

M I N U T E S

LEGISLATIVE COUNCIL

Correction

The minutes of the Legislative Council's October 12, 1977 meeting as distributed to Council members on November 1, should be corrected by inserting on page 3 after the partial paragraph appearing at the top of that page the following new paragraph:

"Senator Eugene Hill's pending motion was then adopted by a divided voice vote."

November 9, 1977

The fifth meeting of the 1977-78 Legislative Council was called to order at 10:10 a.m., Wednesday, November 9, 1977 in Senate Committee Room 22 of the State House in Des Moines. Council members attending the meeting were:

Senator George R. Kinley, Chairperson
Speaker of the House Dale M. Cochran,
Vice Chairperson
Senator C. Joseph Coleman
Senator Lucas J. DeKoster
Senator Gene W. Glenn
Senator Eugene M. Hill
Senator Philip B. Hill
Senator Calvin O. Hultman
Senator Fred W. Nolting
Senator William D. Palmer
Senator Richard R. Ramsey
Representative Gregory D. Cusack
Representative Elmer H. Den Herder
Representative Jerome D. Fitzgerald
Representative William J. Hargrave
Representative James I. Middleswart
Representative Floyd H. Millen
Representative Delwyn D. Stromer

Legislative staff personnel attending all or portions of the meeting included Secretary of the Senate Steve Cross and Director Serge Garrison and Phil Burks, Bernie Koebernick, Thane Johnson and Ron Langston of the Legislative Service Bureau. Also present were a number of representatives of the news media and other interested persons.

On motion of Senator Hultman, the Council voted unanimously to approve the minutes of the October 12, 1977 meeting as previously distributed, when corrected as noted following the heading of these minutes.

Chairperson Kinley recognized Code Editor Wayne Faupel and Superintendent Vern Lundquist of the Printing Division of the Department of General Services. Mr. Faupel noted that section 14.15 of the Code requires, in effect, that following adjournment of the second session of each general assembly, either a new Code or a supplement be issued, and that the Code Editor make the choice in consultation with the Legislative Council. Mr. Faupel asked for the Council's views on the matter. In the discussion which followed, Mr. Faupel noted that the Code of 1977 was the third edition to be printed from the same basic setting of type, with only such deletions, insertions and additions as necessary to reflect changes in the law. He expressed doubt that further use of the type originally set for the Code of 1973 would prove satisfactory.

In response to inquiries, Mr. Lundquist stated that setting new hot lead type in the manner which has been done in the past would probably cost about \$20 per page as opposed to a cost of \$8 to \$10 per page for camera-ready copy prepared from the existing computer Code when properly updated. He added, however, that very few printers are still willing to bid on hot lead jobs. He stated that once the text has been prepared for duplication, either by setting type or by preparing camera-ready copy, the other printing costs involved do not vary significantly between the two printing methods.

Senator Glenn moved that the Legislative Council authorize publication of a new Code in 1979, and so direct the Code Editor. In response to a question, he confirmed that his motion intentionally omits any instruction regarding the method of printing. The motion was adopted by a unanimous voice vote.

In response to a question from Senator Glenn, Mr. Garrison and Mr. Lundquist reported that publication of the Criminal Code supplement to the Code is virtually complete and that copies should be available for distribution beginning on Monday, November 14. Mr. Garrison noted that this publication was printed from computer-generated camera-ready copy.

Chairperson Kinley recognized Speaker Cochran to present a report on behalf of the special Council committee appointed to consider the staffing of the standing Committees on Human Resources, and other matters. (See minutes of the Council's October 12, 1977 meeting, page 12.) Speaker Cochran reported that, with respect to the staffing of the Human Resources Committees, the special committee had approved the following recommendations:

1. That the Legislative Council not continue the independent staffing of standing committees at this time.
2. That Christine Pattee and Vicki Adair be continued as temporary employees of the Legislative Service Bureau through December 21, 1977.

Speaker Cochran moved that these recommendations be adopted.

Representative Cusack said he does not oppose the specific recommendations, but expressed concern about the long-run loss of two staff persons by the Human Resources Committees. Senator Hultman commented that Mr. Garrison had told the special committee that it is difficult to employ and train new staff persons late in the calendar year when the next session of the General Assembly is rapidly approaching.

After some further discussion of how best to assure adequate staff assistance to standing committees of the General Assembly in the future, Speaker Cochran's pending motion was adopted by a unanimous voice vote.

Speaker Cochran reported that the special Committee had also considered the matter of telephone credit cards issued to Council members, pursuant to discussion at the previous Council meeting. (See minutes of Council's October 12, 1977 meeting, pages 13-14.) Speaker Cochran stated the special Committee proposed to instruct the Legislative Service Bureau to compile on a monthly basis a list of Council members who had made telephone calls on credit cards issued them by the Service Bureau, and the amount so expended by each individual Council member, and make this information available to members of the Legislative Council. He then moved that the Council adopt this recommendation.

Senator Philip Hill moved to amend that motion to specify that the number of the telephone from which each call was placed and the number of the telephone to which the call was made be included in the report. After determining by inquiry to Mr. Garrison that this information appears on the monthly telephone bills received by the Service Bureau, and that the Service Bureau proposed to comply with the pending motion, if it should be adopted, by duplicating and distributing copies of these bills, the motion by Senator Philip Hill was adopted by a divided voice vote.

Representative Stromer suggested that the report of telephone expense incurred by each Legislative Council member on the credit card issued by the Legislative Service Bureau be reported yearly rather than monthly. Speaker Cochran moved to amend his pending motion in accordance with Representative Stromer's suggestion. Senator Philip Hill opposed the amendment, stating that a monthly report would be simpler to prepare and would be more effective.

Speaker Cochran's amendment to his pending motion was then adopted by a roll call vote of 10 to 5. Those voting aye were Chairperson Kinley, Speaker Cochran, Senators Coleman and Nolting and Representatives Cusack, Den Herder, Hargrave, Middleswart, Millen and Stromer; those voting no were Senators DeKoster, Glenn, Eugene Hill, Philip Hill and Palmer; Senators Hultman and Ramsey and Representative Fitzgerald were not present when the vote was taken.

Speaker Cochran's pending motion, as amended, was then adopted by a divided voice vote.

Speaker Cochran next stated that the special Committee had also considered the manner in which final reports should be made by subcommittees and study committees. The special Committee recommended that the standing committee chairpersons be instructed to report on the recommendations and activities of subcommittees under their jurisdiction at the next Legislative Council meeting, which it is recommended be held Monday, December 19 and Tuesday, December 20. Speaker Cochran moved that this recommendation be adopted, noting the change in the prevailing pattern of conducting the General Assembly's interim work from special study committees to interim study committees. However, he added that the special study committees which the Council has established should report to the Council as they have in the past. The motion was adopted by a unanimous voice vote.

Mr. Garrison noted the submission to Council members of a compilation of the educational leave reports received by the Service Bureau for the Legislative Council since the Council's previous meeting. He added that information omitted from the similar reports presented in October also appears on the report just distributed, as requested. (See minutes of Council's October 12, 1977 meeting, page 2.) On motion of Senator Coleman, the Council accepted the report by a unanimous voice vote.

Mr. Garrison next presented the proposed rules for prefiling legislative bills for the 1978 Session of the General Assembly, noting in particular a change in the provisions relating to submission and handling of departmental bills. After a brief discussion, Speaker Cochran moved that the Council approve the proposed rules. The motion was adopted by a unanimous voice vote.

Chairperson Kinley stated the next order of business would be consideration of requests for authorization of additional interim committee and subcommittee meetings. Senator Glenn moved that the Senate Committee on Judiciary be authorized a second interim meeting day, in addition to the statutory one day authorization, explaining that it appears that two days of consideration by the full Committee will be required in order to prepare H.F. 248, the Juvenile Code revision bill, for consideration by the Senate.

Senator Philip Hill inquired of Chairperson Kinley how he proposes to organize the Senate's time during the early weeks of the 1978 Session. Chairperson Kinley replied that he hopes the Senate will be spending a substantial amount of its time in floor debate by the second week of the Session, and that he hopes to schedule the Juvenile Code revision bill for early debate. Senator Philip Hill stated he agrees that bill is important, but pointed out that he is a member of the Judiciary Committee and expressed the view that a single day's meeting should be sufficient to prepare that bill for floor action. Chairperson Kinley said he is confident that if the

Judiciary Committee can complete action on the bill in one day, it will do so.

Senator Glenn's pending motion was then adopted by a roll call vote of 11 to 5. Those voting yes were Chairperson Kinley, Senators Coleman, Glenn, Eugene Hill, Nolting, Palmer and Ramsey and Representatives Cusack, Fitzgerald, Hargrave and Middleswart; those voting no were Senators DeKoster, Philip Hill and Hultman and Representatives Den Herder and Millen; Speaker Cochran and Representative Stromer were not present for the vote.

The Council next considered a request for authority for one additional meeting day for the Joint Subcommittee on County Fees and Equipment Car Tax of the Senate and House Committees on Ways and Means, submitted by Subcommittee Chairperson Senator Berl Priebe. At Senator Kinley's request, Mr. Koebnick explained that during the discussions at the first two meetings, it was determined that more information is needed in regard to those county fees which should be raised in order to make the various county offices more self-sufficient, and this information is to be supplied by the Iowa State Association of Counties. In addition, the Subcommittee wishes to review a draft bill to add penalty and refund sections to the equipment car tax chapter, and to amend that chapter so that the tax can be computed in a different manner for equipment car companies.

Senator Palmer moved that the request be approved. Senator Philip Hill expressed opposition, questioning the value of the work done earlier in the present interim by the Council's Studies Committee in light of the number of requests for additional meetings which the Council has since seen fit to approve. Senator Hultman agreed, adding that if so many interim committee and subcommittee meetings are needed, a special session of the General Assembly should be called so that all of them can be taken care of concurrently. In response, Senator Eugene Hill noted the difficulty of coordinating meetings of various committees during a session of the General Assembly due to the limited number of rooms available, and asserted that committees can accomplish much more by meeting during the interim than by holding meetings during a session.

After further discussion, Senator Palmer's motion was defeated by a roll call vote of 10 to 7. Those voting yes were Chairperson Kinley, Speaker Cochran, Senators Coleman, Glenn, Eugene Hill, Nolting and Palmer and Representatives Cusack, Hargrave and Middleswart; those voting no were Senators DeKoster, Philip Hill, Hultman and Ramsey and Representatives Den Herder, Millen and Stromer; Representative Fitzgerald was not present when the vote was taken.

Chairperson Kinley noted that Chief Justice C. Edwin Moore of the Iowa Supreme Court and Director Stanley L. McCausland of the Department of General Services had arrived at the meeting and suggested that consideration of the remaining requests for additional meetings of interim committees and subcommittees be deferred until later in the day.

Senator Palmer was recognized, and moved that the Council chairperson appoint a special committee consisting of three senators and three representatives to conduct an investigation of the Iowa Public Broadcasting Network. In support of his motion, Senator Palmer made a number of specific allegations of improper acts involving misuse or misappropriation of equipment belonging to the state educational radio and television facility. He said that a number of his allegations are based on an audit completed by the staff of the Auditor of State earlier this year, but added that a public television employee, whose identity Senator Palmer had agreed not to reveal, had informed him that IPBN facilities have been used to duplicate pornographic movies obtained elsewhere.

In response to questions from Chairperson Kinley, Senator Palmer stated that the Auditor's report indicates that more than 30 television receiver sets belonging to the Educational State Radio and Television Facility were missing at the time of the audit. He added that management contends that this is due to poor inventory control, but that he personally questions that explanation. In response to Chairperson Kinley's further questions, Senator Palmer asserted that he has in his possession a cassette tape which has been used to record the pornographic movie "Deep Throat" and that although some of the identifying marks have been removed, he has been able to verify that this particular cassette was purchased by IPBN.

In answer to questions by Representative Stromer, Senator Palmer said he has not referred this matter to either the federal General Accounting Office or to the Polk County Attorney's Office. He added that either of these steps might be appropriate later, but that the General Assembly should first conduct its own investigation in order to obtain more information as to the exact nature of the improper acts which have occurred.

Senator Philip Hill said he has read the report of the IPBN audit, and was also deeply disturbed. However, he added he assumed that this would be a priority matter for the Budget Subcommittee on Education, and said he is opposed to bypassing that body. In response to Senator Philip Hill's questions, Senator Palmer said he does not consider it fair to term his motion an attempt to bypass the Budget Subcommittee on Education, but said he would not agree to allowing that body to conduct the investigation for the General Assembly. He explained he believes the investigation will require more time and effort than the Subcommittee can devote, and that it should be begun at once.

Senator Philip Hill said that the Budget Education Subcommittee will want to conduct its own investigation based on the report of the Auditor of State, and that if the Council also conducts an investigation, there will be duplication of effort.

Chairperson Kinley asked Mr. McCausland for a comment. Mr. McCausland said he would welcome clarification of the meaning of the

statutory language which places the State Educational Radio and Television Facility in the Department of General Services "for administrative purposes." (1977 Code, sec. 18.134). He further noted that the State Educational Radio and Television Facility Board, whose members are named by the Board of Regents, Board of Public Instruction and Governor, in turn appoints the Facility's director. Mr. McCausland said that as a result he actually has no control over either the board or the director, and that he has always been uncomfortable with this situation.

Senator Glenn inquired whether Mr. McCausland is responsible for the State Educational Radio and Television Facility's physical equipment. Mr. McCausland replied he is not, that the Facility does its own purchasing and leasing and maintains its own inventory records, and he does not review these matters. In response to further questions from Senator Glenn, Mr. McCausland stated that he had initiated the audit of IPBN by the Auditor of State, but that he has taken no additional formal steps since the audit was completed. He said that he is inclined to agree that the audit indicates there may have been acts of criminal misconduct, but noted that he is not an attorney and would not care to make a definite statement to that effect. He said he does not know if the Bureau of Criminal Investigation has involved itself in the matter, but that to date he has not asked that it do so.

In answer to further questions from Chairperson Kinley, Mr. McCausland said that he has neither the time nor the staff, and does not feel that he has the authority, to try to oversee or review the administration of the State Educational Radio and Television Facility. He said he has not asked the General Assembly to remove the Facility from the jurisdiction of the Department of General Services, and has not discussed the audit of the Facility with the members of the State Educational Radio and Television Facility Board, although he added that he is aware that the Governor has discussed this matter with the Board.

In further discussion, Representative Cusack supported Senator Palmer's motion although he noted that he is not insensitive to Senator Philip Hill's concerns regarding the Budget Education Subcommittee. However, he said the matter is broader than the jurisdiction of that Subcommittee. Senators Coleman and Eugene Hill agreed, adding that assigning the investigation to a subcommittee would downgrade its seriousness.

Senator DeKoster said he hoped that the Budget Education Subcommittee would be closely involved in the investigation in order to avoid duplication. He also expressed concern regarding the status of agencies such as the Radio and Television Facility and its Board, the State Fair Board, etc., calling them "hybrid agencies" which are almost autonomous. He suggested that the standing Committees on State Government or the appropriate Budget Subcommittees be asked to review the status of these agencies with the objective of developing more effective controls over them.

Senator Philip Hill took exception to the criticism of Mr. McCausland he said had been implied by the questions posed by Chairperson Kinley and Senator Glenn, remarking that soon after the State Educational Radio and Television Facility was placed under the Department of General Services, Mr. McCausland had attempted to exercise some control over the Facility, and had been strongly criticized for doing so. Mr. McCausland confirmed that that is correct. Senator Philip Hill added that those who were critical should have changed the law at that time, and that the General Assembly has ultimate control over all state agencies through the appropriations process.

Representative Cusack asserted that the General Assembly's job is not to administer agencies, and that he is becoming tired of "picking up pieces" of executive branch agencies that are poorly administered. He added that when attempts are made to hold interim committee meetings to exercise oversight of such agencies, that is also criticized. Senator Philip Hill responded that he likes Iowa's present system, under which total control is not vested in the Executive. But, he added, that implies that the General Assembly should be slow to criticize the executive for failure to control semi-independent boards.

Senator Ramsey questioned whether the investigation proposed by Senator Palmer's motion is an appropriate function for the Legislative Council, and suggested that the matter be referred either to the standing Committees on State Government or to an appropriate law enforcement agency. Senator Glenn expressed serious concern about the apparent lack of any action by law enforcement agencies on the audit of the State Educational Radio and Television Facility, noting that the audit had been completed at least six weeks prior to the present meeting. He commended Mr. McCausland for requesting the audit, but asked if he does not feel it is his responsibility to bring the results of the audit to the attention of the Governor, the Attorney General, or the Bureau of Criminal Investigation. Mr. McCausland replied that the Facility is preparing a response to the audit, and that he is waiting for it to be completed before he takes any further steps. He noted, for example, that the Facility's administration has stated that it has now accounted for all but one of the television receiving sets which the state audit indicated were missing.

The question was then called for on the pending motion by Senator Palmer, and the motion was adopted by a unanimous voice vote.

The Council next took up the question of allocation of the State House space to become available upon relocation of the Department of Agriculture, which had been discussed at the Council's previous meeting. (See minutes of Council's October 12, 1977 meeting, pages 6-9.) After briefly reviewing pertinent events which have occurred since that meeting, Chairperson Kinley called Council members' attention to his letter of October 14 to Mr. McCausland, and Mr. McCausland's letter of October 27 to Chairperson Kinley,

Chief Justice Moore, and Treasurer of State Maurice Baringer. A copy of each letter is attached to and by this reference made a part of these minutes.

Chairperson Kinley recognized Senator Glenn, who posed a series of questions to Mr. McCausland as follows:

1. Were you aware that the Legislative Council passed a resolution on August 17, 1977 specifically directing you to remodel particular areas of the State House for use by the General Assembly? (See minutes of Council's August 17, 1977 meeting, pages 6-7).
2. Did you receive a copy of that resolution?
3. Did you understand it to be a directive from the Legislative Council?
4. Were you aware of the statutory authority of the Legislative Council to allocate space in the State House for use by the General Assembly?
5. Is it correct that you have assigned for other purposes space in the State House, which the Legislative Council had previously directed that you have prepared for use by the General Assembly?

Mr. McCausland responded to each question, respectively, in the affirmative. Senator Glenn then suggested that Mr. McCausland has, in effect, placed himself above the dictates of the Code of Iowa, and asked him by what authority he has done so.

In reply, Mr. McCausland noted that subsequent to the adoption of the August 17 resolution by the Legislative Council, there had been a meeting of the four-member group discussing State House space allocation (i.e. Chairperson Kinley, Chief Justice Moore, Treasurer Baringer, and Mr. McCausland) and that no resolution of the matters in dispute between the Legislative and Judicial branches had been reached. Mr. McCausland said that it is his position that he did not try to challenge the provisions of the Code, but that the separation of governmental powers doctrine means that no one branch of government can take State House space from another without the latter branch's consent. He continued that, in effect, the space which is presently at issue between the Legislative and Judicial branches is Executive branch space which the Executive branch is willing to give up, but which both of the other branches demand. He concluded that his own immediate responsibility is to the Governor, who he stated supports the resolution of the matter described in Mr. McCausland's October 27 letter.

Senator Glenn and Chairperson Kinley again cited section 2.43 of the Code, relating to the Legislative Council's authority over legislative facilities, equipment and arrangements, and

asserted that Mr. McCausland has ignored this statute. Mr. McCausland replied that if the Council wishes to make that interpretation he will not dispute it, however, he stated that in his view he did not actually ignore it but in fact took it into consideration along with other pertinent factors.

In answer to another question from Chairperson Kinley, Mr. McCausland stated that the Governor did not suggest the reassignment of State House space set forth in the attached October 27 letter, but that Mr. McCausland had himself concluded that this would be the best possible compromise. He added that there may be a constitutional question whether the General Assembly can mandate the Executive branch in the manner it has sought to do through the Legislative Council's August 17 resolution, and that if his October 27 letter accomplishes nothing else it has laid the groundwork for a court challenge to resolve that question.

Senator Philip Hill inquired of Chairperson Kinley which law the Legislative Council expects Mr. McCausland to obey. He cited the statute creating the intermediate court of appeals, and in particular section 684.33 of the Code which requires that court to hold its sessions in the courtroom of the Supreme Court at the State House, and said that as this law is in contravention of and was enacted later than section 2.43 it prevails. He added that he had voted against the August 17 resolution for that very reason.

Senator Glenn said he does not agree that the appellate court statute contravenes section 2.43. He further noted that section 18.8 of the Code, a part of the General Services Department statute, specifically refers to the General Assembly's authority under section 2.43. Senator Philip Hill reiterated that the pertinent statutes are not in harmony, and asked which way the Council expects the decision to go if the Supreme Court is ultimately asked to resolve the question.

Chief Justice Moore stated that he could inform the Council at the present meeting what that decision would be, should the Supreme Court be called upon to make it. Chairperson Kinley responded by criticising Chief Justice Moore for expressing an opinion on a case which the Supreme Court might later be called upon to decide. Chief Justice Moore in turn criticised Chairperson Kinley and the legislative leadership for refusal to accept a compromise solution of the space allocation dispute which, he stated, all other parties are willing to accept.

Senator Hultman suggested the reason the leadership is unwilling to accept the compromise referred to by Chief Justice Moore is what he termed an "insatiable appetite" for space. He asserted that if the General Assembly obtains all the space it is seeking, within a few years it will again be complaining of inadequate space for offices and committee rooms. He continued that if the compromise agreed to by the Executive and Judicial branches is not acceptable to the Legislative Council, an attempt should be made to resolve the matter by litigation. He added he hopes that

this will be the last Legislative Council meeting at which the matter is discussed. Chairperson Kinley replied that the matter certainly will be discussed at future Council meetings if that is necessary and appropriate.

Representative Stromer moved that the Legislative Council seek to resolve the space allocation dispute by submitting it to binding arbitration, in a manner similar to that provided by section 20.22 of the Code for public employee collective bargaining impasses, and that arbitrators be sought from the American Architectural Association.

Senator Eugene Hill moved, as a substitute for Representative Stromer's motion, that the Legislative Council retain legal counsel to advise the General Assembly upon, and to represent it in any litigation arising from, the dispute over allocation of space in the Capitol building.

Senator Philip Hill raised the point of order that under Mason's Manual of Legislative Procedure there is no provision for a substitute motion such as Senator Eugene Hill had offered. He cited as further precedent a point of order raised by Senator Glenn under similar circumstances during a meeting of the Council's Service Committee, which was upheld by Senator Palmer as chairperson of the Service Committee. Chairperson Kinley noted that although substitute motions are not permitted on the floor of the Senate, they have been customary in Legislative Council proceedings. He therefore ruled Senator Philip Hill's point of order not well taken.

Senator Philip Hill commented that he actually agrees with the chair's ruling, but thinks it highly unfair that one set of rules applies in the Council and another in the Council's Service Committee. Representative Cusack agreed that Senator Philip Hill has been subject to two different rulings on the same question, and suggested that an attempt should be made to make these procedures consistent.

In discussion of Senator Eugene Hill's pending substitute motion, Senator Glenn referred again to Mr. McCausland's letter of October 27 and inquired whether that letter constitutes action, or proposed action, by the Executive branch. Mr. McCausland replied that for legal purposes the letter should be regarded as an action. Senator Glenn next asked what Mr. McCausland would do if the General Assembly were simply to physically occupy the State House space now occupied by the Department of Agriculture when that Department moves out of the building. Mr. McCausland replied, "I don't know." He added that his answer is not an evasion but a sincere reply, and that the same answer would apply if the Judicial branch occupied the space in question over the continuing objections of the Legislative branch. Senator Glenn stated that the purpose of the question he had just asked Mr. McCausland was to establish whether a justiciable issue exists.

Chief Justice Moore stated that the Judicial branch has made a good faith effort to compromise the State House space

allocation issue, because if that issue is subject to litigation, it is obvious who will decide the matter. The Chief Justice asserted that he, Treasurer of State Baringer and Mr. McCausland now support the disposition described in Mr. McCausland's letter of October 27, which the Chief Justice described as not entirely favorable to the Judicial branch. He added that the General Assembly has every reason to also be satisfied with that disposition, and the matter should not become a legal issue.

Chairperson Kinley replied that from the start of the meetings between himself, Chief Justice Moore, Treasurer of State Baringer and Mr. McCausland, it was recognized that each of the three branches of government had a veto in the matter, so that the Chief Justice's argument that the Legislative branch is outvoted 3 to 1 is not valid. At Chairperson Kinley's inquiry, Mr. McCausland confirmed that this right of veto was referred to and acknowledged on the date of the last meeting of these four individuals.

Speaker Cochran reviewed earlier discussions of the State House space allocation issue in which he had been involved, before Chairperson Kinley became the representative of the Legislative branch in these discussions. In response to the Speaker's question, Mr. McCausland confirmed that he had at that time stated that he thought the General Assembly was being reasonable in the matter. Speaker Cochran then said that the matter could have been resolved if the General Assembly had been willing to "roll over and play dead." He continued that in light of all that has happened, it appears that the General Assembly would have been just as well off if it had taken a position on the issue and absolutely refused to modify that position in any significant respect, as he asserted other parties to the dispute have done. He concluded that the "compromise" offered the General Assembly in Mr. McCausland's letter of October 27 purports to assign to the Legislative branch some area now assigned an Executive branch agency which to date has given no definite indication that it plans to move out of the State House.

Chairperson Kinley noted \$15,000 had been spent to obtain recommendations of the Hansen-Lind-Meyer architectural firm regarding allocation of State House space, and said that the firm's recommendations should be followed. There was further discussion of these recommendations, in the course of which it was noted that the firm had presented two alternative plans.

The Council recessed for lunch at 1:00 p.m., and reconvened in Senate Committee Room 22 at 1:50 p.m. All Council members who had attended the morning session were again present except Senator Hultman.

Chairperson Kinley recognized Mr. Charles Davis, Secretary-Treasurer and Executive Director of the State Legislative Leaders' Foundation. Mr. Davis described the Foundation as a nonstock, nonprofit organization set up in 1972 to provide research for legislators and legislatures in the areas of operation and

procedures. Mr. Davis continued that he has wondered for some time if some way could not be found to measure the benefit of the changes that have been made in the course of what he termed the legislative reform movement of the last fifteen years or so. He said that the Foundation has cooperated with the National Science Foundation to devise measurement techniques and to design procedures for predicting the result of specific changes in legislative procedures and facilities.

Mr. Davis said that the Foundation has concluded that Wisconsin and Iowa would be excellent places to test these techniques and procedures. Accordingly, efforts will be made to talk to former legislators about how the General Assembly has operated in the past, and to interview present members about how it operates now. Mr. Davis stated that in particular the Foundation will be seeking information about the handling of legislation in the areas of primary-secondary education, corrections and environmental pollution. He concluded that the Foundation has no intention of rating various states' legislatures, and is not asking financial support. His only intent is to inform legislative leaders what the Foundation is seeking to accomplish. In response to a question from Senator Philip Hill, Mr. Davis confirmed that a decision had been made in recent weeks to drop the subject of taxation as one of the areas of legislative action about which information will be sought.

Chairperson Kinley thanked Mr. Davis for his presentation. He then recognized Alan Rosenthal of the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, who was present to discuss the Program Review in Education and Social Services, (PRESS) project. Mr. Rosenthal noted that the project had been discussed at meetings of the Legislative Council during the past summer. (See minutes of Council's August 10 meeting, pages 7-8, and August 17 meeting, pages 1-4 and 7-8.)

After briefly outlining programs of the Eagleton Institute, particularly its projects with and for state legislatures, Mr. Rosenthal explained that the Institute is presently involved in legislative oversight projects which are being funded by the Ford Foundation. Mr. Rosenthal continued that despite the legislative reforms of the past fifteen years, the least effective area of endeavor among state legislatures generally has been that of oversight. However, he said that interest in this area is high, citing as an example the fact that 24 states have passed "sunset" laws. He explained that Project PRESS is intended to teach legislators and staff better oversight techniques, and expressed hope that the project will be a learning experience for both Iowa legislators and staff and the Eagleton Institute.

In response to questions from Senator Eugene Hill, Mr. Rosenthal stated that the Eagleton Institute is seeking neither funding nor space from the Iowa General Assembly. He said that the Institute brings resources to the states, it does not ask for them. He added that the Institute does work with the Legislative Service Bureau and other staff personnel, offering information directly or

putting the staff persons in contact with knowledgeable persons elsewhere.

After a brief further discussion, Chairperson Kinley expressed appreciation to Mr. Rosenthal for the information he had presented. He then recognized Senator Palmer for the report of the Legislative Council's Service Committee pursuant to that Committee's meeting of October 31, 1977. A copy of the report distributed to Council members present is attached to and by this reference made a part of these minutes.

Senator Palmer moved that the Service Committee's report be approved by the Council. In answer to a question from Representative Middleswart, Senator Palmer explained that the date for applications for the position of Citizens' Aide was extended both because some interested individuals were not aware of the previous deadline, and because one person had misfiled an application for the position in the Governor's Office. Committee members had believed that if the deadline was extended for a few people, it should be extended for all. Senator Palmer added that 6 or 7 new applications had been received, bringing the total number of applicants to 34. Senator Palmer's motion to approve the report was then adopted by a unanimous voice vote.

Chairperson Kinley then recognized Representative Cusack for the report of the Legislative Fiscal Committee pursuant to its meeting of the present date. A copy of the report is attached to and by this reference made a part of these minutes. Representative Cusack briefly reviewed the report, specifically requesting the Council's favorable action on the proposed Budget Subcommittee meetings prior to the 1978 Session. He added that the objective of these meetings is the development of a single budget document for presentation to the General Assembly very early in the 1978 Session.

Representative Cusack moved the receipt of the Fiscal Committee's report and the approval of the proposed Budget Subcommittee meetings by the Council. In discussion on the motion, Representative Stromer inquired why it would not be preferable to call a short special session of the General Assembly in December in order to permit the various budget subcommittees to meet simultaneously. Representative Cusack replied that such a procedure would be inefficient, because some of the budget subcommittees will require more time than others. He added that he and Senator Palmer had originally suggested authorization for up to 6 days of meetings for each Budget Subcommittee, but that the chairpersons of some of the subcommittees felt that the necessary hearings could be completed by their respective subcommittees in a lesser number of days.

Representative Stromer asserted that states that use a single unified budget document are generally characterized by a lack of deliberative legislative consideration of the budget. He added that a single budget bill is a tool for the leadership to get what it wants. Representative Cusack replied that in his view, exactly

the opposite is true. He added that the fiscal situation is so tight that he and Senator Palmer feel it is necessary to let everyone see what the total budget picture is so that there will not be attempts to increase funding in one area without awareness of the implications of such a move for other areas of the budget.

Representative Stromer then suggested that there is so little room for adjustment in the 1978 budget, in comparison with the current budget, that perhaps no meetings of Budget subcommittees are necessary. Representative Cusack replied that the leadership would be subject to criticism by the minority if they were to so recommend.

Senator Eugene Hill said he strongly opposes a single budget document approach. Representative Cusack clarified that the Legislative Fiscal Committee has not asked the Budget subcommittees to approve a single budget document, but has suggested that that approach be considered.

Senator Philip Hill suggested that the proposed Budget subcommittee pre-session hearings would, in effect, be a usurpation of the Executive branch's authority in this area. Representative Cusack disagreed, stating that the budget process has historically been a legislative prerogative.

Senator Philip Hill then questioned the source of the Legislative Fiscal Committee's recommendations with respect to the proposed Budget subcommittee pre-session meetings. He complained that there had been no minority party input into the planning of these meetings. He further expressed strong objection to the amount of time he stated members of the General Assembly are being required to devote to meetings during the interim, stating that these are placing an excessive burden on both the finances and, in some cases, the health of members of the General Assembly who must also maintain outside businesses or professional practices.

Representative Cusack's motion was then adopted by a roll call vote of 14 to 3. Those voting yes were Chairperson Kinley, Speaker Cochran, Senators Coleman, Glenn, Eugene Hill, Nolting and Palmer and Representatives Cusack, Den Herder, Fitzgerald, Hargrave, Middleswart, Millen and Stromer; those voting no were Senators DeKoster, Philip Hill and Ramsey.

The Council resumed consideration of requests for additional meetings of interim committees and subcommittees. Chairperson Kinley called on Mr. Johnson for a brief explanation of the requests of the Public Employment Study Committee for authority to hold one additional meeting. Mr. Johnson stated that in the course of the three meetings that were initially authorized, the Study Committee has received oral and written testimony from public management, employee organizations and other interested persons relating to the various public personnel administration laws, and have considered the many recommendations and alternatives to improve the operation of the public personnel systems presented in the

course of these meetings. However, due to the broad scope and complexity of the study assignment, the Study Committee has requested one additional meeting day in order to complete its work during the 1977 interim.

Representative Millen stated that although he has generally opposed the various requests for additional interim meetings, he supports this one. He noted that he had initially contended that the Council was not authorizing this Study Committee enough meeting days.

Representative Millen moved that the request of the Public Employment Study Committee for an additional meeting day be authorized. The motion was adopted by a roll call vote of 12 to 3. Those voting yes were Chairperson Kinley, Speaker Cochran, Senators Coleman, Glenn, Eugene Hill and Nolting, and Representatives Cusack, Den Herder, Fitzgerald, Hargrave, Middleswart and Millen; those voting no were Senators DeKoster, Philip Hill and Ramsey; Senator Palmer and Representative Stromer were not present when the vote was taken.

Chairperson Kinley noted that similar requests had been received from the House Ways and Means Committee and from the Senate Ways and Means Committee to hold one extra day's meeting of the full committee, in addition to the one day authorized by statute during the month of December. At Chairperson Kinley's request, Mr. Koerbernick noted that House Ways and Means Committee Chairperson Lowell Norland wishes to hold a two-day meeting of the full Committee in December to:

1. Review the final equalization order issued by the Department of Revenue in October, 1977.
2. Review data assembled by the State Comptroller's Office relative to the impact of H.F. 332 on property evaluations and local budgets.
3. Receive and review a report on industrial assessments which the Department of Revenue has prepared following a two-year study.
4. Review the work submitted by the interim Ways and Means subcommittees and possible report some of the bills out to the House calendar.

Mr. Koerbernick continued that Senate Ways and Means Committee Chairperson Norman Rodgers also has a number of items in mind which he feels require the attention of that committee, but that the Senate Committee may not meet on the same days as the House Ways and Means Committee meets.

On motion of Senator Nolting, the Council approved the respective requests of the Senate and House Committees on Ways and Means by a roll call vote of 12 to 3. Those voting yes were

Chairperson Kinley, Speaker Cochran, Senators Coleman, Glenn, Eugene Hill, Nolting and Palmer, and Representatives Cusack, Den Herder, Fitzgerald, Hargrave and Middleswart; those voting no were Senators DeKoster and Philip Hill and Representative Millen; Senator Ramsey and Representative Stromer were not present when the vote was taken.

Senator Coleman noted that the special interim Tort Liability Study Committee has requested authority for one additional meeting during the 1977 legislative interim, stating that he had agreed to present this request on behalf of the Co-chairpersons, Representative William Griffie and Senator Alvin Miller. Senator Philip Hill noted that this is a very broad and complex area, and asked if the Study Committee really believes it can complete preparations to draft a bill in one more meeting day. Senator Coleman responded in the affirmative, and moved that the request be approved by the Council. The motion was adopted on a roll call vote of 12 to 4. Those voting yes were Chairperson Kinley, Speaker Cochran, Senators Coleman, Glenn, Eugene Hill, Nolting and Palmer and Representatives Cusack, Den Herder, Fitzgerald, Hargrave and Middleswart; those voting no were Senators DeKoster and Philip Hill and Representative Millen; Representative Stromer was not present when the vote was taken.

Chairperson Kinley noted that the last of the pending requests for additional interim meeting authority is from the joint interim Uniform Landlord Tenant Mobile Home Park Residential Subcommittee of the Senate and House Standing Committees on State Government. At Chairperson Kinley's request, Mr. Langston explained that the Subcommittee has held hearings at which a great amount of information has been received, and has scheduled the last of its currently authorized meetings on November 16 to consider this material and formulate its recommendations. Since it may be difficult to complete the Subcommittee's work on that day, the Subcommittee would like to have authority to also meet on the following day if necessary. Should it prove possible to complete the Subcommittee's work on November 16, the additional day's meeting authority would not be used.

Representative Hargrave moved that the Subcommittee's request be approved. The motion was adopted on a roll call vote of 12 to 5. Those voting yes were Chairperson Kinley, Speaker Cochran, Senators Coleman, Glenn, Eugene Hill, Nolting and Palmer and Representatives Cusack, Den Herder, Fitzgerald, Hargrave and Middleswart; those voting no were Senators DeKoster, Philip Hill and Ramsey and Representatives Millen and Stromer.

The Council resumed consideration of Senator Eugene Hill's pending motion to retain legal counsel in connection with the State House space allocation issue. Representative Millen noted that the General Assembly certainly needs some additional space, and said it is very unfortunate that after approving construction of two new office buildings partially in order to make such space available, the General Assembly is apparently going to be denied that space. However, he stated inasmuch as the head of the Judicial branch has

already pronounced a verdict in the matter, it is pointless to support a motion to enter into litigation.

Senator Philip Hill raised a series of questions about how legal counsel will be selected and exactly what counsel will be expected to do. Chairperson Kinley said that he assumes the matter would be referred to a Committee of the Council. Senator Eugene Hill said the intent of his substitute motion is to proceed to a determination of the space allocation issue.

Senator Philip Hill then asked if it is correct that Senator Eugene Hill's motion contemplates the proposed legal counsel proceeding on the basis of Mr. McCausland's letter of October 27 and his statements during the morning session of the present Legislative Council meeting. Senator Eugene Hill replied that his motion is to retain counsel, and that the first step would be to obtain counsel's advice as to the best method of procedure. Senator Eugene Hill continued by stating that the position expressed by the Chief Justice during the morning session of the present Council meeting is a very high-handed one and that the Legislative Council and General Assembly should not acquiesce in it.

Senator Glenn suggested that perhaps seeking a declaratory judgment might be the best way to proceed, and that if that is so the Legislative Council might consider using the Senate and House Legal Counsel for this purpose. Senator Philip Hill pointed out that the recently employed Senate Legal Counsel is not admitted to the practice of law in Iowa. Speaker Cochran stated that the House Legal Counsel is so admitted.

Representative Hargrave suggested that the General Assembly simply occupy the space to be vacated by the Department of Agriculture when it moves out of the State House. He added that the Judicial branch could then initiate litigation if it so desires.

Senator DeKoster expressed the view that there is no real prospect of the General Assembly prevailing in the matter. He said the Supreme Court would probably simply order the space in question vacated and placed at its disposition.

Speaker Cochran stated that the Legislative Council should force the hand of the Judicial branch, if that branch is going to take the attitude expressed by the Chief Justice during the morning session of the present Council meeting. He then called for the question on the pending substitute motion offered by Senator Eugene Hill.

The motion was adopted on a roll call vote of 11 to 6. Those voting yes were Chairperson Kinley, Speaker Cochran, Senators Coleman, Glenn, Eugene Hill, Nolting and Palmer and Representatives Cusack, Fitzgerald, Hargrave and Middleswart; those voting no were Senators DeKoster, Philip Hill and Ramsey and Representatives Den Herder, Millen and Stromer.

Chairperson Kinley referred the matter of retaining legal counsel, pursuant to the motion just adopted, to the Council's Administration Committee. He requested that that Committee report back to the Council at its next meeting on December 19-20, 1977.

On motion of Senator Glenn, the Council adjourned at 4:00 p.m.

Respectfully submitted,

SERGE H. GARRISON
Director

PHILIP E. BURKS
Senior Legal Counsel