

MINUTE ITEM

30. AMENDMENTS TO SECTIONS 2301 AND 2302, TITLE 2, DIVISION 3, CALIFORNIA ADMINISTRATIVE CODE, RULES AND REGULATIONS OF THE STATE LANDS COMMISSION - W.O. 2541.

After consideration of Calendar Item 35 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO INITIATE PROCEDURES UNDER THE PROVISIONS OF SECTION 11420-11427 OF THE GOVERNMENT CODE FOR CONSIDERATION OF AMENDMENTS TO SECTIONS 2301 AND 2302, TITLE 2, DIVISION 3, CALIFORNIA ADMINISTRATIVE CODE, RULES AND REGULATIONS OF THE STATE LANDS COMMISSION, AS PROPOSED IN EXHIBIT "A" ATTACHED HERETO.

Attachment

Calendar Item 35 (5 pages)

CALENDAR ITEM

35.

AMENDMENTS TO SECTIONS 2301 AND 2302, TITLE 2, DIVISION 3, CALIFORNIA ADMINISTRATIVE CODE, RULES AND REGULATIONS OF THE STATE LANDS COMMISSION - W.O. 2541.

The Commission, at its meeting held February 24, 1959, directed the staff to submit recommendations relative to amending certain provisions of the Commission's rules and regulations covering the sale of school and of swamp and overflowed lands. The principal purpose of the revisions is to streamline the procedure by which these lands are sold, and, in particular, to eliminate excessive deposits by applicants at the time of filing an application to purchase.

There is attached hereto, as Exhibit "A", a draft of the revised regulations as proposed. The revisions incorporated therein accomplish three major changes, as follows:

1. Elimination of the requirement that an applicant deposit his initial minimum offer in cash;
2. Elimination of the preference right accorded a first applicant under present regulations; and,
3. Specification of a period of 20 days from receipt of written notice within which an applicant must deposit funds to meet the appraised value.

Under present regulations, an applicant is required to deposit a minimum of \$2 or \$5 per acre to qualify an application for filing, except in cases where the lands applied for have been previously appraised in which case the minimum deposit required is the previously appraised value. It is imperative that this latter feature be removed from the rules and regulations at the earliest possible date for the reason that in many instances, and particularly in the case of timber lands, valuations have dropped to the point where a previously appraised value is considerably out of line with the current market conditions. This requirement has served its purpose since adoption in 1955 by eliminating the filing of numerous applications for a period following adoption. This provision was included in the regulations at a time when the filing of purchase applications became so voluminous that proper processing was difficult with available personnel. Many applicants were under the impression that State lands could be purchased for the minimum price of \$2 per acre; when information was made available to them that the land for which they had applied had previously been appraised at a figure considerable in excess of \$2 per acre, their application was immediately withdrawn. As stated, this regulation prevented the filing and processing of applications from individuals who intended to pay no more than \$2 per acre for the land in the first instance. The volume of filings has now leveled off to a point where this regulation is no longer considered essential.

With respect to Item 2, it is believed that the regulation giving a first applicant the preferential right to purchase has also completed its purpose

CALENDAR ITEM 35. (CONTD.)

and there appears to be no real reason for its retention. It is the opinion of the staff that public lands which are offered on the open market should be sold outright under competitive bidding to the person submitting the highest bona-fide bid. Under the present system, it is found often that persons who are otherwise desirous of filing an application or bid fail to do so and clearly state they will not submit an application or bid in view of the preference right accorded a first applicant. They feel that the effort is useless on their part and they appear to be correct, for the records show that approximately 95% of the first applicants meet the highest bona-fide bid received.

This preference right has been in effect for many years, with the only apparent justification for it being that it afforded an incentive to prospective applicants to apply for the purchase of State lands. It appears also to have had the effect of according an advantage to an adjoining landowner who, knowing the land was available for purchase, could file an application and thereby be accorded a preference right in acquiring title to the land.

With respect to Item 3 above, the present regulations fail to specify a particular time following receipt of written notice within which the applicant must deposit funds to meet the appraised value. Section 2402(c) of the rules and regulations, pertaining to the deposit of funds to meet the appraised value under the indemnity selection procedure, allows a period of 20 days following receipt of written notice. To be consistent with Section 2402(c), the Division has always allowed 20 days to deposit funds under the school land sale procedure, considering this to be reasonable. This procedure has been established through administrative practice. It would appear preferable to have the procedure specified in the rules by amendment of Section 2302.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO INITIATE PROCEDURES UNDER THE PROVISIONS OF SECTION 11420-11427 OF THE GOVERNMENT CODE FOR CONSIDERATION OF AMENDMENTS TO SECTIONS 2301 AND 2302, TITLE 2, DIVISION 3, CALIFORNIA ADMINISTRATIVE CODE, RULES AND REGULATIONS OF THE STATE LANDS COMMISSION, AS PROPOSED IN EXHIBIT "A" ATTACHED HERETO.

Under Section 11425 of the Government Code, a State agency shall afford any interested person or his duly authorized representative, or both, the opportunity to present statements, arguments or contentions in writing, with or without opportunity to present the same orally.

PURSUANT TO AUTHORITY GIVEN IN SECTION 11425 OF THE GOVERNMENT CODE, IT IS ALSO RECOMMENDED THAT APPROVAL BE GIVEN FOR INITIAL REVIEW OF THE SUGGESTED AMENDMENTS BY ALL INTERESTED PARTIES, TO BE PRESENTED IN WRITING ONLY, WITH ALL PRESENTATIONS TO BE CONSIDERED BY THE COMMISSION AT A FUTURE MEETING WHERE OPPORTUNITY WILL BE GIVEN FOR ORAL OR WRITTEN PRESENTATION OF FURTHER STATEMENTS, ARGUMENTS OR CONTENTIONS OF INTERESTED PERSONS.

Attachment
Exhibit "A"

EXHIBIT "A"

2301. Applications. To qualify as a bona fide applicant, and obtain the rights enumerated under Section 2302-(a), a person shall tender to the Sacramento office of the commission his complete application on the form prescribed, accompanied by a filing fee of \$5 and an expense deposit of ~~\$100~~ \$250 (See Section 1903) ~~and the full amount of his offer.~~ The application must contain a bona fide offer of not less than \$2 per acre for the lands described therein, pending an appraisal as provided in Section 2302. No further deposit is required to support the original offer. ~~The minimum acceptable offer shall be \$2 per acre for lands not within the exterior boundaries of a national forest, national park, or national monument, or not within the exterior boundaries of lands withdrawn from public entry for forest purposes; for the excepted classes of lands the minimum acceptable offer shall be \$5 per acre; provided, however, that should the lands applied for have been appraised by the state prior to the filing of the application at a value in excess of the amounts stated above, the minimum acceptable offer shall be such appraised value.~~

2302. Unoccupied Lands Not Suitable for Cultivation. (a) Upon filing of a bona fide application, an appraisal will be made by the Division of State Lands Division. ~~In the event the offer of the first bona fide applicant is less than the appraised value, and written notice to that effect shall be given him, said applicant shall have the opportunity to amend his offer and, should he fail to increase his offer,~~ Subsequent to the appraisal, written notice of the value established shall be given the first bona fide applicant. Said applicant shall have the opportunity to deposit an amount equal to the appraised value. Should he fail to increase his original offer to an amount equal to the appraised value, by delivery to the State Lands Division of the required amount within 20 days following receipt of written notice, the application shall be cancelled.

(b) Upon deposit of all required funds, receipt of the amended application, the lands shall be advertised for sale. The advertisement shall state a minimum price which the commission will consider which shall be the minimum acceptable offer specified in Section 2301, or the appraised value, whichever is the greater. During the period of 30 days following the date of first publication of notice to receive bids, said advertisement, any qualified person may submit a bid file an application for the purchase of said lands, and any person having an application on file prior to said publication may increase his original offer by submission of the full amount in cash plus any additional amount required as an expense deposit not previously submitted. Bids submitted pursuant to advertising must be on the form prescribed. Bids and increased offers must be in a sealed envelope, identified on the outside thereof in accordance with the requirements of the published notice and delivered to the State Lands Division at Sacramento on or before 4 p.m. of the 30th day following the date of first publication. In the event the 30th day falls on a Saturday, Sunday or other legal holiday for the conduct of state business, the period during which bids and increased offers must be submitted is extended until 4 p.m. of the next regular business day. Subject to the rights of the first applicant,--Each applicant may make as many different bids as he may desire, which bids must be in writing, and sealed and delivered to the Division of State Lands at Sacramento, before 4 p.m. of the thirtieth day following the date of advertisement.

(c) Should an applicant withdraw his offer to purchase at any time, including the period during which publication of notice of sale occurred or thereafter, all costs incurred in processing the application to the date of such withdrawal shall be borne by him provided no other application or bona fide bid is on file.

Should the first applicant withdraw his offer to purchase the land for which he made an expense deposit and no other application or bid is received during the 30-day period following the advertising, then all costs of processing the application shall be borne by him.

(d) -- In the event the first applicant is not the highest bidder, he shall be given 20 days from date of opening of bids within which to make payment of the additional amount necessary to meet the highest qualified bid. Should he fail to make such payment, the highest qualified bidder shall be recommended to receive the award.

(d) (e) The appraisal and all offers and bids received pursuant to such advertising shall be reviewed by the Division of State Lands Division which shall then fix the price at which the land shall be recommended to be sold. Such price shall be exclusive of costs of appraisal, advertising, patent fees, filing fees, etc., and shall not be less than the minimum price as advertised, nor less than the highest qualified bid received.

(f) (e) The Commission shall then review the recommendations of the Division of State Lands Division and make final award or take such other action as public interest indicates.

(f) (g) The successful bidder shall pay all costs incident to the sale which shall include but are not limited to appraisal, advertising and patent fees. The unsuccessful applicants and bidders shall be entitled to a refund of all moneys deposited except the \$5 filing fee.