

M I N U T E S

LEGISLATIVE COUNCIL

November 10, 1970

The fifteenth meeting of the 1969-1971 Iowa Legislative Council was called to order by the Council Chairman, Senator Elmer F. Lange, at 9:55 a.m., Tuesday, November 10, 1970 in the Speaker's Room, State House, Des Moines, with the following Council members present:

Representative Ralph F. McCartney, Vice Chairman
Speaker William H. Harbor
Senator James E. Briles
Senator Andrew G. Frommelt
Senator Eugene M. Hill
Senator Clifton C. Lamborn
Senator Arthur A. Neu
Senator George E. O'Malley
Senator Robert R. Rigler
Representative Dale M. Cochran
Representative William J. Gannon
Representative Charles P. Miller
Representative Leroy S. Miller
Representative Nathan F. Sorg
Representative Andrew P. Varley

Also present for the meeting were a number of senators and representatives in attendance for the purpose of presenting reports of study committees, Secretary of the Senate Carroll Lane, Director Serge Garrison and Senior Research Analyst Phil Burks of the Legislative Service Bureau, and a number of representatives of the news media and other interested persons.

Chairman Lange recognized Mr. Lane, who explained that he was appearing on behalf of both himself and Chief Clerk of the House William Kendrick, who was unable to be present. Mr. Lane stated that prior to the 1969 legislative session he and Mr. Kendrick had discussed the possibility of installing security gates on the staircases leading from the main first floor corridor to the rear entrances to the respective legislative chambers, in order to protect the typewriters and other equipment in use during the session and readily accessible to theft by anyone who might come up those stairs after hours. Mr. Lane added that he had at that time appeared in regard to this matter before the Executive Council, which referred it to the Capitol Planning Commission, which took no action on the matter.

Mr. Lane pointed out that by virtue of chapter 69, section 37, Acts of the Sixty-third General Assembly, First Session, the Legislative Council now has full control of changes

in the facilities of the legislative areas in the Capitol Building. This law does require consultation with the Executive Council and Capitol Planning Commission, but does not bind the Legislative Council by any adverse decisions of the other bodies. Mr. Lane observed that during the past two years it has been most fortunate that the series of bomb scares which occurred were all hoaxes, but cautioned that the possibility remains that someone could slip up the stairs behind one or the other of the legislative chambers and place a bomb in the areas occupied by the General Assembly.

Mr. Lane reported that with the foregoing possibilities in mind, and at the urging of the acting State House Security Chief Galyn Kilgore, he had made preliminary investigation of the problem and had asked Mr. Sam Nicolino of the Sanico Ornamental Iron Company to attend the present meeting with him to give the Council some preliminary ideas of what can be done to increase security with respect to the staircases leading to the rear entrances of the legislative chambers while maintaining the beauty of these staircases.

Mr. Lane then introduced Mr. Nicolino, who briefly explained the possibility of installing ornamental iron gates at the landings or platforms found midway up each of the staircases in question. He explained that these would be what he termed "independent" units, in order to preserve the beauty of the staircases, and that access through the gates would be provided by a key.

Mr. Lane also introduced Chief Kilgore, who explained the difficulties of controlling access to the areas behind the respective legislative chambers on account of the open stairways. He stated that the manpower of the State House security force is quite limited, and that it is most difficult to properly police these staircases at times when the State House offices are closed.

In the ensuing discussion, Senator Frommelt commented that while the installation of security gates such as had been suggested would no doubt assist in controlling access of the general public to the areas behind the legislative chambers, it should not be supposed that such gates would prevent an individual determined to plant a bomb in one of these areas from doing so. Senator Hill then suggested that the Council recess briefly to view the areas where it is proposed to install the security gates. This suggestion was agreed to, and the Chairman declared a brief recess for the purpose.

Upon reconvening of the meeting in the Speaker's Room, Mr. Lane stated that he had no further comments to make regarding

the proposed security gates at this time, but urged the Council to give careful consideration to the matter.

Mr. Lane then requested that the Council make a decision on the disposition of the extra Senate and House desks which, due to the reduction in membership of the General Assembly, will not be reinstalled when refurbishing of the chambers is completed. Mr. Lane explained that the space where the desks are presently being stored will be needed before the convening of the 1971 session, and suggested that the alternatives for disposition of the unneeded desks would seem to be as follows:

1. Storage in the State House attic.
2. Sale at a price established by the Legislative Council.
3. Sale on the basis of sealed bids.
4. Sale together with other excess and outmoded state equipment to be offered at the forthcoming Fairgrounds auction.

Mr. Lane added that it is his view that at least two desks should be retained as standby replacements for desks which might for any reason become unusable.

Senator Frommelt pointed out that the Senate is being returned to its pre-1964 size while the House of Representatives is being reduced eight seats below its pre-1964 size. Therefore all of the excess Senate desks and all but eight of the excess House desks are relatively new desks, made to accommodate the additional members added by the temporary apportionment measures which were in effect during the latter 1960s and presumably have a great deal less antique or historical value than the older desks which were used prior to 1964. There was general agreement among Council members that none of the pre-1964 desks should be offered for sale.

After further discussion, Representative Leroy Miller moved that all of the excess legislative desks which were made subsequent to 1964, except any of the excess Senate desks which it might be deemed advisable to retain on a standby basis, be sold by a sealed bid, the Council reserving the right to reject any or all bids. The motion was seconded by Senator Hill. Senator Frommelt inquired what would be done if it were discovered that more bids, for approximately equal amounts of money, were submitted than there are desks available to be sold.

Representative Sorg commented that in this case the proper procedure would be to select the winning bids by lot. Representative Leroy Miller's motion was then adopted by a unanimous voice vote.

Mr. Lane then requested that the Council establish a policy regarding use of the Senate and House chambers between sessions. Mr. Lane added that it would be his personal recommendation that use of the chambers for administration of examinations and for other more or less routine types of meetings not be allowed in the future, although it would perhaps be desirable to continue to allow the use of the chambers for such events as the YMCA Youth in Government model legislature. Mr. Lane explained that his recommendation is based on the view that indiscriminate use of the chambers for nonlegislative purposes are demeaning to their impressiveness and an unwise use of very expensive and rather specialized facilities. It was the consensus of the Council that any policy on use of the newly refurbished legislative chambers between sessions should be established by the 1971-73 Legislative Council.

There was a brief discussion of the final disposition of the remainder of the old drapes which formerly hung in the Senate and House chambers. At the conclusion of the discussion, it was suggested that the Secretary of the Senate and Chief Clerk of the House be authorized to use these drapes in committee rooms, offices, and other legislative facilities in such manner as they see fit. There being no objection, Chairman Lange so ordered.

Mr. Lane concluded his presentation to the Council by advancing a number of suggestions for the improvement and better utilization of facilities in and immediately adjacent to the Senate chamber, and requested that the Legislative Council take these suggestions under advisement. A summary of the suggestions, headed "Space Age Suggestions for the Good of the Senate," is attached to and by this reference made a part of these minutes.

Chairman Lange then recognized Speaker Harbor for a report on the previous day's meeting of the Council's Legislative Procedures and Facilities Committee. Speaker Harbor reported that the Committee had briefly reviewed the situation relative to the Legislative Fiscal Director's need for additional office space, which Fiscal Director Gerry D. Rankin had presented to the Council on September 29 and which had then been referred to the Procedures and Facilities Committee. After consideration of a letter regarding this matter from the Budget and Financial Control Committee, the Procedures and Facilities Committee had

agreed to recommend to the Council that the question of major alterations in the space presently assigned to the Fiscal Director be referred to the Capitol Planning Commission.

Speaker Harbor further reported that considerable time had been devoted on the previous day to review and discussion of the preliminary draft of the new Iowa Bill Drafting Guide, prepared and issued jointly by Mr. Garrison, Mr. Lane, Mr. Kendrick, and Code Editor Wayne Faupel. Speaker Harbor pointed out that the new drafting procedures, when fully implemented, would utilize data processing equipment available through the Comptroller's Data Processing Division, and thereby greatly facilitate legislative procedure in general. Speaker Harbor noted that the new bill drafting guide is largely self-explanatory, and that only a few minor suggestions for changes have been adopted at the previous day's meeting. He urged all Council members who had not already done so to read the manual.

Chairman Lange commended Mr. Garrison for his work in preparation of the new Bill Drafting Guide and added that he believes the new bill drafting procedure will make for much more effective and expeditious handling of bills in future general assemblies.

Chairman Lange recognized Senator Hill, who pointed out that one year ago he had accepted appointment to the National Legislative Conference Intergovernmental Relations Committee, after consulting with the Legislative Council which had agreed to reimburse Senator Hill for expenses incurred in connection with his service on this Committee. Senator Hill noted that he had not asked for and did not wish to accept per diem for his service on the Committee. He reported that he has been asked to accept appointment to the Committee for another year, and inquired whether the Legislative Council is willing to continue the same arrangement with respect to reimbursement of his expenses for this service. Speaker Harbor moved that the Council continue to reimburse Senator Hill for expenses incurred in service on the NLC Intergovernmental Relations Committee. The motion was seconded by Senator O'Malley and unanimously adopted.

Chairman Lange then recognized Representative Edgar H. Holden, Chairman of the Eminent Domain Study Committee, for his report on the Study Committee's work to date. Copies of the report are on file with, and may be obtained from, the Legislative Service Bureau.

With respect to the notation on page 2 of the report that the Study Committee had requested an Attorney General's opinion on the constitutionality of S.F. 1184 and 1185, which were passed by the Second Session of the Sixty-third General Assembly, Senator Frommelt noted his objections to the request for this opinion. He explained that he believes there should be a presumption of constitutionality with respect to every bill passed by the General Assembly, and that it is the Attorney General's obligation to defend any bill passed by the General Assembly if its constitutionality is challenged. He added that while it is proper in his view for the Attorney General to express an opinion to the General Assembly as to how the courts are likely to rule on the constitutionality of any pending legislative proposal, once a bill has been passed by the General Assembly any determination of its constitutionality should be left to the courts.

Representative Gannon noted recent news media reports that a major Iowa utility firm has proposed joint development with the Conservation Commission of a recreational lake in connection with construction of a nuclear powered generating plant. He pointed out that while the utility firm in question does not have the power of eminent domain for this project, the Conservation Commission does have such power with respect to recreational projects, and he expressed the opinion that the utility firm's motive may be to indirectly obtain the benefit of the Conservation Commission's power of eminent domain. He requested that the Eminent Domain Study Committee look into this matter.

Representative Cochran made reference to the statement in the Study Committee's progress report that it does not at this time recommend any changes in the laws applicable to payment of damages for underground gas storage facilities. He expressed the view that the companies which are storing gas at the present time are obtaining rights of considerable value for very little compensation. He added that the contract with the landowners in the underground gas storage areas limits drilling in such areas to a fixed level, which is often not deep enough to permit the landowners to drill wells which will reach the present water tables in these areas.

Representative Holden replied that the utility companies involved had expressed concern about these matters in appearances before the Study Committee. He also stated that a bill to revise some portions of the law governing arrangements for underground storage of gas has been before the previous session of the legislature, but had not been considered. He

pointed out that legislation in this area is complex, difficult to understand, and directly affects only a relatively few people in the state. Representative Cochran agreed, and added that it is just for these reasons that support for legislation in this area by bodies such as the Study Committee is needed.

Representative Cochran continued that a related problem which has come to his attention is that in cases where landowners conclude that a utility company is violating the conditions of its contract for underground gas storage, the company frequently takes the position that the landowner should initiate legal action and allow the courts to make the determination. He pointed out that an individual landowner is placed at a considerable disadvantage in attempting to take an action against a multi-million dollar corporation. Representative Holden replied that a bill which would allow such disputes to be settled, subject to appeal, by a panel drawn from the county condemnation commission had been considered by the Study Committee, but did not receive enough votes to be recommended.

Representative Charles Miller asked if existing law or any of the recommendations of the Eminent Domain Study Committee will permit an adjoining landowner to claim damages on account of a road building or other public project where no part of such landowner's land is actually taken for the project. Representative Holden replied in the negative, adding that the Study Committee had considered this matter and had concluded that it would be quite difficult to write such legislation because of the difficulty of determining how far away from the project in question damages should be allowed, and what in fact constitutes damage to the value of a given piece of property. Senator Frommelt pointed out that certain kinds of public improvements, particularly those made in connection with highway projects, could radically affect the value of the location or facility of a business as well as a private home. Representative Holden agreed and commented that the Study Committee has been made aware of instances in which this has actually happened.

In response to a question from Senator Lamborn, Representative Holden stated that while the Study Committee has made no formal recommendation, it would be his own personal recommendation that public utilities use public rights-of-way for installation of new transmission lines, and similar facilities. He pointed out that there is already public access to every city, town, business, and dwelling in the state of Iowa,

and that there would appear to be very few instances in which it is actually necessary to grant additional public access for use by utility firms. He noted that improvements in technology permit installation of very high voltage power lines in relatively narrow corridors.

Council members having no further questions regarding the Eminent Domain Study Committee at that time, Chairman Lange expressed appreciation to Representative Holden for his report. Chairman Lange then recognized Senator Ralph W. Potter, Chairman of the Municipal Laws Review Study Committee, for his report on the Study Committee's work to date. Copies of the report are on file with, and may be obtained from, the Legislative Service Bureau.

Representative Gannon inquired whether the Study Committee has taken a position with respect to the use of municipal utility funds for purposes other than maintenance and operation of the utility. Senator Potter referred the question to Representative Sorg, a member of the Study Committee's sub-committee which has worked in this area. Representative Sorg replied that if receipts of a municipal utility exceed expenses attributable to its operation, it is possible under existing procedures to transfer the excess funds to other municipal accounts, and that this power will be preserved in the new legislation expected to be recommended by the Study Committee. Representative Gannon observed that this in effect requires users of municipal utilities services to indirectly support other types of municipal services.

Senator Frommelt expressed objection to the wording of the comments regarding the existing thirty-mill limit on general fund property tax levies by cities and towns, appearing in the second paragraph of Division VII of the synopsis of the proposed new municipal code which is attached to the Study Committee's report. He explained that in his view the comments in question appear to be a recommendation that the thirty-mill limit be retained, and that he considers retention of this limit unrealistic unless there is a significant change in the present state tax structure as it affects financing of municipal services. Senator Potter replied that it was the Study Committee's understanding that its directive was to avoid recommendations for changes in city taxing powers, and that the comments to which Senator Frommelt had referred are in effect a statement that the Study Committee has done so. Representative Varley agreed, but Senator Frommelt again stated that he does not so interpret the comments in question and if this is the intent of the comments they should be rewritten.

In response to questions from Representative Charles Miller, it was stated that the two and one-half mill capital improvements reserve fund, to which reference is made in the fourth paragraph of Division VII of the synopsis, would be new authority which is not found in present law. However, it is possible under present law for a city or town to make a one-mill "emergency levy" in addition to the maximum thirty-mill general fund levy.

Council members having no further questions regarding the Municipal Laws Review Study Committee at that time, Chairman Lange expressed appreciation to Senator Potter for his report. Chairman Lange next called for the report of the Metropolitan Planning Study Committee. Mr. Garrison explained that it was not possible for either Representative George Milligan, the Study Committee Chairman, or Senator Lucas DeKoster, the Vice Chairman, to attend the present meeting. Mr. Garrison then presented on behalf of Chairman Milligan a progress report on the Study Committee's work to date. Copies of the report are on file with, and may be obtained from, the Legislative Service Bureau.

Senator Hill inquired why it would not be possible to simplify legislation such as is being considered by the Study Committee by declaring all counties with cities of over 45,000 population to constitute metropolitan areas, and allowing the respective central cities in such counties to provide services to all residents of the county. He pointed out that this would eliminate the problem of a "superstructure" above existing levels of local government. Mr. Garrison replied that the Study Committee had considered this possibility, but pointed out that some metropolitan areas, notably the greater Des Moines area, cross existing county lines.

The meeting recessed for lunch at noon, and was reconvened at 1:30 p.m. in the Speaker's Room. All Council members who had been present for the morning session, and Lieutenant Governor Roger Jepsen, were present for the afternoon session.

Chairman Lange recognized Senator Rigler, Chairman of the Governmental Reorganization Study Committee, for the progress report on the Study Committee's work to date. Copies of the report are on file with, and may be obtained from, the Legislative Service Bureau.

Representative Gannon inquired whether it appears that implementation of those recommendations of the 1969-70 Governor's Economy Committee which the Study Committee has endorsed will save as much money as was projected by the Economy Committee in its report. Senator Rigler said that no attempt has been made

to determine exactly how much money is likely to be saved by implementation of any or all of the Study Committee's recommendations, but expressed the opinion that the savings would be substantial. He added that the Study Committee has accepted most of the Economy Committee's recommendations, with the principal exception of the recommendation for issuance of motor vehicle license plates for a period of five years. Senator Rigler explained that while he personally favors this recommendation, it is highly controversial and was therefore not adopted. Senator Hill, also a member of the Study Committee, commented that it appears that the recommendations adopted by the Study Committee will result in a total of approximately eighty bills which are in the process of being drafted by the Legislative Service Bureau.

Senator Lamborn inquired whether it is considered that the regional jail concept would be a means of saving money. He pointed out that local governments would have to pay a proportionate share of the cost of operating these facilities on a charge-back basis, as well as having the expense of maintaining some kind of local detention facility for persons awaiting trial or who are being held for only a very short period of time for some reason. Mr. Garrison stated that the intent of the draft legislation presently being prepared by the Service Bureau is that the cost of initial construction be borne by the state, adding that it appears that fifty percent and possibly even seventy-five percent federal matching funds would be available to the state for construction of such facilities. He agreed with Senator Lamborn that the cost of operation will be borne primarily by local governments, and that this will be a significant cost, but it is not known whether the net effect on county finances will be a saving or an increase in cost.

Senator Neu pointed out that the only apparent alternative to establishment of a regional jail system would be for each county to continue operating its own local jail facilities. He added that it might also be argued that every county should operate its own facility for the care and treatment of the mentally ill and mentally retarded, rather than operating state institutions for this purpose. Senator Lamborn replied that the regional jail system is an entirely new proposal, and should be carefully evaluated from the point of view of cost to counties before it is adopted.

Representative Leroy Miller asked whether the Study Committee has considered recommending establishment of a state Department of Transportation. Senator Rigler replied in the negative.

Council members having no further questions regarding the Governmental Reorganization Study Committee at that time, Chairman Lange expressed appreciation to Senator Rigler for his report. Chairman Lange then recognized Representative William Hill, Chairman of the Criminal Code Review Study Committee, for the progress report on the Study Committee's work to date. Copies of the report are on file with, and may be obtained from, the Legislative Service Bureau.

At the conclusion of his report, Representative Hill pointed out that Mr. Charles Vanderbur, who held the office of Story County Attorney at the time of his appointment as a non-legislative member of the Study Committee, has since resigned that office and is now in private practice in another county. Since it had been felt that county attorneys should be represented on the Study Committee, Washington County Attorney Ira Morrison has been serving in a consultant capacity pending an opportunity for approval by the Council of his appointment as a nonlegislative member of the Study Committee. Representative Hill requested that the Council approve the appointment at this time. Chairman Lange inquired if any member of the Council had any objection to the appointment. No objection being expressed, the appointment was declared approved.

Chairman Lange expressed appreciation to Representative Hill for his report, and recognized Senator Charles Laverty, Chairman of the Environmental Preservation Study Committee, for the progress report on the Study Committee's work to date. Copies of the report are on file with, and may be obtained from, the Legislative Service Bureau.

Upon concluding his presentation of the prepared report Senator Laverty pointed out that the Study Committee still has considerable work to do in determining all details of its recommendations to the Sixty-fourth General Assembly and in completing draft bills to implement these recommendations. Chairman Lange pointed out that the convening of the Sixty-fourth General Assembly is only two months away, and that the Legislative Council hopes to act on recommendations of the various study committees at a meeting sometime during the first half of December. Senator Laverty expressed confidence that the Environmental Preservation Study Committee's recommendations will be ready for the First Session of the Sixty-fourth General Assembly.

Senator Hill referred to the organizational chart of the contemplated Department of Environmental Quality which the Study Committee presently has under consideration, and inquired how, if this pattern of organization were adopted, it would be possible for the Water Quality Commission, for example, to be adequately informed about the work of the Division of Water Quality. Senator Lavery replied that the Deputy Director in charge of the Division of Water Quality would be responsible to the Director of Environmental Quality, who in turn is directly responsible to the Executive Committee, of which the chairman of the Water Quality Commission is a member. He pointed out that one of the executive committee's primary responsibilities is coordination among the various agencies which would be included in the Department.

There was some discussion of the revisions which it is anticipated will be recommended in H.F. 1336 of the Sixty-third General Assembly, the most recent version of the conservancy districts bill originally recommended by the 1965-68 Drainage Laws Study Committee. Senator Lavery pointed out that the work which has been done on this bill to date has been carried out almost entirely by a Subcommittee on Watershed Districts, of which he is not a member, but of which Representatives Varley and Cochran are members.

In response to a question from Senator Neu, Representative Varley stated that under the Subcommittee's current proposal, the six conservancy districts organized along topographical watershed lines would each be governed by the State Soil Conservation Committee, which would be enlarged and somewhat restructured in order to be in a better position to discharge these functions. Senator Lavery commented that at this time the revision of H.F. 1336 and the bill which would create a new Department of Environmental Quality have not been reconciled, and are in conflict at some points.

Representative Cochran pointed out that another feature which has been added to the former H.F. 1336 is a guarantee that no mandatory soil conservation practice would have to be undertaken without the availability of public funds to assist with the cost of the practice. Representative Gannon expressed concern that federal agricultural cost-sharing funds for such projects may be reduced or even become unavailable in the future. Representative Cochran agreed that such recommendations have been made to the United States Congress by both the previous and present federal administrations, but pointed out that these recommendations have never yet been accepted, and that the adoption of measures such as the proposed conservancy district bill might be a strong encouragement to the federal government

to continue financial participation in soil conservation practices.

In answer to further questions from Representative Gannon and Senator Hill, Representatives Varley and Cochran and Mr. Burks explained that the conservancy districts bill is structured in such a way as to strongly encourage farmers to voluntarily comply with any soil conservation regulations which may be adopted, since there is no possibility of obtaining federal cost-sharing funds for work undertaken in compliance with a court order or other mandatory enforcement measures. Senator Hill suggested the possibility of substituting a penalty for failure to undertake soil conservation practices, such as the withholding of agricultural land tax payments, rather than an outright requirement that such practices be undertaken. Senator Lamborn expressed concern that some farmers might be unable to afford to comply with mandatory soil conservation practice regulations even if they wish to do so. Representative Cochran pointed out that none of the soil conservation practices defined by the conservancy districts bill are unduly expensive to install or maintain.

Senator Neu made reference to recent actions of the new Chemical Review Board relative to use of certain types of pesticides, and to news media reports that the state Secretary of Agriculture regards the Board's action as advisory rather than mandatory. Senator Neu inquired whether the Study Committee has done anything to make clear to the parties involved the legislative intent that the Board have mandatory authority in this area. Senator Lavery replied that he has communicated with the Board chairman on this matter, and that the chairman is aware of the Legislature's intent that the Board have mandatory powers.

Chairman Lange thanked Senator Lavery for his report and recognized Representative Don D. Alt, Chairman of the Housing for the Handicapped Study Committee, for the progress report on the Study Committee's work to date. Copies of the report are on file with, and may be obtained from, the Legislative Service Bureau.

In response to a question from Senator Hill, Representative Alt stated that the definition of the term "handicapped" has been one of the Study Committee's major problems. The Study Committee finally agreed to define the term as meaning physically handicapped for the purpose of this study, although the Division of Vocational Rehabilitation uses a broader definition. Representative Alt noted that people who are physically handicapped

are sometimes also mentally handicapped, but that physically handicapped persons who are not mentally handicapped object to being included in the same category with the mentally handicapped. In addition, it is frequently necessary for younger severely physically handicapped persons to live in the same facilities as the aged infirm, and this is quite distressing to younger physically handicapped persons.

Chairman Lange, noting that he has served as a member of this Study Committee, expressed the conviction that there are important needs to be met in the area of housing and other physical facilities to serve handicapped persons, and commended Representative Alt for his work as the Study Committee Chairman. He thanked Representative Alt for the report he had just presented.

Chairman Lange announced that this completed the progress reports scheduled for presentation at the present meeting, and that seven additional committees are expected to make what it is hoped will be final reports at the Council's next meeting on Monday, November 23. Action on recommendations of committees will be taken at the Council's December meeting, the date of which has not been set.

The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

PHILIP E. BURKS
Senior Research Analyst

SERGE H. GARRISON
Director