickard of the City of Santa Barbara did not believe he should comment on the staff's recommendation, but reminded the Commission that he had appeared at its last meeting and at that time had given underlying reasons for the City's proposal. He pointed out that as he was Chairman of the City Council, and that inasmuch as any protest would be addressed to the six other councilmen as well as to himself, it would not be appropriate for him to comment. He felt that the Commission should file a written protest, indicating therein the value of the State land, which protest the Council could then consider, as well as considering the effect upon the State's interests of the proposed annexation. Answering the question raised earlier by Mr. Kirkwood, he indicated that not more than five percent of the territory could be deleted from the proposed annexation from then on without invalidating the entire petition, and that there would be a waiting period of one year before another proceeding could be started.

Senator Hollister asked if there were people present who would be interested personally, and was informed that all interested persons had been notified but that only a few were present.

Mr. Milton L. Duncan, President of the Summerland Citizens Association, stated that he was present as a representative of the four unincorporated communities which would be affected by the proposed annexation, and that Mr. Oren D. Sexton of the Hope Ranch Park Homes Association was also present. Mr. Duncan stated that although it was a "local squabble", the problem could affect other areas.

Assemblyman Holmes informed the Commission that his only reason for attending the meeting was to find out the basis used for evaluating the State's land, and contended that as far as the evaluation was concerned, it did not have State-wide effect. He thought that as the Legislature had set up a sanctuary under the Cunningham-Shell Act under which no leases could be issued, that putting a potential value of \$40,000,000 on such land based on oil leases was not appropriate and was information that could be used adversely in the future in taxing the land.

Mr. Duncan agreed with the staff and felt that the evaluation must be based on what might be obtained in the future. He went on to say that the unincorporated communities involved could not put their faith in a future city council with the same confidence that they could in the State to maintain the oil sanctuary.

Senator Hollister stated that he had talked to a City councilman from Santa Barbara the previous Saturday who had admitted that the City could go farther sideways with the proposed annexation if there was private property on which they could pick up some additional value.

Mr. Kirkwood commented on not wanting to become involved in a local squabble, but thought that under the opinion of the office of the Attorney General the Commission should protest any annexation of tidelands, whereupon Mr. Shavelson indicated that this was not the intent of the opinion. He pointed out that whenever a city annexes tidelands it would have powers of taxation, but that it is up to the Commission to determine whether the municipal services that could be provided in the areas to be annexed could compensate for additional burdens that might come upon the State if the lands should ever be leased. He stated that there was no intent, however, to indicate that the Commission should ever disapprove of any annexation of tidelands, and that each case should be considered individually.

Mr. Kirkwood commented on the fact that the people of some of the area involved would have no voice unless the State did act, and indicated that he felt that the City Council could not pass on the validity of a protest, but only on the value of the property on which the protest was based.

The Executive Officer stated that the picture would be different if the City were to extend its limits normal to its present boundaries, and that in the past the only annexations that had been acknowledged had been normal to the shoreline and for a school district, except in one case at Huntington Beach where an annexation went laterally up the coast and took in quite a bit of area, and where an attempt was made to go laterally downcoast but was stopped by one of the oil companies.

Mr. Kirkwood expressed reluctance to make any official finding as to the value of the property. He did not think the Commission had the necessary facts before it to say what the value was, but on the other hand he was equally reluctant to shut off the people of Summerland and upcoast from protection because of their personal inability to protest.

Assemblyman Holmes believed that evaluation for unoccupied territories should be considered on the base of land against land, and that the potential value of leases should not be a determining factor.

Senator Hollister pointed out that if the City of Santa Barbara was fairly certain that the value of the lands of those favoring annexation was higher than that of the State lands, then there was no reason why the State Lands Commission should not enter a protest and "let the cards fall where they may".

Mr. Kirkwood moved that the State Lands Commission protest as to that part of the area to be annexed which lies either easterly or westerly of the shoreward limits of the City extended outside of the present City Limits of Santa Barbara.

Senator Hollister reported that many legislators were worried about the precedent that might be set by the proposed annexation that would affect many problems other than oil interests.

Deputy Attorney General Shavelson commented that a determination had to be made as to whether or not to file a protest, but that he did not quite know the effect of filing a protest as to annexation of certain lands and not others, and said he believed the Commission had to look at the annexation as a whole and protest it as a whole.

Senator Hollister pointed out that the City had an alternative method open of annexing only an offshore corridor to reach the City Airport, thereby protecting the interests of the unincorporated coastal communities in their shorelines.

Mr. Sexton wanted to know, if the Commission were to protest but did not appear personally, how the property owners in the unincorporated areas were going to be able to protect their interests, as they legally had no authority to oppose the proposed annexation personally.

The Chairman pointed out that the position of the Commission was to take action to protect the State's interests, and that he did not believe the Commission had any responsibility with regard to protecting the landowners on shore; that the Commission would be protesting on behalf of the State.

Mr. Duncan wanted the Commission to understand fully that the only recourse for the unincorporated communities was to go to the Commission which had jurisdiction over the adjoining tide and submerged lands, and he claimed that no matter what should eventuate, if the annexation took place it would adversely affect the jurisdiction of State lands. Mr. Duncan claimed that when a municipality acquires rights in which others have an interest, such as riparian rights in front of properties, it seemed that the State should protect the unincorporated communities affected. He referred specifically to the question of harbors, asking what might happen if later one of the unincorporated communities should want to be incorporated and have a harbor, and whether the proposed annexation might interfere with its rights to do so.

The Chairman asked if there was a possibility that the matter would have to be resolved before the Courts if the Commission were to protest the annexation. The Executive Officer indicated that he thought so, and Deputy Attorney General Shavelson agreed.

Mayor Rickard believed that the law states that the owner of public land has the right to file a protest, but that the protest must encompass not only the reason therefor, but also the evaluation.

Mr. Shavelson stated that in its opinion the office of the Attorney General did not mean to infer that the State could not file a protest unless the State owned half of the property, but that the protest would be effective only if the value of the land under the jurisdiction of the State was equal to one-half or more of the value of all the lands involved; however, he felt that there was no necessity for the State Lands Commission to make any official declaration of value.

Mr. Kirkwood asked if when uninhabited area was taken there had to be a base on shore, or whether there was anything to prevent a city from going farther along the coast. Mr. Shavelson said "No", except that normally annexed areas must be contiguous.

UPON MOTION DULY MADE BY LIEUTENANT GOVERNOR POWERS, SECONDED BY MR. KIRKWOOD, AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION AUTHORIZES THE EXECUTIVE OFFICER TO APPEAR BEFORE THE COUNCIL OF THE CITY OF SANTA BARBARA, AT ITS MEETING ON MAY 23, 1957, AND TO OPPOSE THE ANNEXATION INDICATED ON EXHIBIT "A" ATTACHED HERETO, ON THE GROUNDS THAT:

- (A) THE STATE OF CALIFORNIA IS THE OWNER OF OVER FIFTY PERCENT OF THE VALUE OF THE LANDS PROPOSED TO BE ANNEXED; AND
- (B) THE ANNEXATION WILL BE AGAINST THE INTERESTS OF THE STATE.

Attachments:

Calendar Item 25, with Exhibits "A" and "B" (5 pages)

CALENDAR ITEM

SUPPLEMENTAL

25.

(PROPOSED ANNEXATION BY THE CITY OF SANTA BARBARA - W. O. 2400.3.)

At the meeting of the State Lands Commission on April 8, 1957 (Item 11, Minute page 3055), the Commission was advised of the proposal of the City of Santa Barbara to annex certain lands offshore of that City and also some uplands which would encompass the Municipal Airport. The Commission was further advised that if upon receipt of an opinion of the office of the Attorney General it was found that the Commission had jurisdiction, the Executive Officer would prepare a recommendation, including therein a statement of the bases for such recommendation.

An informal opinion of the office of the Attorney General has been received and, among other things, indicates that the Commission is "vested with exclusive jurisdiction over all tide and submerged lands owned by the State (Sections 6216, 6301, Public Resources Code). * * * is the agency through which the State as owner must act." In the opinion of the office of the Attorney General, Section 35313 of the Government Code clearly authorizes the State, through the State Lands Commission, to protest the annexation if the State otherwise qualifies under that section. The office of the Attorney General further believes that the State is qualified under Section 35313 of the Government Code, and could prevent the annexation if the value of the tide and submerged lands equals one-half of the value of all lands proposed for annexation. The area of the tide and submerged land "sanctuary" greatly exceeds the area of the upland proposed to be annexed.

Estimates of the value of the tide and submerged lands under the control of the State Lands Commission indicate a value in excess of forty million dollars. In the opinion of the staff this valuation is substantially greater than one-half of the value of all land proposed for the annexation.

As pointed out by the office of the Attorney General, it cannot be assumed that future technological advances may not eliminate present objections to drilling operations.

A copy of the map showing the proposed annexation is attached hereto as Exhibit "A", and a copy of the informal opinion of the office of the Attorney General is attached as Exhibit "B".

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO APPEAR BEFORE THE COUNCIL OF THE CITY OF SANTA BARBARA, AT ITS MEETING ON MAY 23, 1957, AND OPPOSE THE ANNEXATION INDICATED ON EXHIBIT "A" ATTACHED HERETO, ON THE GROUNDS THAT:

- (A) THE STATE OF CALIFORNIA IS THE OWNER OF OVER FIFTY PERCENT OF THE VALUE OF THE LANDS PROPOSED TO BE ANNEXED; AND
- (B) THE ANNEXATION WILL BE AGAINST THE INTERESTS OF THE STATE.

Attachments:
Exhibit "A"
Exhibit "B"

T. 5 N., R. 28 W.

T. 5 N., R. 27 W.

T. 5 N., R. 26 W.

T. 4 N., R. 28 W.

T. 4 N., R. 26 W.

GOLETA

SANTA BARBARA

SUMMERLAND

COAL OIL PT.

GOLETA PT.

EASTERLY BOUNDARY
P.R.C. 6871.2(B)

EASTERLY BOUNDARY
P.R.C. 6871.2(B)

3 NAUTICAL MILES FROM O.H.W.M.

STATE OF CALIFORNIA
Los Angeles 12

INTER-DEPARTMENTAL COMMUNICATION

TO: Honorable Rufus W. Putnam
Executive Officer
State Lands Commission
302 State Building
Los Angeles 12, California

DATE: May 9, 1957

FILE NO.

SUBJECT:
Santa Barbara Annexation
(W.O. 396.51)

FROM: Department of Justice

Your memorandum of April 10 refers to the proposed annexation of the City of Santa Barbara pursuant to resolution adopted March 21 and requests an informal opinion on the following questions:

- 1) Does the State Lands Commission qualify as an owner of lands within the area proposed to be annexed, so as to be able to file an effective protest within the applicable Government Code provisions?
- 2) In brief, what would be the nature and scope of the city's jurisdiction to regulate and tax within the State-owned tidelands proposed to be annexed?

The proposed annexation presents serious questions of law and fact which may invite litigation. For that reason, we withhold a detailed analysis and express our views in general terms, as follows:

1) The State Lands Commission is vested with exclusive jurisdiction over all tide and submerged lands owned by the State (Sections 6216, 6301, Public Resources Code). Accordingly, the Commission is the agency through which the State as owner must act. The tide and submerged lands proposed for annexation are owned by the State; annexation is sought under the Uninhabited Territory Act of 1939. In our view, section 35313, Government Code, clearly authorizes the State, through the State Lands Commission, to protest the annexation if the State otherwise qualifies under that section. We believe the State is otherwise qualified under section 35313 if the value of tide and submerged lands (alone or when combined with the value of lands of protesting private owners) equals one-half the value of all lands proposed for annexation.

2) As a matter of law, the jurisdiction of the State Lands Commission over tide and submerged lands cannot be diminished by extension of municipal jurisdiction. The authority, for example, to approve the design and location of structures upon such lands would not be

affected by their inclusion within the corporate limits of a city. Although local authority would not extend to the State or its interests in lands included within municipal boundaries, the conduct or interests of the State's lessees can be affected. The taxing power, subject only to general limitations affecting levies and assessments, can operate upon a lessee's interest. A local law cannot affect the activity of the State's lessee to the extent that jurisdiction of the State Lands Commission may be ousted (Monterey Oil Co. v. City Court, 120 Cal. App. 2d 31). However, there may be local matters, unrelated to State-wide concern, which can be regulated by local ordinances. Such activities of municipal concern can be controlled by sixth class cities in the absence of conflicting State law. Charter cities, such as Santa Barbara, can control such activities notwithstanding conflicting State law. Examples may perhaps be found in ordinances related to the protection of persons and property or relating to safety and sanitation. No constructive purpose will be accomplished by an attempt to cite examples of situations which may be lawful, legally questionable, or contrary to law. Each situation must, of course, be determined by the facts and circumstances compelling or purporting to justify enactment of local ordinance.

It appears that the area proposed for annexation is believed to contain oil and gas. At this time, the area is withheld from drilling by reason of policy declared by the State Legislature. The general policy of the State with respect to drilling is well known. Judicial recognition of that policy was expressed by our Supreme Court as follows:

" . . . the development of the mineral resources, of which oil and gas are among the most important, is the settled policy of the state and nation . . . "

Boone v. Kingsbury,
206 Cal. 148, 182

We cannot assume that future technological advances will not eliminate the reasons for present restraints upon drilling in the sanctuary area. Accordingly, we cannot assume that public policy will compel the Legislature to continue existing restraints at all future times.

We call your attention to Resolution No. 3152 of the City Council of the City of Santa Barbara, dated March 21, 1957, which recites that:

" . . . the City of Santa Barbara acknowledges and assumes its responsibility to aid the State of California in protecting the lands within the sanctuary so as to carry out the object and purpose thereof; and

Hon. Rufus W. Putnam
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" . . . the main purpose of the sanctuary is to exclude oil operations therefrom . . . "

In our view, the State Legislature must, exclusively, determine whether oil operations shall be withheld from tide and submerged lands owned by the State. We also believe that the State Legislature has the sole responsibility for enactment of all regulations designed to effect restraints upon drilling into such lands. The City purports to assume as a responsibility the power to enact further restraints concerning matters of State-wide policy; to that extent, we believe that no such responsibility is imposed upon or may be assumed by the City.

Monterey Oil Co. v. City Court,
supra;

Monterey Oil Co. v. The City Court,
120 Cal. App. 2d 41.

At this time, there is an absolute prohibition against drilling within the sanctuary area unless offset operations are required. Whatever action may be contemplated for adoption by the City of Santa Barbara, whereby the sanctuary may be further regulated, will not aid the State in its present policy.

We suggest that any measures which may be adopted by the City for the purpose of regulation may be a hindrance when, if ever, the Legislature determines that the area should be developed in the interests of the public, including the interests of the people of Santa Barbara. We do not assume that the policy of the City of Santa Barbara would not willingly yield to the policy of the State of California. It is not unreasonable, however, to anticipate normal unavoidable delays in repealing regulations which, as enacted, would hamper the accomplishment of the State's objective.

EDMUND G. BROWN, Attorney General
JOHN F. HASSLER,
Deputy Attorney General

By (Signed) J L S
JAY L. SHAVELSON
Deputy Attorney General

JLS:lm:rt