

**MINUTES OF THE
LEGISLATIVE MANAGEMENT COMMITTEE**

November 9, 2004 – 2:00 p.m. – W135 House Building

Members Present:

Speaker Martin R. Stephens, Chair
President Al Mansell, Vice-Chair
Sen. Ron Allen
Sen. Gene Davis
Sen. Mike Dmitrich
Sen. Karen Hale
Sen. Peter C. Knudson
Sen. John L. Valentine
Sen. Michael G. Waddoups
Rep. Jeff Alexander
Rep. Greg J. Curtis

Rep. Brent H. Goodfellow
Rep. Patricia W. Jones
Rep. Brad King
Rep. Karen W. Morgan
Rep. Michael R. Styler

Staff Present:

Mr. Michael E. Christensen, Director
Ms. M. Gay Taylor, General Counsel
Ms. Beverlee LeCheminant, Secretary

Note: A list of others present and a copy of related materials can be found at www.le.utah.gov, or by contacting the committee secretary, Beverlee LeCheminant, at 538-1032. A recording of the meeting is available from the committee secretary.

1. Committee Business

Speaker Stephens called the meeting to order at 2:05 p.m.

MOTION: Rep. Goodfellow moved to approve the minutes of the October 19, 2004 meeting. The motion passed unanimously. Sen. Davis, Sen. Hale, Sen. Waddoups, Rep. Alexander, and Rep. Morgan were absent for the vote.

2. USU Report on Study of Tuition Tax Credits

Professor Roberta Herzberg said that Utah State University was asked to provide an economic analysis of the effect of tuition tax credits on public and private schools and the overall fiscal consequences of implementation of a bill similar to HB 271 from the 2004 General Session. She indicated that LMC asked USU to look at a variety of impacts of tuition tax credits, but the basic areas to be looked at were: 1) What are the costs of the proposal; 2) How many students will switch from public to private schools based on the tuition tax credit; and 3) how many private school slots will be produced in response to tuition tax credits. Ms. Herzberg outlined the results of USU's report "Estimating Demand and Supply Response to Tuition Tax Credits for Private School Tuition in Utah" in a slide presentation.

Speaker Stephens thanked USU for their presentation and indicated that this issue is for LMC's information only and does not require any action.

3. Armory Board Purchases or Sales

Colonel Morgan, Construction and Facilities of Utah National Guard, distributed a fact sheet about the Utah National Guard Northwest Salt Lake City Readiness Center Land Purchase. He indicated that the Utah National Guard has done all it can to obtain this property at the purchase price of \$2,070,000 and is ready to purchase the property.

MOTION: Sen. Knudson moved that LMC recommend the State Armory Board be authorized to spend the \$2,070,000 Utah National Guard funds for the Northwest Salt Lake City Readiness Center land purchase. The motion passed unanimously. Sen. Davis, Sen. Dmitrich, and Rep. Curtis were absent for the vote.

4. Tenant in Common Interest in Developed Real Estate used for IRS Rollovers

Mr. Jason Perry, Deputy Director, Department of Commerce, and the acting director of the Division of Securities, said the issue his department has been asked to discuss is not whether or not property held as a tenant in common could be held in an IRS Section 1031 exchange, but whether or not those transactions are structured in such a way that they should be considered security. He indicated that the Division of Securities has not taken any action on this particular issue, but it does have a couple of matters that have recently come before the division that will require them to address the issue specifically.

Mr. Perry stated that for the division to properly address this question there are three key definitions that need to be addressed: 1) what is a security; 2) what is a 1031 exchange; and 3) what is a tenant in common. Mr. Perry said that in the final analysis it is clear that a 1031 can be structured as a tenant in common, but it appears that the federal government may determine that this is a security and, consequently, may not provide any protection to the real estate brokers in Utah.

Mr. Robert Thorup, partner with Ray Quinney & Nebeker, discussed the securities law aspects of the tenant in common interest.

Mr. Doug Matsumori, partner with Ray, Quinney & Nebeker, said his client FOR 1031 has tried to navigate the law so that they are legally selling a real estate interest. He indicated that his firm has concluded that this is essentially a real estate interest that is being offered and is a business opportunity that involves real property and should be sold by real estate people.

Mr. Gary Leavitt, Realty Advisor, said that somewhere around \$100 billion a year is exchanged in the United States and tenants in common make up about two percent of that market place at the present time. He stated he feels that real estate should remain as real estate and in the future it will determine whether the Federal Securities and Exchange Commission, on a national basis, construes tenants in common as a security. He indicated that he also feels that the state should wait and see what happens on a national scale regarding this issue.

Mr. Blaine Walker, Utah Property Development, said he believes that the Division of Securities is concerned about protecting the public just as the Real Estate Division is. He indicated that he is involved in many 1031 exchanges, both for clients and himself, and he feels these exchanges are real estate transactions. He stated that he thinks the difference between them is how they are structured and he would encourage the state to look closely at the structure.

Sen. Mansell asked that the Division of Securities meet with the Office of Legislative Research and General Counsel staff and Ray Quinney and Nebeker Law Firm to draft legislation to assure that these 1031 exchanges are considered as real estate and not as security interests.

5. Committee Letters

Mr. Christensen reviewed a letter from the Natural Resources Appropriations Subcommittee requesting authorization to hold a subcommittee meeting on November 11, 2004.

MOTION: Rep. Styler moved to approve the Natural Resources Appropriations Subcommittee's request. The motion passed unanimously. Sen. Allen, Sen. Davis, Rep. Curtis, and Rep. Morgan were absent for the vote.

Mr. Christensen reviewed a letter from the Health and Human Services Interim Committee requesting approval to review draft legislation proposed by Representative Mascaro.

MOTION: Sen. Knudson moved to approve the Health and Human Services Interim Committee's request. The motion passed unanimously. Sen. Allen, Sen. Davis, Rep. Curtis, and Rep. Morgan were absent for the vote.

6. Interim Committee Action on Sunset Reviews

Ms. Taylor reviewed the handout entitled "Sunset Act and Repealers - Acts or Entities that are Scheduled for Repeal in 2005." She highlighted those acts or entities that had not been recommended for extension and would be repealed in 2005.

MOTION: Senator Valentine moved to have LMC send a letter to those entities who were affected by the sunset to inform them that if they want to be reauthorized, they must find a legislative sponsor before December 1, 2004. The motion passed unanimously. Sen. Allen, Sen. Davis, Rep. Curtis, and Rep. Morgan were absent for the vote.

MOTION: Sen. Valentine moved to approve that whatever the interim committees had reauthorized be included within a LMC bill with President Mansell as the sponsor. The motion passed unanimously. Sen. Allen, Sen. Davis, Rep. Curtis, and Rep. Morgan were absent for the vote.

7. Legislation on Legislative Space in Capitol Complex

Mr. John Fellows reviewed draft legislation, "Capitol Complex Space" and indicated that the legislation designates the House Building and its appurtenant parking as the legislative area; clarifies the scope of the Capitol Preservation Board's (CPB) responsibilities; and clarifies LMC's responsibilities for the legislative area. He stated that the legislation would change jurisdiction of the House Building and the parking facilities related to the building to the Legislature, from CPB.

Mr. Dave Hart, Executive Director of CPB, said that he supports what is being proposed in the legislation, but suggested four items for discussion: 1) that CPB have responsibility to maintain the architectural integrity of the building; 2) that CPB have control and be responsible for the mechanical and electrical core of the building; 3) that the exterior enclosure be part of CPB's responsibility; and 4) that CPB maintain responsibility for the roof, the utilities and securities tunnel between the House Building and the parking structure. He indicated that CPB would also like some guidance on parking during the interim and

the session.

MOTION: Sen. Valentine moved to go on record as supporting the concepts in the legislation “Capitol Complex Space” regarding control of legislative space in the Capitol Complex, with changes which address Dave Hart’s concerns and also address the issue of parking as being separately addressed each year by LMC in a letter to CPB. The motion passed unanimously. Sen. Davis and Rep. Morgan were absent for the vote.

8. Recommendation of Audit Subcommittee on Legislative Auditor General

President Mansell reported to the committee that the Audit Subcommittee interviewed all 11 of the qualified applicants from the 13 applications for the position of Legislative Auditor General. He said that four of the 13 applicants were called in for a second interview and, upon completion of the second interviews, the Audit Subcommittee was unanimously recommending the appointment of John Schaff as the Legislative Auditor General.

MOTION: President Mansell said that it is the unanimous recommendation of the Legislative Audit Subcommittee that John M. Schaff be appointed as the Legislative Audit General. The Legislative Audit Subcommittee also recommended that his salary be set initially at \$105,381. He also moved that LMC direct that a joint resolution be prepared for final approval of his six-year appointment by the Senate and the House of Representatives. The motion passed unanimously. Sen. Davis and Rep. Morgan were absent for the vote.

9. Other Business

Rep. Jones suggested informing the chairs of the interim committees to make sure they are following the interim rules in having LMC approve any study items before they are scheduled for consideration by the interim committee.

10. Adjourn

MOTION: Sen. Mansell moved to adjourn. The motion passed unanimously.

Speaker Stephens adjourned the meeting at 4:13 p.m.

Legislative Management Committee
November 9, 2004
Page 5