

MINUTE ITEM

28. REQUEST FOR APPROVAL OF EXPENDITURE OF TIDELAND REVENUES, BELMONT PIER FISH MARKET - L.B.W.O. 10,076.

After consideration of Calendar Item 34 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO ADVISE THE CITY OF LONG BEACH THAT ITS APPLICATION FOR APPROVAL BY THE STATE LANDS COMMISSION OF A PROPOSED EXPENDITURE BY THE CITY OF ITS SHARE OF THE TIDELAND REVENUES FOR CONSTRUCTION OF THE BELMONT PIER FISH MARKET HAS BEEN DENIED.

Attachment

Calendar Item 34 (3 pages)

REQUEST FOR APPROVAL OF EXPENDITURE OF TIDELAND REVENUES, BELMONT PIER FISH MARKET - L.B.W.O. 10,076.

On May 27, 1958, the City of Long Beach requested prior approval of the State Lands Commission for the expenditure of approximately ten thousand dollars for the construction of a 15' x 50' structure on Belmont Pier to be operated as a retail fish market. The funds required for this proposed construction are to be expended from the City of Long Beach's share of the tideland revenues. The location of the proposed fish market is to be on tidelands but outside of the Long Beach Harbor District. Subsequent to the receipt of this request from the City of Long Beach, this Division submitted a request to the office of the Attorney General for an informal opinion regarding the propriety of the proposed expenditure of the tideland revenues. In response to this request, the office of the Attorney General advised that before the Commission could approve the requested expenditure, it must first determine from the facts that the use of the proposed structure would constitute a use necessary or convenient for the promotion and accommodation of commerce or fishery. The opinion, in effect, declared the matter to be the subject of a policy determination within the sound discretion of the State Lands Commission.

The City's application for approval of the proposed expenditure has been submitted according to the procedure set out in Chapter 29, Statutes of 1956, 1st E.S., and the Stipulation as to Entry of Decree in the case of the People of the State of California vs. the City of Long Beach. Section 10 of the above-cited Stipulation provides in part:

...that as to all uses, activities, purposes and projects other than those..., the City of Long Beach, before expending, committing, encumbering or disbursing any oil revenue for any of such other uses, purposes, activities, purposes or projects, shall apply to the Court, on not less than 20 days' notice to the State, for declaratory or other relief..., unless, however, written approval of the State Lands Commission is obtained therefor or the Attorney General stipulates thereto in this action. ...

This Stipulation provides three possible alternatives available to the City of Long Beach to determine the propriety of the expenditure of its share of the tideland revenues. The first alternative is a Petition for a Declaratory Judgment with the original trial court which has retained jurisdiction for such purposes in the People of the State of California vs. City of Long Beach case. To date the City of Long Beach has filed an appropriate petition affecting several proposed expenditures, among which was the proposed expenditure of approximately one million dollars of the City's tideland revenues to construct a building on the tidelands in Long Beach to be leased for a period of 25 years to the National Board of the Young Men's Christian Association at an annual rental of one dollar. The trial court concluded that the proposed expenditure was consistent with and in aid of the applicable trust uses and purposes, and that the expenditure was for a public purpose of

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statewide interest and benefit. The District Court of Appeals, upon its own motion and before reaching a decision, moved the matter to the State Supreme Court where the appeal was recently argued and the court now has the matter under submission.

The second alternative provided in the above-mentioned Stipulation would be by stipulation between the office of the Attorney General and the attorneys for the City of Long Beach. The office of the Attorney General has declined to so stipulate for the reason that this alternative was not intended for the situation here under concern, and, secondly, for the reason that the requested approval necessitates a finding of fact rather than law.

The third alternative provided is the written approval of the State Lands Commission authorizing the expenditure.

It is the position of the staff of the State Lands Commission that it cannot recommend approval of this proposed expenditure for the following reasons:

- a. As set out in the Attorney General's opinion hereinabove referred to, the Commission can approve the proposed expenditure only in the event that it finds that a retail fish market, such as herein proposed and having no connection with commercial fishing in the Long Beach area, is a necessary or convenient structure or appliance for the promotion and accommodation of commerce and navigation. The fish market is to be constructed with City tideland revenues, and will then be leased to a qualified applicant who will operate a retail fish market which will have no connection with the local fishing industry, except as a final retail outlet of fish products which have been acquired through normal wholesale channels. The return to the City of Long Beach is to be in the form of an annual rent guarantee with a percentage of the gross dollar volume over and above the minimum annual rental. The staff has been advised verbally that funds for the construction of the market, as well as profits realized over and above the initial investment, are to be returned to the City's tideland revenue fund.

The staff is unable to find that this proposed improvement is either necessary or convenient for the promotion and accommodation of commerce, navigation, or fisheries in the Long Beach area. To determine what are appropriate expenditures requires the establishment by the courts of definitive criteria, which may be supplied, at least in part, at such time as the California State Supreme Court renders its decision on the armed forces Y.M.C.A. now pending before it.

- b. Further, it is the opinion of the staff that the State Lands Commission should not be required to substitute its approval for the judgment of a court of law or stipulation by the attorneys as provided in Section 10 in the above-referred-to Stipulation. The determination of the trial court or Stipulation by the attorneys in the case has a finality which cannot be attacked upon the basis of an abuse of discretion, whereas a determination by this Commission could be subject to direct attack. Therefore:

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IT IS RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO ADVISE THE CITY OF LONG BEACH THAT ITS APPLICATION FOR APPROVAL BY THE STATE LANDS COMMISSION OF A PROPOSED EXPENDITURE BY THE CITY OF ITS SHARE OF THE TIDELAND REVENUES FOR CONSTRUCTION OF THE BELMONT PIER FISH MARKET HAS BEEN DENIED.