

MINUTE ITEM

20. REJECTION OF APPLICATIONS TO PURCHASE VACANT STATE SCHOOL LANDS,
HARRY A. LOEBENSTEEN - S.W.O. 7083, AND EUGENE SMITH - S.W.O. 6932.

Following presentation of Calendar Items 32 and 18 attached, Deputy Attorney General Paul M. Joseph explained the legal reasoning to support the withdrawal of bids on these two parcels. Inasmuch as original applicants are allowed to withdraw bids, the only logical interpretation appears to be that subsequent bidders also have the right to withdraw.

It was suggested by Commissioners Carr and Cranston that, because of the many questionable points involved, all bids for both parcels should be rejected, that each parcel should again be offered for sale, and that in both instances the rights of each of the respective first applicants should be preserved.

UPON MOTION MADE BY COMMISSIONER CARR, SECONDED BY COMMISSIONER CRANSTON, AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED TO REJECT ALL APPLICATIONS ON FILE AND TO READVERTISE THE FOLLOWING DESCRIBED LANDS, RESERVING ON EACH PARCEL TO THE RESPECTIVE PRESENT FIRST APPLICANTS THE STATUS OF FIRST APPLICANT ON SUBSEQUENT OFFERS IF THEY CHOOSE TO AVAIL THEMSELVES OF THAT STATUS.

PARCEL COVERED BY S.W.O. 7083:

W $\frac{1}{2}$ OF SECTION 36, T. 37 N., R. 4 E., M.D.M., CONTAINING 320 ACRES
IN SHASTA COUNTY.

PARCEL COVERED BY S.W.O. 6932:

W $\frac{1}{2}$, SE $\frac{1}{4}$, W $\frac{1}{2}$ OF NE $\frac{1}{4}$, SE $\frac{1}{4}$ OF NE $\frac{1}{4}$, AND NE $\frac{1}{4}$ OF NE $\frac{1}{4}$ OF SECTION 16,
T. 5 S., R. 9 E., S.B.M., CONTAINING 639.2 ACRES IN RIVERSIDE
COUNTY.

Attachments

Calendar Item 32 (2 pages)
Calendar Item 18 (2 pages)

CALENDAR ITEM

32.

SALE OF VACANT SCHOOL LAND, APPLICATION NO. 5402, SACRAMENTO LAND DISTRICT, SHASTA COUNTY, HARRY A. LOEBENSTEEN - S.W.O. 7083.

An offer has been received from Harry A. Loebenstein of San Francisco, California, to purchase the W $\frac{1}{2}$ of Section 36, T. 37 N., R. 4 E., M.D.M., containing 320 acres in Shasta County.

A staff appraisal has shown that the land is not suitable for cultivation without artificial irrigation, and established its value at an average of \$25 per acre, or a total of \$8,000. The applicant deposited the necessary amount to meet this value.

The land was advertised for sale with a stipulation that bids must be in excess of \$8,000.

Pursuant to advertising, a bid of \$8,640 was received from Eugene G. Seery of Compton, Frank A. Farrell, Thomas Farrell, and Oliver J. Farrell of Los Angeles (Application 5462, Sacramento Land District, S.W.O. 7453). The bid was accompanied by the required expense deposit and filing fee of \$195.

The bid form was in accordance with the terms of the published notice and was proper in all respects except that the letter of transmittal accompanying the bid read as follows:

"Enclosed herewith is an Application (Bid) to Purchase State Land, together with four (4) checks in the amount of \$2,208.75, each, totaling \$8,835.00, which you are authorized to use if you can deliver Title free and clear to the land described in the Application, vesting said Title as follows:

Eugene G. Seery and Mary Margaret Seery, husband & wife as joint tenants, as to an undivided 1/4 interest;

Thomas Farrell and Evelyn M. Farrell, husband & wife as joint tenants, as to an undivided 1/4 interest;

Frank A. Farrell, an unmarried man, as to an undivided 1/4 interest;

Oliver J. Farrell and Marjorie P. Farrell, husband & wife as joint tenants, as to an undivided 1/4 interest.

"It is understood that if this Bid is unsuccessful, all funds will be returned immediately after the November 12, 1959 sale."

"Sincerely,

/s/ Eugene G. Seery
Eugene G. Seery

/s/ Thomas Farrell
Thomas Farrell

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/s/ Frank A. Farrell
Frank A. Farrell

/s/ Oliver J. Farrell
Oliver J. Farrell

Written notice was immediately served upon the first applicant indicating an additional deposit of \$640 was required to meet the high bid received. The first applicant deposited the additional amount within the 20-day period specified by the Commission's rules.

Subsequent telephone and written communications disclosed that the joint Seery-Farrell bid was intended by some of the joint bidders to have been conditional.

In response to the Division's letters of November 18, 1959 directed to each of the joint applicants, a letter was received November 23, 1959 from Mr. Eugene G. Seery. He indicated that he was willing to comply with whatever rules and regulations were in effect governing the sale of State lands. A communication was received by the Division November 27, 1959 signed by the Messrs. Farrell with a notation, "Unable to reach Mr. Seery at this time for signature". These bidders requested that the bid not be submitted to the Commission for consideration and that the funds deposited be returned immediately.

The foregoing may be summarized as follows:

1. There has been a variance in the intent of the joint bidders.
2. Under its present rules and regulations the Commission could not comply with the conditions contained in the transmittal letter accompanying the joint bid.

In view of the foregoing, it appears that the bid submitted by the joint bidders, Messrs. Seery, Farrell, Farrell, and Farrell, is not a bona-fide bid.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE $W\frac{1}{2}$ OF SECTION 36, T. 37 N., R. 4 E., M.D.M., CONTAINING 320 ACRES IN SHASTA COUNTY, IS NOT SUITABLE FOR CULTIVATION WITHOUT ARTIFICIAL IRRIGATION;
2. AUTHORIZE THE SALE OF SAID LAND, SUBJECT TO ANY RIGHTS-OF-WAY PREVIOUSLY GRANTED BY THE STATE, AND SUBJECT ALSO TO ALL CONSTITUTIONAL AND STATUTORY RESERVATIONS INCLUDING MINERALS, TO THE FIRST APPLICANT, HARRY A. LOEBENSTEEN, AT THE APPRAISED AND ADVERTISED VALUE OF \$8,000;
3. REJECT THE JOINT BID OF \$8,640 SUBMITTED BY EUGENE G. SEERY, FRANK A. FARRELL, THOMAS FARRELL, AND OLIVER J. FARRELL, AS NOT QUALIFIED;
4. DIRECT THE REFUND OF ALL DEPOSITS MADE BY SAID JOINT BIDDERS (EXCEPT THE STATUTORY \$5.00 FILING FEE).

CALENDAR ITEM

18.

SALE OF VACANT SCHOOL LAND, APPLICATION NO. 11304, LOS ANGELES LAND DISTRICT, RIVERSIDE COUNTY, EUGENE SMITH - S.W.O. 6932.

An offer has been received from Eugene Smith of Indio, California, to purchase the $W\frac{1}{2}$, $SE\frac{1}{4}$, $W\frac{1}{2}$ of $NE\frac{1}{4}$, $SE\frac{1}{4}$ of $NE\frac{1}{4}$, and $NE\frac{1}{4}$ of $NE\frac{1}{4}$ of Section 16, T. 5 S., R. 9 E., S.B.M., containing a net of 639.2 acres in Riverside County, for \$1,278.40, or \$2 per acre.

A staff appraisal shows that the land is not suitable for cultivation without artificial irrigation and establishes its value at an average of \$6.25 per acre, or a total of \$3,995. The applicant deposited the necessary amount to meet this value.

The land was advertised for sale with a stipulation that bids must be in excess of \$3,995.

Prior to advertising, an offer was received from Robert A. Ellsworth and Harold E. Ensley of Thermal, California (App. 11313, Los Angeles Land District, S.W.O. 6944), of \$1,917.60, or \$3 per acre. Said offer was increased pursuant to advertising to \$7,000, or \$10.95+ per acre.

Under Section 2302(d) of the Rules and Regulations of the State Lands Commission, the first applicant was allowed 20 days from date of opening of bids (October 14, 1959) within which to submit the additional amount of \$3,005 to meet the highest bid received. On October 29, 1959, the first applicant, Eugene Smith, met the high bid.

On October 21, 1959, a telegram was received from the second applicants, Messrs. Ellsworth and Ensley, which was confirmed by letter received October 26, 1959, requesting withdrawal and cancellation of their high bid of \$7,000. This request gave rise to the question as to whether anyone submitting a bid or increasing a bid is entitled to withdraw under these circumstances. Accordingly, the question was referred to the office of the Attorney General, resulting in an informal opinion to the effect that, until accepted by the Commission, either an original application or a subsequent bid may be withdrawn, and, further, that under the rules governing the sale of these lands and in the circumstances of this case, withdrawal of the high bid would establish the first applicant's right to receive the award at the appraised value.

In view of the foregoing (1) withdrawal and cancellation of the bid of Messrs. Ellsworth and Ensley appears proper; (2) Eugene Smith, the first applicant, is entitled to receive the award at the appraised value of \$3,995, should the Commission feel that such action is in the best interest of the State.

IT IS RECOMMENDED THAT THE COMMISSION: (1) FIND THAT THE $W\frac{1}{2}$, $SE\frac{1}{4}$, $W\frac{1}{2}$ OF $NE\frac{1}{4}$, $SE\frac{1}{4}$ OF $NE\frac{1}{4}$, AND $NE\frac{1}{4}$ OF $NE\frac{1}{4}$ OF SECTION 16, T. 5 S., R. 9 E., S.B.M. (EXCEPTING FROM SAID $NE\frac{1}{4}$ OF $NE\frac{1}{4}$ 0.8 ACRE PATENTED BY THE STATE ON NOVEMBER 17, 1934), CONTAINING 639.2 ACRES IN RIVERSIDE COUNTY, IS NOT

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SUITABLE FOR CULTIVATION WITHOUT ARTIFICIAL IRRIGATION; (2) AUTHORIZE THE SALE OF SAID LAND, SUBJECT TO ALL CONSTITUTIONAL AND STATUTORY RESERVATIONS INCLUDING MINERALS, TO THE FIRST APPLICANT, EUGENE SMITH, AT A CASH PRICE OF \$3,995, THE APPRAISED AND PUBLISHED VALUE; AND (3) APPROVE WITHDRAWAL OF THE BID AND CANCELLATION OF THE APPLICATION SUBMITTED BY MESSRS. ELLSWORTH AND ENSLEY AND THE REFUND OF THEIR DEPOSITS.