INTERIM HEARING

OF

SENATE COMMITTEE ON LOCAL GOVERNMENT

ON

1911 IMPROVEMENT ACT

State Building

107 South Broadway

Los Angeles, California

December 12, 1969

APPEARANCES

Senator John G. Schmitz, 35th Senatorial District, Chairman

Senator Alfred E. Alquist, Santa Clara, Committee Member

Senator Albert S. Rodda, Sacramento County, Committee Member

Senator James O. Wedworth, Los Angeles, Committee Member

Senator Tom C. Carrell, Los Angeles, Committee Member

Senator William E. Coombs, San Bernardino, Author of S.R. 370

Mr. Dick Whittaker, Consultant

WITNESSES

CHAIRMAN JOHN G. SCHMITZ: We are going to start this meeting without the author, we were holding off waiting for Senator Coombs. We will start the meeting and hope he arrives before too much of the testimony is given.

The purpose of this hearing is to provide an opportunity for interested citizens, local agency and related industry representatives to present testimony regarding the 1911 Improvement Act. More specifically, we are here pursuant to the provisions and directions contained in Senate Resolution 370, entered by Senator Coombs during the preceding session of the Legislature.

As stated in the resolution, and I am quoting here "...citizens in numerous areas have reported assessments far in excess of original estimates...", and "...It has been charged in many cases that property owners have been assessed by special districts under the Improvement Act of 1911 for improvements that may not even affect their property...". Consequently, we wish to investigate these charges to determine just what has transpired; however, and I would like to emphasize this point, we are not here to find guilt or innocence, but to determine from the facts whether or not corrective legislation may be needed. Thus constructive suggestions that have been thoroughly thought out will be greatly appreciated.

The committee has established a tentative list of witnesses; copies of which are available at the front table, as are copies of the resolution. This list is not exclusive,

and if you are not listed as a witness but wish to testify, please fill in the registration form which is also located on the front table and give it to the Sergeant-at-Arms, and we will add you to our agenda.

I would like to request of all witnesses that you identify yourself for the record and our court reporter by name, title and/or organization you represent, if applicable.

Now, if we may have our first witness, Mr. Reed Sprinkle of the Fontana Paving Company, Inc. Is he here? Apparently not.

I should identify the members of the committee.

I am Senator Schmitz of the 35th Senatorial District, Chairman of the Local Government Committee.

To my left and your right is Senator Alquist from Santa Clara.

And to my right and your left, Senator Rodda from Sacramento County.

The gentleman off to my far right and to your far left is the Consultant, Mr. Dick Whittaker.

Now, is Mr. Stanford D. Herlick, County Counsel of San Bernardino County, here?

MR. WILLIAM BETTERLEY (Supervisor, San Bernardino County): Stanford Herlick will not be present.

CHAIRMAN SCHMITZ: Thank you. We have a registration form, if you would like to testify yourself.

MR. BETTERLEY: No, I am not here to testify except if there are any comments made about our county I will certainly testify.

CHAIRMAN SCHMITZ: Thank you.

By the way, we do not have an extra large group of witnesses and if they do not show up then it is going to be even shorter. We are tentatively not planning to hold an afternoon session and from the looks of it we should be able to finish up this morning. So, you can plan your schedules accordingly.

Well, I see Senator Coombs has just arrived.

Senator, you are just in time. We have not taken any testimony yet.

SENATOR WILLIAM E. COOMBS (San Bernardino): Fine.

CHAIRMAN SCHMITZ: At this time, I will call upon Mr. David Hartley of the California Assessment Bond Underwriters Association. Is he here?

MR. DAVID HARTLEY: Yes.

CHAIRMAN SCHMITZ: How many people are here to testify other than the two names I mentioned?

MR. ED SMITH (Deputy Engineer, County of Los Angeles): I would like to make a few remarks.

CHAIRMAN SCHMITZ: All right. Thank you.

You may proceed, Mr. Hartley.

MR. HARTLEY: Senator Schmitz and Members of the

Committee, my name is David Hartley, I am the General Partner of the firm of Steffen & Vandevert, San Francisco.

I am here today as a representative of the California Assessment Bond Underwriters Association, and I have been, for four years, the Chairman of the Association's Legislative Committee. I have been and our firm has been, I should say, in the business of underwriting assessment bonds since 1930. I have been connected with Assessment Bond Underwriters since 1951.

I have left with you, as you have requested, our statement. I will read it, trying to give a little emphasis on some of the areas that we see could bring some discussion. We wish to express our appreciation for your receiving our testimony today on the matter of Senate Resolution 370 by Senator Coombs, relative to the Improvement Act of 1911.

Our Association consists of all of the major assessment bond underwriters in California, and our associate membership consists of the attorneys who handle, review, and process the majority of special assessment proceedings in California.

The Improvement Act of 1911 has been used for many years in California by all communities constructing improvements that benefit local neighborhood areas. This Act has been used consistently and with a great deal of confidence on the part of public entities. Over the years it has been ne-

cessary to amend the Act to meet the needs and to correct abuses.

Our Association has reviewed the information related to this particular hearing, and we are quite familiar with the situations that have been a problem in San Bernardino County, namely the Trona and Lenwood Assessment Districts.

We can quite understand why some of the property owners in each of these districts have been unhappy with the assessment district process, but we do not agree that the problem lies in the 1911 Act itself. In our opinion the problem lies in the administration of the Act.

The Act itself provides a basic process which carefully designates a procedure for establishing districts, constructing improvements and issuing bonds to finance that construction. The Act does not go into every detail of administrative processing of an assessment district.

We feel that the Legislature should not amend the Act to provide for a highly detailed, specific administrative process. Assessment districts vary in their nature, and the Improvement Act allows for the proper amount of flexibility so that each particular district can be designed to meet the need for that location.

The responsibility of administration rests at the local government level, and the board or council and their staff should have a process for administering assessment

districts in their community.

I would like to speak directly to the five areas of major concern to be brought up at this hearing. Now, gentlemen, this was in anticipation, our anticipation of matters that were going to be brought up. I think whether they are or not specifically, we have reviewed the problems, we have had a discussion with Senator Coombs, we are aware of the particular districts in the county and we have polled our Association to find out any additional information we might have that would be helpful to all of us today, and these are the five areas that we see, that appear to be on our minds, or certainly on the mind of the county.

1. Assessments exceeding original estimate.

Estimates of cost should be carefully developed by the county staff and engineers to meet current day realistic costs of construction, financing and processing. Obviously, if the estimate is not properly drawn and people expect an assessment to be lower than it actually turns out to be they are going to be unhappy. If an estimate of costs is exceeded by 10% or more, the law provides for a hearing or notice advising property owners of the correct amounts.

Now, I will only elaborate on that. I realize that different cities and counties in this state have different processes for administering how they handle a bid for construction that comes in over the estimate.

Because this is a public process it is essential; in the opinion of our Association, it is essential that the people are aware, as aware as possible, of what the real costs are.

SENATOR COOMBS: Mr. Chairman, I have a question.

CHAIRMAN SCHMITZ: Yes, Senator Coombs.

SENATOR COOMBS: At this point, in the areas where the Act has been successfully administered over a period of time, or in the areas where the Act is apparently being administered satisfactorily, what can the property owners do about an overrun at the point where this notification takes place, if they are notified, at that point stop the project, if they could? Are they in a position to do it?

MR. HARTLEY: It is my understanding that is possible. There are in the room here people who can give you a specific answer from a point of law or from the point of administration. I am sure that the Los Angeles City or County people could answer it more directly or a special bonds counsel.

I think it is a good question and I do not want to jump aside but I am not the expert on that that some other people are.

CHAIRMAN SCHMITZ: Senator Coombs, will you please repeat your question?

SENATOR COOMBS: Testimony was just given that in many areas the 1911 Improvement Act is consistently used

successfully. I know that because of five years on Rialto City Council we had no trouble with the 1911 Act. However, we had the situation where the estimate of costs exceeded by 10% or more and there is provision for notice of hearing. At that point if the property owners don't want a 10% increase, what do they do about it? They can abort the project at that point?

MR. HARTLEY: It is my understanding they cannot unless it is under certain sections of the Health and Safety Code, health particularly.

CHAIRMAN SCHMITZ: If they cannot abort the project then the notice of hearing is the whistle that blows before they get hit.

SENATOR COOMBS: That is right.

MR. HARTLEY: How would you like that? If you would like to speak directly to that...

CHAIRMAN SCHMITZ: Senator Coombs, if you do not get your question answered before we terminate today...

SENATOR COOMBS: Let us defer the question, maybe there will be somebody in a position to answer it.

CHAIRMAN SCHMITZ: While we have a break here, the district that was mentioned--Trona and Lenwood-- Senator Coombs, what side of the fault line are they? This afternoon it might be an academic question.

SENATOR COOMBS: I think they are both the other side

of San Adreas Fault.

CHAIRMAN SCHMITZ: Then we will continue the hearing, otherwise we might be doing an idle act.

MR. HARTLEY: I know why you want to get out of here.

CHAIRMAN SCHMITZ: That is the real reason we are testifying this morning, so Rodda can fly on the other side of the fault line.

We will proceed. Continue Mr. Hartley.

MR. HARTLEY: Next is what we designated Item 2.

2. Inequities in assessment practice.

The law provides a flexible procedure wherein each improvement and its costs is taken into consideration and related to each particular property within an assessment district to determine the benefit for that property. In equity, a formula is arrived at for spreading an assessment, and this formula should be applied uniformly throughout the district. The amount of any one assessment relates to benefit.

There is a hearing on inequities of spreading the assessment equitably and at that hearing the property owners have the right to protest or show cause why their protest should be upheld and the governing body must review and make a finding prior to the confirmation of the assessment against the property.

3. Properties assessed for work which does not benefit them.

The law does not provide for assessing properties that do not receive benefit. The governmental entity running

the proceedings must carefully determine the benefit area for any public improvement construction. If no benefit is to be received the property should not be included in an assessment district.

Properties assessed for work which does not benefit them perhaps should receive no assessment.

CHAIRMAN SCHMITZ: Are you speaking legally or theoretically when you say "should"?

MR. HARTLEY: My understanding is both--that if legally no benefit can be shown then legally I don't see how they can be assessed. The law does not provide for you to be charged with something that you do not receive a benefit for, and you have the right, if you feel as a property owner that you have no benefit or you have received an inequitable spread, to take it to a standard legal process and it can be upheld by the courts, and if it is, then a reassessment must be made.

CHAIRMAN SCHMITZ: While we have a break here, I would like to call your attention to and welcome the presence of Senator Wedworth of Los Angeles County to the hearing.

MR. HARTLEY: Then continuing with the next item...

4. Delay in the issuance of warrants.

Because the issuance of an assessment warrant is a legal process and does involve a public hearing and the process of spreading the assessment, giving the proper notice and holding a hearing takes time, and it must be done after

the work is completed so that final construction figures can be used. The contractors who bid on this type of work in the State are all aware of this delay and normally will include a factor for that in their construction bid.

Now, a contractor does not get paid cash under the 1911 Act but he is compensated in the form of a warrant which authorizes him to receive assessments during the collection period and he does not receive cash in that period. Then it calls for bonds to be issued which he receives.

Now we are aware in this underwriting group particularly that there are some contractors in the state who do not understand this process fully. We attempt prior to entering into any bid with a contractor for an assessment warrant to tell him of the normal standard operating procedures of the Act.

Now, I realize that some of these delays can be abnormal. In the Lenwood Area there was an abnormal delay because there was necessity of a validation proceeding. The contractor, obviously, who bid the job and was not aware of that was hurt.

If he had money out and interest was being paid on it and instead of getting a warrant in two months or three he got it in eight months--he is hurt, and he did not know it going in. Some contractors on occasion will be very disturbed

if undue delays are met.

We do not feel it is possible to, on every standard project, get it out in two weeks after he finishes work, but when he finishes he wants that and in the normal process he should get it. The administrative procedure is very important, and the administrative procedure of getting that work out we feel is important.

5. Excessive financing costs.

The nature of the 1911 Act makes it necessary for a contractor to finance himself during the progress of the work, and after he has completed his work he must wait through a time period for a public hearing mentioned above. The contractor therefore must include in his construction bid the cost of money he must advance to do the work.

Contractors normally do not keep the assessment warrants they receive in payment for their work. In fact, they sell them to bond underwriters. Because a time element is involved the contractor must know what he is going to receive for an assessment warrant prior to making his construction bid so that he can include in his bid any discount or premium he might receive on the warrant.

Contractors and public agencies understand this process and should provide for realistic interest rates and bond discounts or premiums in their estimate at the beginning stage of the project. Bond houses are normally very pleased

to give an indication of what these costs might be prior to the construction bid period.

In many cases, particularly in situations where they realize a discount might be involved, they ask what do you think this bond discount might be, how can we make our estimate reflect the true financing cost. We give them our best guess. Obviously, not our number but we give them a range and they can put this or crank it into the estimate of the construction financing cost. So, with that all put together, the construction financing cost, the discount and the time element, then they can come up with a meaningful bid.

Now, obviously, in that statement number five, I referred to discount or premium. I don't think it is necessary today to point out the state of the municipal market or capital market, or what have you. In many states such bonds are selling at fifty cents on the dollar. We can well imagine what that might be and how it might be transferred into a bond piece of property. To say the least, it is difficult if not impossible.

The other factor in here is that because the 1911 Act provides the payment at the end of the project, and because the project can oftentimes take as much as a year, we are buying futures. We used to be pretty confident about buying futures. We used to feel the bond market if it moved 1500's in one year was a big move; last week it moved 1522's

and what we buy here must pay for here a year later obviously and it can be rather disastrous.

That is why it is necessary for the contractor not to take that bid, and that doesn't mean he won't but he would like to know on a firm basis at Point A what he is going to get at Point B when he sells that warrant and we put our necks on the line. If the market goes one way, fine; if it goes the other way that is our cake.

I think from the standpoint of the property is what we are here to think about today, that these costs should be put into the estimate and might even be exposed in the estimate in some manner so that when the local governing body that is reviewing the process sees the numbers they can take a look at the financial feasibility from the point of view of the cost of raising the money. Most of your communities will do this.

In the 1915 Act there is a standard procedure where the discount is estimated and put into the engineer's report at the beginning of the project, at the first hearing. So, there is a way to handle this and it is administrative in our opinion.

Our review of the above five problem areas indicates that they can best be handled at any public agency level by an established administrative process run by people who are informed about the Improvement Act of 1911.

We feel that legislation is not the answer to the particular problems that have been experienced in San Bernardino County. We recommend that the County carefully review all of the possibilities of processing and pass a resolution establishing an effective procedure to meet the needs of their County and the property owners who are affected. Our Association would be happy to be of continuing service to this Committee in any further discussion relating to the Improvement Act of 1911.

Once again, thank you and I am available.

CHAIRMAN SCHMITZ: Thank you, Mr. Hartley. The committee members might want to ask some questions or the author of the resolution.

SENATOR COOMBS: I would like to ask, Mr. Hartley, do you have any recommendations or has your Association provided any recommendations regarding strengthening of the Act? You indicate that might be in order.

MR. HARTLEY: I think there are some recommendations that we are going to have before the Legislature in the beginning of 1970. My committee is working hard on it now to strengthen the Improvement Act of 1911. Yes, we feel there is some clean up work to be done.

Last year, as you will recall, the major problem was cleaning up problems relating to public assessment where a piece of public property was in the middle of a district and how do

they pay and yet they receive a benefit. We feel a pretty adequate job was done in working with our committee as well as the Assembly.

We have some particular problems relating to the advance call on bonds. We have some problems relating to the treasurer's duties, where there is some vagueness, and we are going to have a program probably involving five or six amendments to the Act at this stage.

Now, we can appreciate it and we have been rather successful in having a lot of the inquiries made on this to our Association through either direct communication from the members of the Legislature or from people in cities or counties who have a concern, and if they will bring it to us, both the attorneys and underwriters in the group, we have machinery now with which we can explore it together, with the Legislature and work out these matters.

We see nothing of major consequence in the Act that looks like a problem. We don't see a lot of the matters raised here are anything but primarily administrative. We are open to suggestion and will respond to any that come up, because we don't know everything that is for sure.

SENATOR COOMBS: One other question, Mr. Chairman.

Do you have any ideas at all about how the public can be protected against some of the problems that have arisen in the past in connection with faulty administration ? Property

owners are just as badly hurt regardless of where the problem arises.

MR. HARTLEY: I would have to answer that question consistently with our point of view, Senator, that I do think, that if it were me, that I would certainly go to my supervisor and I might be soft spoken, I might be loud spoken but I would gather evidence and lay it on the table.

If my supervisor were mishandling the project or for some reason was not aware it was being mishandled at some staff level or whatever it might be, I would make sure that through a local government process my voice would be heard. And then, if I still felt I had been taken advantage of I would have it justified and from my point of view because the law does provide me a vehicle through the courts to set aside, readjust, amend, abort a proceeding involving my piece of property.

Now, seven years ago we dealt, as most of you will recall, with a great deal of problems in the Act that were referred to in many terms but they were, in our opinion, abuses.

There were some real loopholes and particularly in the acquisition parts of the Act where it left room for literally somebody to fraudulently take funds or run away with monies involved in the assessment district. Now, this did cause a great deal of chaos in two or three districts in northern California, a lot of smoke, a lot of fire.

Well, after the Legislature and underwriters and attorneys got together we got a well structured set of amendments to close the acquisition loopholes and again we do not see a problem and, obviously, at that time we did not either until somebody took advantage of it and then we saw the problem and said it should be cleared through the Act.

There have been many counties and cities in recent months that have asked our group or members of our group to aid or help them in preparation of resolutions in establishing and beefing up the administrative process. It is a complicated Act and it is detailed, and people going through the staff jobs at the county and city government sometimes have a difficult job, a difficult time.

We have tried, our organization has put out a very large volume handbook as a public service. We have submitted it to every finance officer and every major person, to engineers, to administrative agencies in the state, as a handbook, a reference book in the continuing education process for administration which will lead to better understanding. In San Bernardino and Rialto and many, many communities it goes like this.

Now, in Los Angeles County and Los Angeles City they have a lot of especially trained people, they live with it and do it all the time, handle the situation and don't find the difficulties. It doesn't mean they do not find people

unhappy because of assessments on their property. If they have assessments, number one, they have a benefit; and number two, the benefit is spread equitably.

SENATOR JAMES O. WEDWORTH: Mr. Chairman.

CHAIRMAN SCHMITZ: Senator Wedworth has a question.

SENATOR WEDWORTH: The witness continued to talk, but I will pursue it like this.

As we all know, we have talked about the complicated Act, intended though to be very fair and equitable, and there is a provision, as you say, whereby a person involved within one of these proceedings does have recourse.

We must also know that when we are dealing with the public that it is not necessarily a sophisticated public. We have found in procedures we are involved in that most people don't even know what is going on and generally find out it is after the fact.

MR. HARTLEY: Yes.

SENATOR WEDWORTH: So, should we not continue to strive to improve this Act even though you have an educational process going? There are some areas wherein the city or the county, or the people involved, the procedures go along pretty good but we must also recognize we have areas throughout the State of California where this isn't so.

MR. HARTLEY: I quite agree. Over the years we have heard amazing stories. You can mail a notice of assessment or

put it on the telephone pole, go out and dig up his street in front of him and he will cuss because he cannot get in and out of his driveway, or you can ask to use his water; but for some strange reason, when he gets the final bill, he says--what is this all about? We don't understand that either.

So, the law provides him a vehicle, the notice that is delivered to him or mailed to him, provided he will read or pay attention to it.

Now, there are very well established notice provisions in the Act but we cannot make these people read these notices. The notices get larger all the time because we try to explain. We expand on what should go in, for example that they have the option to pay or go to bond, this kind of thing. It is in the Act now.

SENATOR WEDWORTH: The requirement in the Act, is that by registered mail?

MR. HARTLEY: Not to my knowledge.

SENATOR WEDWORTH: In our city, under 1911 Act procedures ....

CHAIRMAN SCHMITZ: Are you talking of Hawthorne?

SENATOR WEDWORTH: Yes. We took it upon ourselves to institute registered mail notices. It costs us money but when this was instituted our problems just disappeared. Prior to that we were driving in stakes and putting notices there and on the poles but the people were not getting the message.

What do you think about including this in the Act? Because we have many, many government agencies not doing that. It would not cost you anything.

MR. HARTLEY: No. Obviously it costs somebody.

SENATOR WEDWORTH: It costs the property owners.

MR. HARTLEY: That is certainly a possibility. It is a cost. If you are going to mail it then you can certainly go through the process of registered mail. I don't know what some other legal implications might be. I see no problems except the cost.

SENATOR WEDWORTH: Well, I know that we found that the time consumed with additional hearings and talking to individuals, it was much cheaper to send out the notices by registered mail.

MR. HARTLEY: It gets to be a real problem some places, because there are absentee owners and a mailing is only as good as the list from which it is mailed, as we all know, and even the tax collectors can tell us, and for some strange reason what with the crazy financing deals and non-recording the person who owns the property does not get the notice.

SENATOR WEDWORTH: I agree there are some exceptions but not too many. When you use the latest up-to-date assessment files and records you do not have too much of a problem. There might be a ninety day lag or something.

MR. HARTLEY: Some cities and counties have a little difficulty but I see no essential problems from our point of view. And maybe it would not surprise you but when the property owner agrees and understands he has an assessment and is liable to pay it is a much better bondage.

CHAIRMAN SCHMITZ: Any further questions? None?

We thank you for your testimony.

Now, will the next speaker please identify himself for the record.

MR. REED SPRINKLE: Gentlemen, I am Reed Sprinkle, President of the Fontana Paving Contractors, performing work in the County of San Bernardino.

The report I am furnishing to you is an outline of some basic areas and my primary purpose of bringing to you information from a contractor's point of view is:

1. We are trying to develop in our industry the most competitive price so we can maintain the activity of the 1911 Act work.

2. In order to have this be performed we are going to have to have greater cooperation from the governmental agencies to provide the reduction of these costs and our costs.

The costs I am talking about are the cost of administration, the cost of financing and, of course, discounting is something we cannot have any jurisdiction over. Mr. Hartley did provide that information to you quite adequately.

I can talk on two specific jobs that I feel are perhaps some area of concern and perhaps some of this might be in the Resolution or something that might preclude these circumstances happening, or legislation.

I want you to know I am a contractor and I am prejudiced in my opinion and there are certainly some things that could be heard from the county's position. But my interest is not that there is any recovery from my point, at this time, of monies of any sort, the contract is closed and payment has been made. So, anything I say today is not going to reflect a benefit to me on my two specific jobs. I am speaking of two jobs I know of and hopefully the industry might benefit by it.

The job I am first referring to is the Main Street job in Hesperia. It was P6A-5 Assessment District Contract, signed in May 1967. There were two areas of the contract, one a 1911 Act dollar amount of $89,944. Another portion of that work was the contract of cash paid to the contractor by the County of San Bernardino for the amount of the contract, $90,967.50.

These are not the actual dollars, I have identified, actual dollars paid to us because there were certain increases on quantities on the job under unit price items. Our concern is there was $36,533.00 of this as the total incidentals which was in addition to those prices that I just stated, and those

incidentals were a cost of 40% of that 1911 Act part of the bond.

What I am saying is the contract was for actually $91,000.00 and it cost $36,000.00 for incidental expenses.

CHAIRMAN SCHMITZ: Give an example of incidental expenses for those of us not in the contract business.

MR. SPRINKLE: One is engineering, right-of-way, and administration costs that the county will have. I don't know any other. There could be more details on it.

SENATOR WEDWORTH: Go on past 40% and let us hear that.

MR. SPRINKLE: We had a meeting with the county on the next item, on "H". If you refer back to my report on the proposed work to be done, which included Avenue H, from Main to Olive Street and the actual work under contract did not include that and we did not construct that item of work.

Now, there is a street that had to be engineered to get it at one time but apparently the county did not see fit to construct that portion of work. My problem was that I was told at the time I bid the job this was not from the county, that my people asked the county what were the incidentals to be done on this job and they said approximately $25,000.00. The actual cost was $36,533.00. It is a supposition on my part that these increased costs were a part of a street that was never constructed.

SENATOR WEDWORTH: You think it was engineering cost of H Street?

MR. SPRINKLE: I was unable to get information from the county that this was a true fact. We had a hearing. But I am lead to believe this is of reasonable significance.

SENATOR WEDWORTH: That was a violation of the Act, if it happened.

MR. SPRINKLE: It could be. I protested at the time because I had a 14-1/2% discount. If I am bidding 25 and it comes to 36, it is still discounted and I am losing money at that discount rate and that is why I was concerned. We had a meeting and I have the minutes.

That is going to be one of my recommendations, as far as the fact of counting of those incidentals, incidental cost. That is my main point, the cost of incidentals and approximately a portion of the contract not performed, and yet the cost of administering of engineering costs, called incidentals, included as part of payments that our company has had to make.

Next, the Alta Loma District, P66-5. This was a contract. The total amount, a 1911 Act dollar amount, was $395,958.70. The total incidentals was $91,016.77. If my math is correct that represented an incidental cost to the project of 23%.

Our concern on this particular matter was identified

by Mr. David Hartley in the fact that the county caused the delay of the assessment rolls being processed, which I considered to be a period more than two and a half months. We allowed in our estimate a two month period from the date of acceptance of our work for the processing of these warrants and have them be ready for the final hearing.

I had given to Senator Coombs previously and gave to the Vice Chairman of our Board of Supervisors a detail of the time schedule which involved the delay and that delay again cost our company several thousand. I believe our estimate was in the neighborhood of $3400.00 in additional interest costs.

My recommendations would be:

1. That the government agency advertising for the contract of any project dealing with the 1911 Act would be accountable for the incidentals which should be made available to the contractor or to whomever would have reason to want this information. They should have an estimate of the incidentals.

2. Their final cost should be prepared and ready at the time of the final hearing so we would know whether there would be right-of-way costs included in there, some administrative, engineering, and we would want to go into detail on engineering.

If we wanted, we would have an opportunity to fix the time established for a final hearing date and that date would be established after the acceptance of the work by the County Road Department.

Now, for clarification. The contractor performs the work and the county says, you have now completed all the work of the contract. That does not complete the 1911 Act obligation, we have to have a bond hearing and during that period of time the contractor is liable for any damages or weather on the project until the hearing date and the Board of Supervisors has approved it.

So, you see we are still liable for any maintenance that might be performed and we have no relief from the project. Once the final date is established, and it is established after or as of the date the county has accepted the work, we would be locked in and the county would be locked in.

Should there be a delay from that hearing date, it is my considered opinion that the contractor should be reimbursed for those delays in administration or whatever would pertain to the delay.

I recognize there could be a reasonable delay and it would be understandable if a property owner had a complaint to be filed at the time of the final hearing and that certainly would be considered, which would not be penalized against the county although the time does toll against the contractor

and penalize him.

Usually it would put the problem, if it relates to the contractor, he could have caused damage to the property, he could not have done certain things and there might be liens filed on a person's property, it is the contractor's responsibility. If it is that then the contractor should have that pressure brought to bear so it applies to the contractor. Where it deals solely with processing of assessment rolls, I feel the established time should be lived up to and it should be the responsibility of the agency that it applies to.

One other question and I don't know if I am on very firm ground. I have been told that items of the contract which are not listed, I am dealing in the areas of change order work, is not permissible; if we have an item that includes tonnage of job for asphalt paving I should be entitled to that, but if there is a change order, not known at the time of bidding, I am told by the county that our change order request has no merit.

Now, we do feel under the State of California Highway Department's general specifications, 1960 or whatever the applicable year, I think it is 1967 now, and we do deal under the contract of the county specifications, but those administrative clauses which give us remedy where a changed condition did not exist, I have only been told this, I tried to research

this to find out if I am entitled, I have been told I am not because of the burden of additional cost to the property owners should be fixed.

That is the end of my remarks.

CHAIRMAN SCHMITZ: Are there any questions from the members of the committee? None?

Thank you very much, Mr. Sprinkle.

SENATOR WEDWORTH: Mr. Chairman.

CHAIRMAN SCHMITZ: Senator Wedworth.

SENATOR WEDWORTH: I think the significant thing to be brought forth here would be this. I think if you check specific contracts under this Act, counties and cities, you would find probably a very wide variation of incidentals. Why, I don't know. It might be lax study on the part of both sides. I think you would find some pretty wide differences.

CHAIRMAN SCHMITZ: All right.

Now we have Ed Smith, Deputy County Engineer of Los Angeles County.

MR. ED SMITH (Deputy County Engineer, Los Angeles County): Gentlemen, I am here representing John A. Lambie who is the County Engineer of Los Angeles County.

When we saw your Resolution, gentlemen, and the opportunity to talk to you and present some thoughts, we did not realize that this was primarily a problem of San Bernardino County. However, if you care to bear with me, I think

we can present some information that could be of value.

CHAIRMAN SCHMITZ: By the way, for the record, the problem in San Bernardino may have been the occasion but the hearing is to hear all aspects of the 1911 Act. So, feel very much at home despite the previous testimony and the author of the bill being from San Bernardino County.

MR. SMITH: Well, the first statement in the preamble of your Resolution 370 concerns assessments considerably higher than the original estimate. There are various reasons why this might happen. One would be that it was just poor estimating. Another one would be that there could be an unavoidable delay in a project.

The latter happened to us recently when we tried to get an easement from a railroad without sending it back to Chicago and waiting six months to get a reply. Between the time the estimate was made and the time to go to construction we had two strikes on our hands, one was the asphalt workers and the other was the equipment operators.

So, from the time the estimate was made until we went to contract things happened and I think these were justifiable. It is an unfortunate thing that these things do happen sometimes but they are not illegal and it appears that no statutory change should be attempted to handle the situation.

SENATOR COOMBS: Mr. Chairman, I would like to ask Mr. Smith a question.

CHAIRMAN SCHMITZ: Senator Coombs.

SENATOR COOMBS: Mr. Smith, from the standpoint of the property owners, don't you think that when these things do happen that they should have a chance to change their minds as to whether or not they want the improvement?

MR. SMITH: I think they should, Senator Coombs. The law just touches on this situation when it says that when the low bid, the best bid is more than 10%, the low bid plus the estimated incidentals is more than 10% above the original estimate of contract incidentals then the legislative body may direct the Clerk to advise the property owners of the district of this situation, and there it stops.

There is no obligation to do it. There is no obligation on the part of the legislative body when returns come in to do anything about it, they can ignore it. This might be strengthened. No hearing is required under the law. It is possible some agencies do hold a hearing but it is not required.

However, the Board of Supervisors of Los Angeles County is concerned with this situation and we do poll the district and are usually bound by the wishes of the people and if they tell us no, we don't want the project then we do recommend it be abandoned.

This is an administrative matter and it should be controlled by any legislative body, the Supervisors or City

Council.

CHAIRMAN SCHMITZ: Thank you. Please continue.

MR. SMITH: Concerning inequities in assessments, there should be no inequities in assessments. If there are it is done in ignorance. I don't want to say fraud. It should not exist anyway and if it does it is illegal. No change in the statute is required here.

Property assessed when there is no benefit is absolutely illegal and no change is required in the Act.

The last portion of the Resolution is interesting. It shows an indication that you gentlemen would like to have the property owners know in advance what they are going to be assessed and this can be done under the 1911 Act, we do it. It requires a contribution to the project.

Now, we do guarantee the property owners in most of our street jobs what their assessment will be. If it comes out higher than that a contribution is made. There is usually a contribution on a project anyway but it is adjusted so the contribution added to the project can control that assessment.

SENATOR WEDWORTH: What fund is the contribution made from? The General Fund?

MR. SMITH: In our case it comes from Gas Tax money and is only used on street projects.

These are the only comments we have on Resolution 370 but I should like to present to you some thoughts for improv-

ing the Act.

There are four legally required notices of a hearing on a resolution of intention at which it is decided if work is to be done or not, the extent of the district, etc. Those four notices are:

1. U. S. mail order
2. Notice is posted in the district
3. A map is filed with the County Recorder
4. Notice is placed in the newspaper in the community

I doubt if any is worth much except the mail order. The one that is probably the most wasteful is the publication of the resolution of intention. This appears in sometimes a throwaway newspaper or something that is not read. I don't believe anybody ever reads a resolution of intention in the newspaper, it costs the project $200.00 and consideration should be given to eliminating this notice from the law.

The other is assessing of state land. We have had a lot of difficulty with this in years gone by, especially with all the activity the state has gotten into with freeways.

As you know, the state goes through a neighborhood after they determine the proposed alignment and will acquire the right-of-way necessary. It seems to be their practice when only a portion of a lot is needed to take all of it, the whole lot is acquired. Some day when the freeway is constructed and it is decided they do not need all of this lot they declare

it excess land and put it on the market.

It used to be our practice to place an assessment on what we thought would be excess and not required for freeway purposes. We assessed the state land and the state refused to pay it, the bond put forth to cover it.

However, a woman, a Mrs. Bing, took a case to court suing the City of Duarte. The city had a project where they did essentially the same thing and Mrs. Bing became the owner of the bond issued for unpaid assessment. The state refused to pay and the woman went to the city and pointed to a section of the law that says if you assess the state or federal government the city has to pay. They didn't, the city turned it over, said it is not our obligation, the state should pay.

It went to trial court and Mrs. Bing lost. So then it was taken to the appellate court and there it was reversed. The court pointed to a section of the law where it is required that the notice of award of contract be filed with the County Recorder. And in that same section it says this shall be notice to everybody that land will be assessed.

The court felt this was state land also and they talked of the difficulty a contractor would have submitting a bid when he did not know whether the state would pay the assessment or not because it is going to be his assessment, his money.

So, the court decided that the state was responsible

if they acquired the land after that notice was recorded with the County Clerk. That is the Bing matter.

In the last session of the Legislature it was written into the law and it is the law now, the judgment in the Bing case. However, we recommend that you go beyond that.

Now the resolution of intention is adopted, the property owners are notified of a hearing and in the notification we tell them how much their assessment on the property will be. Later will come a contract and notice of award of contract recorded with the County Recorder and if in the interim the state acquires land it will be before, in this case the state does not have to pay.

Now, people earlier at the resolution of intention were given anticipated rates that did not include this contingency. Our recommendation is that the law be revised again in just a moderate way to change this date on the notice of filing notice of award of contract, change it to the adoption of the resolution of intention. Now everybody will know whether they have to pay or not, contractors and the property owners as well.

There is another recommendation that may be considered somewhat minor but it is required that the call for bids be published in a newspaper circulated in the city. It is somewhat like the publication of the resolution of intention, the people who should see it are contractors, potential

bidders who probably never read those in a newspaper circulated in the city.

The way these particular people do learn about this usually is from a construction newspaper, what we call here the "Green Sheet". They pick it up with a brief reference to it and the contractors themselves go out and get more details.

We are recommending a change in the law to put the notice directly in the green sheet with all the details at probably the same expense. We would also recommend that we be authorized to use more than one newspaper. This would be rare but it would be done, for instance as in a case I can cite.

In one of our large water improvement projects, we felt that contractors outside this area should bid on the project because it was a four million dollar job and we wanted a big group of contractors to bid. So, we would recommend that we be permitted to use more than one newspaper. We could at this time but could not charge it.

There is one last point in our recommendations. This is a very radical thing. We know now the contractors are borrowing money at ten and eleven percent interest to finance their projects for construction and for at least two to three months after construction. This cost, as Mr. Sprinkle said, must be included in his bid. It should find its way then in-

to the assessment of the people of the district.

We are recommending something different and that is that permission be placed in the law which, of course, need not be used but to be there to permit the agencies to finance 1911 Act projects themselves. In a general way the permission would permit the establishing of an improvement fund and lending to it probably from the General Fund the estimated amount of the contract.

There is authority in the law now for a contractor, if he cares to, to award or to assign his warrant, assessment and bond to the public agency. That could be used. Then, while a contractor is underway this agency with the money in the improvement fund could make progress payments to the contractor like we do on 1913 Act projects.

Near the time of the assessment the agency would sell the bonds we expect to be issued and knowing the amount of discount we could include it in the assessment, when the assessment was made up for the hearing.

This would, in effect, we feel be using public credit, public funds to finance the contractor as opposed to an outside agency doing it. We know that will not be gratefully received by the people who might feel hurt by it. But there is the other side of the people of the district paying ten or eleven percent on the money the contractor must borrow.

This, gentlemen, is the end of our recommendations

and we intend to provide suggestive legislation at your next session to carry some of these things into law.

CHAIRMAN SCHMITZ: Any questions?

SENATOR WEDWORTH: My question is this, which code and what section of that code do you use to subsidize the difference between the estimated cost and the actual cost?

MR. SMITH: I could not tell you, Senator, right now the section but it is the portion of law that covers contributions. Contributions are permissible and we adjust the contributions as we think we should.

SENATOR WEDWORTH: It would be fine. Thank you.

CHAIRMAN SCHMITZ: Any other questions? None?

Thank you very much, Mr. Smith.

Are there any other people in the audience who have come here to testify on the subject matter here?

Yes, sir.

MR. SMITH (Los Angeles Newspaper Service Bureau): We, unfortunately, were unaware you were going to hold this hearing today but I had a call during the hearing that the subject of published notices had come up in several instances and we are not prepared to discuss it.

However, I think perhaps there are discrepancies in terms of details that have been presented and we would like an opportunity, if you are going to pursue this at a future date to present the newspaper viewpoint.

CHAIRMAN SCHMITZ: What I heard the other Mr. Smith mention was his recommendation which was to do away with the publishing of the notice. I was wondering how long it would take for the newspapers to respond. I did not think the response would come quite this quick.

MR. SMITH: News travels fast. We are interested too in pursuing the element of published notice in the 1911 Act and I wish we had known. We had no word from the Newspaper Publishers Association. I don't think any of them were aware the meeting was upcoming.

SENATOR COOMBS: Would it be in order for the newspapers to file their statement to be included with the report of the committee?

CHAIRMAN SCHMITZ: Senator Coombs suggests you file your suggestions regarding the subject matter here. If there is no objection by the committee it can be filed with the committee report.

I think most of the committee members understand your position in this. Whenever the subject matter comes up in committee the newspapers are very much in evidence. But for the purpose of the report, if there is no objection by the committee, we will invite you to submit your comments for inclusion in the report.

MR. SMITH: Thank you.

CHAIRMAN SCHMITZ: Is there anybody else in the

audience here to speak on any angle whatsoever?

The question that came up with the first witness, during Mr. Hartley's testimony, regarding the fact that if the estimate goes over 10% and the required hearing is held can the citizens abort the project at that time; is there anyone here that can give us an opinion on that?

MR. FRANK MACKENZIE BROWN (Los Angeles Attorney): I am an attorney practicing in Los Angeles and my practice is solely limited to the special assessment field either working for public agencies, counties and cities, assisting them in conducting special assessment proceedings, or securities firms and bond houses in the issuance of bonds.

I jotted a few notes down regarding the question and points originally raised in Mr. Hartley's statement and I am going to try at this time to clarify those along with the point you just raised, including bids.

There was a question raised about certain properties being within the district that maybe do not benefit and the question that the assessment was not spread according to the benefits.

If we look at the history of these acts dating prior to 1911, originally strict legislation was attempted to curb maybe what you think is a problem today. Originally, under acts prior to 1911, it was set forth that the assessment would be spread only according to front footage. That was the sole

guideline or measure.

Whenever a strict guideline was applied like this to assessment proceedings, it was found the inequities that would result greatly exceeded that which resulted from more liberal assessment systems. So, it was liberalized to be spread according to benefits.

The legislative body must rely on the assessment engineer and it is up to the council or board to make the final determination as to whether the assessment was according to benefits.

CHAIRMAN SCHMITZ: May I interrupt?

MR. BROWN: Certainly.

CHAIRMAN SCHMITZ: Tom C. Carrell just came in, he is also a member of the committee.

All right, Mr. Brown.

MR. BROWN: I think as far as legislation in that matter it is only going back to what was unsatisfactory. And the question of whether or not the properties in the district are benefitted, the question of development, these are legislative questions and must be left to the legislative bodies to decide.

If the bid is in excess of the estimate, as Mr. Smith says, the law presently only touches on this matter. In all the cities where I am representing them as special counsel, many times what we will do is call for bids in advance prior

to the first hearing. So, the property owners are there protesting the improvements or the proposed cost. At that time we can present the actual bids received.

This is how in many cases I have felt the problem can be solved in any agency. Whether or not legislation at this level would help this problem, I don't know, by reason of the fact you have a contractor who has submitted a bid.

Generally, your specifications will provide the awarding body must act on its bids, or the bids within a certain specified time.

Does this mean; say we have a bid in excess of the estimate by 11% and draft legislation that sets forth a limitation of 10%, and let us assume we have a good bid although in excess of the estimate by 11%, what should we do?

If the bid was correct originally we could go, but we must throw the bid out and call for bids say four months later and we get a higher bid. It is a circle that keeps on turning.

The law provides the notice can be mailed out and I recommend the agencies do mail out notices. We found whenever they are mailed or a subsequent hearing is held the same people who protested originally come in subsequently at a later hearing.

If a subsequent hearing is held like we have done several times, it begins to impair on the contractor's rights

because now he is probably going to be delayed three to four months maybe before he can start his work.

So, the problem, I think, requires more thought than just laying down certain legislative limits when the bids can be awarded or cannot when it is in excess of the estimate.

Mr. Sprinkle raised one good point where legislation would be worthy of consideration and that is on preliminary incidentals the contractor must put up at the time he signs his contract. I could recommend and I don't think it would have any effect on public agencies, that in their call for bids or even in specifications that they set forth the figure they would require for the preliminary incidentals.

If it is done then the contractors would all know exactly how much they have to put up and certainly they can figure financing on that amount of money. The way the law is worded they must advance preliminary incidentals. However, I don't think legislation along this line would in any way affect the citizens' rights, it would only help the contractors and I think this could be recommended.

The other problem that Mr. Sprinkle brought up is the one about the final hearing on the confirmation and the time delay. This is something I have been discussing with other attorneys now for five years, seeing if we can come up with some sort of formula or method to set something in the

code to avoid this delay.

We have not found anything that would be a satisfactory working tool for the public agencies but we are aware of this problem and we try to gear our public agencies to try to expedite the confirmation of assessments as rapidly as they can.

I think the agencies represented here, Los Angeles City and County do a fine job of turning up assessment rolls following completion of the work. So, most of these are administrative problems in my opinion.

I did have an opportunity to review the proceedings in question, Lenwood and Trona, as well as the Alta Loma job, and I must say from our standpoint, representing the bond owners, we are also looking after property owners. And in the Lenwood file it was my decision to protect the recording, validity of certain aspects of the proceedings, that we file this validation act to protect the property owners and if the property owner then felt wrong dealings were being done they would come into a lawsuit and none of them chose to come into a lawsuit. They all had the opportunity and everybody in the Lenwood area was aware that a validation proceeding had been filed.

I will conclude with that.

SENATOR COOMBS: I don't think he quite answered my question. Suppose you have got this excess and the people

want to abort, how do they do it?

MR. BROWN: Let us assume we do have the excess, preliminarily under law there is some procedure. Let's see what they can do at anytime during the proceeding, maybe we should start there. Let us take the first hearing on the resolution of intention. The law sets forth the proceedings will be abandoned and also four-fifths vote by the council would overrule the protest.

The question is do we want to set something forth in legislation that is more strict than that regarding bids where we already have a hearing on the project itself. In other words, the project is the major item in the proceeding.

I would think if the council has the power to proceed on the proceedings should we have something else in the law that would stop it by reason of the fact the bid comes in in excess of the estimate.

SENATOR COOMBS: It is a question of do the people want to pay that much for the improvement.

MR. BROWN: The first question is whether or not they want the improvement, that is where we have to start.

SENATOR COOMBS: We have to start at the price. Do you want it at a buck or $10,000.00?

MR. BROWN: I have to agree with that and certainly legislation could be enacted but we are narrowing to a small point and I think we should look at the whole picture.

CHAIRMAN SCHMITZ: Senator Coombs has hit on the problem, the objection here. A person might want it and vote for it at a certain price but not want it at 10% above it. If it does, does he get to re-evaluate? If they cannot abort at that time or have another expression then why have the hearing if the hearing is nothing more than to, as I said, blow the whistle that there is a boat coming.

MR. BROWN: Let us go back and consider what any hearing actually is, it is for the property owners to come in and express their opinion. Isn't that correct?

CHAIRMAN SCHMITZ: If it is just to express their opinion ---

MR. BROWN: My point is we are talking about legislative discretion.

SENATOR WEDWORTH: I think the question is well known. The answer to the question can people come in and abort one of these acts, they cannot. Their privilege ends at the end of the hearing and that is it.

MR. BROWN: Unless they want to go to court.

SENATOR WEDWORTH: Sure. That Board of Supervisors is not going to hang around very long. The answer to the question is no.

CHAIRMAN SCHMITZ: The hearing is to get information on which to base a decision whether they want to go to court.

MR. BROWN: The question in front of the council at

the time of the hearing is do we have a district that is sound? Do the property owners want the improvement? Does the public interest and convenience require the improvement? The property owners come in and express their opinions, yes or not in favor at the first hearing. The law provides with four-fifths vote the project can still proceed.

These questions are left to the legislative body and it is within their discretion whether or not they feel the project should proceed based on the evidence and testimony presented at the hearing.

The question is, do we want to put a complete stop gap in the code mainly because of the bid being in excess of the estimate? You turn around the following week and revise the estimate by 10% and start all over. To put a stop gap there to stop everything completely is not going to solve the problem. It is a discretionary matter.

SENATOR WEDWORTH: This is a very difficult question this attorney is expressing. On this question there are many built in factors before you get to the hearing. Who is going to pay for that? There is much that must be done prior to the hearing in setting this thing up which costs a lot of money. This is a serious question. I think we are getting back into the mechanics of this thing.

MR. BROWN: What I try to do is call for bids prior to the first hearing.

SENATOR WEDWORTH: It costs a lot of money.

MR. BROWN: No. We feel it saves time and money if the proceedings are necessary. We have bids in front of us at the hearing so we won't close the hearing, call for bids and the property owner will say I don't know whether to vote or not because I don't know what it is going to cost.

I say we have the bids and they are as follows and then the council can make a decision at that time to proceed with the proceedings or abort the contract as bids are received. But the Act is set forth to be a legislative discretionery act, leaving certain acts to the council and they have to make the decision whether or not they want the improvements, the assessments have been spread according to benefits, the property within the district is benefitted and whether or not the contract received is the best.

SENATOR WEDWORTH: It is a legislative matter.

CHAIRMAN SCHMITZ: If there are no further witnesses, I would like to thank all of those who have appeared. And I personally feel I have never been to a hearing where there has been as little overlapping testimony and redundancy as in this hearing today.

I think we have gleaned the information in this field, as it were, and we thank the witnesses for not duplicating the testimony. I think we have accomplished a lot.

If I might speak for the committee, we don't have

the answer but we do have a heck of a lot more information on which to base a decision in the future on the 1911 Act.

If there are no further comments, the committee meeting will be adjourned.

(Thereupon, the committee adjourned.)

C E R T I F I C A T E

I do hereby certify that the foregoing proceedings were taken down by me in Stenotypy and comprise the full and complete record made in the matter reported on the date of December 12, 1969 at the State Building in the City and County of Los Angeles, California.

M. Virginia Dalton

Hearing Reporter