

CALIFORNIA CITIZENS COMPENSATION COMMISSION

ORIGINAL

TRANSCRIPTION OF RECORDED  
CALIFORNIA CITIZENS COMPENSATION COMMISSION  
HELD AT CITY HALL  
SACRAMENTO, CALIFORNIA  
MARCH 29, 2012

TRANSCRIBED BY: DONNA K. NICHOLS, RPR, CSR NO. 5660

1 CHAIRMAN DALZELL: Call the California Citizens  
2 Compensation Commission to order. My name is Tom Dalzell,  
3 Chairman of the Commission.

4 Our first order of business is the roll call.

5 Madame clerk.

6 MADAME CLERK: Tom Dalzell.

7 CHAIRMAN DALZELL: Present.

8 MADAME CLERK: Charles Murray.

9 COMMISSIONER MURRAY: Present.

10 MADAME CLERK: Kathy Sands.

11 COMMISSIONER SANDS: Present.

12 MADAME CLERK: Ruth Lopez Novodor.

13 John Stites.

14 COMMISSIONER STITES: Present.

15 MADAME CLERK: Scott Somers.

16 COMMISSIONER SOMERS: Present.

17 MADAME CLERK: Wilma Wallace.

18 COMMISSIONER WALLACE: Present.

19 MADAME CLERK: Thank you.

20 CHAIRMAN DALZELL: Our next order of business will be  
21 review and approval of the Minutes of the Commission meeting  
22 from April 14, 2011.

23 Do any commissioners offer any corrections or  
24 additions to the transcribed record of our meeting from  
25 2011?

1           COMMISSIONER SOMERS: Mr. Chairman, yes, I do. One,  
2 just a comment first. I was struck in the Minutes by the  
3 number of unintelligibles that there were in there. And I  
4 don't know if it's something that we need to help with by  
5 speaking more loudly or something, but we seem to have lost  
6 a fair amount.

7           Debbie, is there some reason why?

8           MADAME CLERK: Two reasons. One -- one, you do --  
9 really do need to speak into your microphone. And, two, the  
10 recording was from Burbank when we were in Los Angeles in  
11 that area, and the recording capability of that site is not  
12 good. And so I think that was the primary reason. So  
13 hopefully the recording here will be a lot better.

14           COMMISSIONER SOMERS: Okay. Thank you. And then I  
15 have two specific. On page 37, line 16, where it says  
16 Commissioner Stites, I believe those were my comments,  
17 actually. It should be Commissioner Somers.

18           John, unless you have --

19           COMMISSIONER STITES: Yeah, I noticed that myself.

20           COMMISSIONER SOMERS: Right, okay. And then the  
21 final comment I have is page 72, line 7. Again, it was a  
22 comment that I had made where it says language for the  
23 adoption of our treatment for insurance-related, not board  
24 insurance-related, benefits.

25           That's all I have.

1 CHAIRMAN DALZELL: Do any other commissioners offer  
2 any corrections or additions to the transcribed record?

3 COMMISSIONER SANDS: I'll move approval with the  
4 corrections.

5 CHAIRMAN DALZELL: Is there a second on the motion?

6 COMMISSIONER SOMERS: Second.

7 COMMISSIONER STITES: Second.

8 CHAIRMAN DALZELL: Okay, those in favor?

9 (Multiple voices saying aye)

10 CHAIRMAN DALZELL: The motion carries. The Minutes  
11 as corrected by Commissioner Somers from the April 14, 2011,  
12 meeting stand.

13 We now come to the opening comments by Commission  
14 members. And I'll start to my right. Commissioner Stites.

15 COMMISSIONER STITES: Well, first, I'd like to  
16 welcome our new member. Wilma, welcome aboard. You'll  
17 have -- you'll have fun.

18 And I'd like to get into later on a little bit more,  
19 and not in opening comments, but just the communications  
20 that we have copies of between the Attorney General's office  
21 and the State Controller's office, because there was some  
22 questions I had and some comments.

23 But other than that, glad to see you all again.  
24 That's it.

25 COMMISSIONER SANDS: I have no opening comments other

1 than we welcome you.

2 COMMISSIONER WALLACE: Thank you.

3 COMMISSIONER SANDS: Yes. Thank you.

4 COMMISSIONER SOMERS: I have one with regard to  
5 compensation. We can discuss this -- this later and perhaps  
6 get into more detail if you wish, Mr. Chairman.

7 But I have been struck -- I think it was raised --  
8 Gus, you raised, and it's been raised with this group  
9 before. But I think you raised it either last -- last year  
10 or even the year before about the -- in compensation  
11 comparisons how do we think about I guess is really the  
12 question of pension benefits.

13 And while the people of California voted to eliminate  
14 pension benefits for legislators, to not think about, at  
15 least -- or -- and I -- and I recognize it -- it adds an  
16 element of complexity for -- for this Commission, because I  
17 presume that the people of California did not intend for us  
18 to make up that amount of money in current annual  
19 compensation.

20 On the other hand, it becomes a less than  
21 apples-to-apples comparison when you're really looking at  
22 other states. And the L.A. Times article recently, for  
23 instance, mentioned -- mentioned the comparison. And as  
24 California legislators still being as high as they are, I  
25 think we have to somehow at least think about how we want to

1 deal with -- with pension benefits.

2 I'm sure that if we took away pension benefits from  
3 every other California public employee there would be a lot  
4 of complaint. And -- and in some respects I think we have  
5 an obligation as this Commission to make sure that we're  
6 representing fairly what -- what the compensation is for  
7 particularly legislators. I think as -- as maybe everyone  
8 knows, as this group knows, the Constitutional officers  
9 still have pension benefits.

10 And as an example, if your -- the State Controller or  
11 the Insurance Commissioner at a hundred thirty some thousand  
12 dollars, and you serve eight to ten years, your pension  
13 benefit is \$55,000 a year. That's not insignificant. And  
14 the legislators don't get any of that. And if -- if they  
15 were -- if they did have CalPERS benefits, they would get  
16 about 18,000 a year if they served essentially eight years,  
17 eight to ten years. And they don't get any of that.

18 So when we're comparing compensation to other states  
19 that do get pension benefits, I think we have to -- we have  
20 to give some -- some thought and careful consideration as to  
21 how we really think about that.

22 COMMISSIONER MURRAY: Thank you, Tom. I think -- I  
23 don't have any starting comments other to join everybody  
24 else to welcome you on board. It will be a -- a fun couple  
25 years.

1           COMMISSIONER WALLACE:  And -- and I -- I guess --  
2 first would like to thank everyone for the warm welcome, and  
3 I'm looking forward to all this fun that we're supposed to  
4 be having and am honored to serve.

5           I did have one initial observation, and it may be  
6 extremely uninformed.  But it struck me as I was reviewing  
7 the Senate and Assembly summaries of expenditures, the wild  
8 vary -- variances in spending between -- among the senators.

9           So I'm new at this and interested in understanding a  
10 little bit more as to what the root cause of those variances  
11 are and as I get my head around this, but wanted to share  
12 that observation with you because it struck me as pretty  
13 profound.

14          So thank you, and I look forward to working with each  
15 of you.

16          CHAIRMAN DALZELL:  Thank you all.  And let me state  
17 for you and -- and for -- for the record my intention for  
18 today's meeting.  I think that it is important that we  
19 discharge our duties as described in the Constitution.  And  
20 to best do that I think that acting on oral motions without  
21 precise language is something that can and has gotten this  
22 Commission into trouble before.

23          2009 there was some confusion about pension and per  
24 diem issues.  And then last year the action that this  
25 Commission took ended up inadvertently -- obviously

1 inadvertently costing the taxpayers of California rather  
2 than saving money. We took a -- a mileage travel expense  
3 that had been 37 cents a mile in the Assembly, 42 cents a  
4 mile in the Senate, and by the action that this Commission  
5 took we ended up with a 53 cent a mile reimbursement.

6 So it's my intention today to explore the information  
7 that we have, to identify the issues that we would like to  
8 proceed on without having motions, asking for further staff  
9 reports, data reports, and then convening at some point in  
10 May with written motions to act on, consider all motions  
11 that are written at -- at that point.

12 But I -- I think that we are prohibited under the  
13 Brown Act from talking to each other in the interim, so I  
14 think we on our own should develop written motions that we  
15 would like the entire Commission to proceed on. That's --  
16 that's my intention. I am not a dictator. I can be  
17 overruled. But that's my intention as -- as Chair, to come  
18 back in May with -- with draft language for motions.

19 That said, Madame Clerk, would you -- actually, we  
20 should probably introduce the new counsel -- or have the  
21 counselor introduce herself, Melissa.

22 Shortly after we met last year the Department of  
23 Personnel Administration determined that there was at least  
24 the appearance of a conflict of interest between that office  
25 providing direct legal advice as it had in the past. And so

1 the Department went outside.

2 Melissa, would you introduce yourself?

3 MS. MEITH Sure. My name is Melissa Meith. I'm  
4 actually a retired annuitant, former State counsel at  
5 various levels and in various agencies. And I'm now on --  
6 employed by DPA but with letters that give me complete  
7 independence in advising the Commission and assisting you in  
8 whatever way you -- you deem necessary. So that's my  
9 background. And it's nice to be here.

10 CHAIRMAN DALZELL: All right. Madame Clerk, Debbie,  
11 would you walk us through, please, the binder that you  
12 prepared for this meeting?

13 MADAME CLERK: Absolutely. In the salary survey  
14 section, most of it is -- we have the meeting Minutes that  
15 we've gone over, the Resolution that was drawn from April  
16 14th's, 2011, meeting. And then in the salary survey  
17 portion -- under your salary survey tab we have the salary  
18 survey that is a nationwide survey of elected officials.  
19 This year Mr. Somers asked for a ten-year survey. And we  
20 summarized that by including every other year in this  
21 survey. A lot of the states did not respond to us this  
22 year. It was a very poor response.

23 In addition to that we have -- from Web sites we've  
24 gotten salary of Constitutional officers which was last  
25 updated in 2009. We have State retirement provisions for

1 State Legislatures. And this is off the National Conference  
2 of State Legislature's Web site. Again from that same Web  
3 site we have the State's per diem rates. And then following  
4 that are the legislative compensation tables.

5 Then one of the handouts that you'll find that's not  
6 in the binder that we just got this morning from Mr. Demas  
7 were -- is a legislative salary and retirement benefit  
8 comparison between New York and California.

9 In the health benefits section we have a summary page  
10 that's in the past years of the Constitutional and  
11 legislative officer's benefits.

12 And then in the correspondence section we have some  
13 information that was provided by Senate Rules Committee on  
14 expenditures from the Senate Operating Fund. And the  
15 Assembly from the Assembly Journal we have expenditures for  
16 the Assembly people.

17 And then also we have the letters from the State  
18 Controller's office, and then the letters back and forth  
19 between the Commission and the Franchise Tax Board.

20 And that's it.

21 CHAIRMAN DALZELL: Thank you. Is there anything that  
22 the commissioners would like to state for the record or  
23 discuss or perhaps identify as a -- as -- as a -- as a  
24 motion in response to the Franchise Tax Board's declining to  
25 give us the interpretation that we asked for? This -- this

1 was your baby, was it not?

2 COMMISSIONER SANDS: They refrained.

3 COMMISSIONER SOMERS: Maybe we could have a summary  
4 of exactly what they did say in that -- in that opinion.

5 COMMISSIONER SANDS: Do you have the letter -- do you  
6 have the letter?

7 COMMISSIONER SOMERS: Just so that we're all clear.

8 COMMISSIONER SANDS: Yeah, it's in the letter.

9 CHAIRMAN DALZELL: Is there anybody from the  
10 Franchise Tax Board?

11 COMMISSIONER SANDS: Yeah, Franchise Tax Board. And  
12 then -- do you see it?

13 COMMISSIONER SOMERS: Yeah, no, I've -- I've read it.  
14 I just think it would be useful to sort of kind of say,  
15 okay, what's -- what's the real meat of this.

16 CHAIRMAN DALZELL: Well, as I understand the real  
17 meat of it is that the Franchise Tax Board, as is the  
18 practice of the taxing authorities with which I am familiar,  
19 declined or refrained from expressing views on tax policy  
20 matters in effect pointing out that both the United States  
21 congress and the California Legislature are players in the  
22 tax game, and for that reason they would not offer an  
23 opinion as to the appropriateness of legislators receiving  
24 tax-free per diem on days in which they are not in  
25 Sacramento.

1 Do you think that that is a fair summary of what they  
2 said? It's in the letter dated June 27th, 2011, from the  
3 executive officer the State Franchise Tax Board.

4 COMMISSIONER SOMERS: I'm not sure I totally  
5 understood that. But my -- my interpretation of this is  
6 that they basically said that -- that -- that they are  
7 allowed to accept a per diem on a non-taxable basis as  
8 reimbursement for expenses as part of an accountable plan  
9 for every day that the Legislature is in session regardless  
10 of whether they're here or not.

11 The only qualification on that is that the California  
12 tax authorities fundamentally said they have to be out of  
13 town, they can't be -- but they don't have to be here.

14 CHAIRMAN DALZELL: Any further discussion of the  
15 Franchise Tax Board issue?

16 COMMISSIONER STITES: Yes, Mr. Chairman. It kind of  
17 surprised me that their -- we can call it inability or  
18 basically they didn't want to respond to it, because they  
19 were pertinent questions. And the only reference -- or the  
20 only avenue we have now is to go back to the Legislature and  
21 ask them what do you think we should tax you on or what do  
22 you think is taxable, which kind of defeats the purpose.

23 I'm sure the Franchise Tax Board has no problem in  
24 dealing with the citizens and taxpayers in California  
25 because they'll very quickly take action or render an

1 opinion on what they consider tax -- taxed income. So just  
2 a general comment, but also a -- it doesn't really surprise  
3 me.

4 CHAIRMAN DALZELL: Have you ever asked the IRS for  
5 advice? Yeah. Yeah, right, that -- that's why it doesn't  
6 surprise us. Yes.

7 COMMISSIONER WALLACE: Mr. Chairman, I do have a  
8 clarifying question. There's a memo attached behind the  
9 letter dated 6-27-11 from what appears to be the Franchise  
10 Tax Board. It's unclear to me who the author of that memo  
11 is given the Franchise Board's unwillingness to opine on the  
12 issue.

13 MADAME CLERK: Right. The original memo, 6-27-11,  
14 and the attachment to that is what follows that memo from  
15 the Franchise Tax Board.

16 COMMISSIONER WALLACE: Thank you.

17 MADAME CLERK: So I don't think we know whether it  
18 was prepared in response to the question or whether it's a  
19 generalized summary, or who wrote it or -- or it's sort of  
20 presented as information is how I understand it.

21 COMMISSIONER WALLACE: And then I guess a follow-up  
22 question would be does the Commission believe that it's  
23 responsive to the initial inquiry. I didn't have the  
24 benefit of the meeting last year, obviously.

25 CHAIRMAN DALZELL: Well, responded by not respond --

1 by refraining from responding. So they acknowledged our  
2 question and said they weren't going to answer it. I think  
3 they understood the question.

4 COMMISSIONER WALLACE: Yeah.

5 COMMISSIONER SANDS: I think that's all we're going  
6 to get.

7 COMMISSIONER WALLACE: Okay. And then my final  
8 question is whether or not there's any appeal process if you  
9 feel that this response was not responsive to your initial  
10 inquiry, and -- and you still believe it to be a valid  
11 inquiry.

12 CHAIRMAN DALZELL: Well, I think that that would be a  
13 question that we could direct our counsel to work on between  
14 now and our May meeting, the options. I -- I'm -- I'm an  
15 attorney, and I'm not an attorney representing this  
16 Commission, and it's not particularly my area, but I think  
17 that any sort of a -- an attempt to compel a response would  
18 probably be difficult. Chance is slim to none, slim's  
19 heading out of town.

20 But I -- I think that we could probably ask for  
21 advice from our counsel on that issue, whether -- what are  
22 the possible avenues for further pursuit of this, if any,  
23 what are the chances of prevailing on it. Would we like  
24 that?

25 COMMISSIONER SANDS: Mm-hmm.

1           COMMISSIONER MURRAY: I would agree if -- if I could  
2 ask a -- ask a point straight to counsel.

3           What are the options would you say off the cuff?

4           MS. MEITH We're dealing with the --

5           COMMISSIONER MURRAY: You might -- might hit your  
6 mic.

7           MS. MEITH Thank you. For -- you mean in responding  
8 to the Franchise Tax Board's position?

9           COMMISSIONER MURRAY: No, no, we -- I'm saying we --  
10 we ask the -- the legislative body for an -- a ruling on a  
11 law that is in effect, then come back to us and say we  
12 aren't going to answer your response. What are -- what  
13 other options do we have?

14           MS. MEITH I think with that -- with that body you're  
15 probably right, that they're not going to -- I'm sure this  
16 is consistent with their usual position on responding to  
17 questions. I say I'm sure. I'm -- I'm fairly sure. Not as  
18 sure as I can be.

19           So your other options would be to ask -- you can ask  
20 me to inquire. I'm not a tax lawyer, but I can do some  
21 rudimentary research. It may be significant enough to ask  
22 for -- to look at other resources to get advice on it. I --  
23 and I don't know if it would necessitate hiring a private  
24 counsel. Because I'm not sure the -- the other source of  
25 advice in this State is the Attorney General's office, but

1 I'm not sure they would opine on it since the Commission  
2 also establishes the salary of the Attorney General.

3 COMMISSIONER MURRAY: So -- so if I could continue.  
4 You're saying the only other valid option we have really is  
5 to go out and retain an outside firm to make a ruling on it?

6 MS. MEITH If you -- if you care significantly -- if  
7 you care about this issue this year, then I think that would  
8 be the best solution.

9 COMMISSIONER MURRAY: Okay. Thank you.

10 COMMISSIONER SANDS: Hmm. What does that cost?

11 COMMISSIONER SOMERS: Money.

12 CHAIRMAN DALZELL: At -- at this point I will repeat  
13 and somewhat clarify concerns that I raised last year on the  
14 entire issue of the per diem. I noticed that in Article 4  
15 the State Constitution, Section 4, Section B, travel and  
16 living expenses for members of the Legislature in connection  
17 with their official duties shall be prescribed by statute,  
18 passed by roll call vote, entered in the Journal, two-thirds  
19 of the membership of each house concurring.

20 So it appears to me, as I stated last year, that the  
21 subject of living expenses by the Constitution is  
22 specifically deferred or delegated to the Legislature, not  
23 to this Commission.

24 And I further note Government Code Section 9350.6,  
25 compensation and salary specifically exclude mileage and per

1 diem allowances paid to -- to legislators. So I think that  
2 on the entire issue of per diem we're on very, very thin  
3 ice. But I will not preclude further consideration of the  
4 issue when we come back in May. If -- if there are motions,  
5 we'll deal with the motions when they come up.

6 But I think -- I think that on per diem we're -- that  
7 is beyond the purview of this Commission. I said that last  
8 year. And I simply add two references, one on the  
9 Constitution, one on the Government Code, to my concern.

10 Is there any -- any further comments or discussion on  
11 the issue of -- of travel? We see that we are now paying  
12 legislators 53 cents a mile instead of the 37 or 42 that we  
13 were doing before. Any -- any further comments on travel  
14 issues?

15 COMMISSIONER STITES: Yes, Mr. Chairman. May as well  
16 deal with this thing now.

17 I don't know where the 37 and the 42 cent mileage  
18 issue came up. And they were using that to show that -- the  
19 Legislature used that in the report to show us that they  
20 were -- it would be cheaper to go with the allowance other  
21 than that. But I -- and this kind of leads it into the  
22 issues that were addressed in these two letters, one that I  
23 have a copy of from the Attorney General's office, the other  
24 one from the State Controller's office.

25 Issues that came up, there is the Commission -- they

1 seem to -- the inference I drew was that the Commission  
2 asked for the Controller to pay the allowance. We didn't.  
3 I assume that if they -- if the Legislature can come up with  
4 a mechanism to take revenue and provide it for vehicles,  
5 buying them, leasing them, and otherwise, that surely they  
6 could come up with a mechanism to provide the allowance.

7 Well, they seem to have tried to get around. But the  
8 only reason the 53 cents came in to play is -- was to  
9 provide them with additional compensation. And I believe  
10 the original question that went to the Attorney General's  
11 office, according to the letter, was whether or not they  
12 could take the allowance and also take the mileage, which  
13 they were going to address as 53 cents a mile plus the \$300  
14 a month for each legislator. I don't remember that ever  
15 coming in to play by this Commission.

16 Now I have a question, is the Rules Committee paying  
17 the allowance? And that's a question that needs to be  
18 asked. I'd like to know who asked for the opinion from the  
19 Attorney General's office in the first place. We didn't  
20 ask. We were pretty much satisfied with our position as it  
21 was placed in the Resolution. And if somebody was asking if  
22 they could draw the allowance and claim the mileage and  
23 asking for a legal opinion, that to me is simply another way  
24 by that person, whoever he was representing, I'm assuming he  
25 was representing the Legislature, of trying to find a way to

1 be fixed upon legal issues, Government Code issues as far as  
2 reimbursement for mileage and the like of the Constitution.

3 But I -- I also have a question on what laws gave the  
4 Legislature the authority to establish their auto lease  
5 program in the first place? I've -- I've never heard of  
6 where it came from, so they apparently internally did that  
7 themselves. And anyone who could come up with a -- which I  
8 thought it was -- probably was the premier example of a  
9 lease program when you have someone purchase a car for you  
10 and then have them pay you so that you can pay for the lease  
11 and still get gas -- your fuel paid -- costs paid for and  
12 your maintenance costs, probably the best least program in  
13 the world. I don't know of any other one like that.

14 CHAIRMAN DALZELL: I think I can answer two of your  
15 questions.

16 COMMISSIONER STITES: Okay.

17 CHAIRMAN DALZELL: One -- one is where did they get  
18 the -- where does the Legislature get the authority to  
19 establish the travel program. It's in the California  
20 Constitution, Article 4, Section 4, Subsection B. Travel  
21 expenses in connection with their official duties shall be  
22 prescribed by statute, passed by roll call vote, entered in  
23 the Journal, two-thirds of the membership of each house  
24 concurring. I think that's where they got the authority.

25 And as to who asked the attorney -- the Attorney

1 General. If we were to believe the -- the Attorney  
2 General's office, the request came from the chief counsel of  
3 the office of the State Controller, not from the  
4 Legislature.

5 COMMISSIONER STITES: Well, yes, but that was the  
6 State Controller attempting to determine whether -- what  
7 action they should take. I don't think that came originally  
8 from the State Controller. I think the question was asked  
9 by someone else.

10 COMMISSIONER SOMERS: Well -- may I make a comment  
11 Mr. --

12 CHAIRMAN DALZELL: Please.

13 COMMISSIONER SOMERS: It is the -- my interpretation  
14 of this is that they basically said, and the Controller's  
15 office presumably was told, that you can't pay \$300. Is  
16 that \$300 getting paid?

17 COMMISSIONER STITES: That was the question I had,  
18 Mr. Chairman. The Rules Committee was the one providing the  
19 revenue before. Is the Rules Committee providing the State  
20 allowance now at the direction of this Commission, which is  
21 what we asked to happen?

22 CHAIRMAN DALZELL: We -- we can ask between now and  
23 May. My understanding from this correspondence is they're  
24 not paying \$300, they're reimbursing at 53 cents a mile.  
25 But we can ask.

1           COMMISSIONER STITES: Well, the correspondence isn't  
2 the response from the Legislature, it's simply a legal  
3 opinion by the State Attorney General. And I don't think --  
4 if -- if the Legislature's hesitating to respond to what we  
5 asked them to do, I'm -- I'm sure that they're not going to  
6 pay any attention to the Attorney General.

7           COMMISSIONER SOMERS: One of the -- if I may add a  
8 comment on that. That normally in compensation, at least as  
9 I've seen compensation programs, if you're paying a car  
10 allowance, it is normally taxable.

11           COMMISSIONER STITES: Yes. And that was pretty much  
12 understood --

13           (Speaking over each other)

14           COMMISSIONER STITES: -- California it's considered  
15 compensation.

16           COMMISSIONER SOMERS: So basically they said, okay,  
17 it is taxable compensation and with a twist on it that if --  
18 if you want it to be taxable compensation, then you should  
19 just increase their compensation by \$300 a month and they  
20 can be paid. But we didn't say that. We basically said we  
21 want it to be a car allowance, which they said we were not  
22 allowed to do and, therefore, it shouldn't be paid.

23           If we were allowed to do it, however, it would be  
24 taxable, and like most organizations they would then -- it  
25 would be taxable, and it would be allowed to deduct or

1 expense any actual miles traveled, which is what I think I  
2 heard in the opinion say.

3 So, in other words, they can deduct -- they can  
4 expense actual miles traveled at whatever rate, 52 cents,  
5 and we could increase their compensation by \$300 to allow  
6 them an extra \$300 of compensation for the car, but it would  
7 be taxable.

8 COMMISSIONER STITES: And they're also saying that  
9 they would also be authorized to claim mileage per the  
10 Government Code.

11 CHAIRMAN DALZELL: That's right. I -- I think if we  
12 look at the final sentence of the Attorney General's  
13 opinion, it is that -- it was the opinion of the Attorney  
14 General's office that we did not have the authority to  
15 direct the Controller to pay the \$300 monthly allowance  
16 either in lieu of or in addition to the reimbursement for  
17 the actual costs of travel.

18 So I -- I don't think it was as simple as  
19 Commissioner Stites stated, which was you couldn't get both.  
20 I -- I think that the direction was that the \$300 is not  
21 allowed under any circumstance.

22 But I've added it to my list. And I'll go over it at  
23 the end of the meeting of the requests that we have to staff  
24 to generate requests to other -- to the Legislature or to  
25 other bodies for -- for information or opinions.

1           COMMISSIONER STITES: Well, allow me to reemphasize  
2 that, again, I don't recall this body directing the  
3 Controller to do anything. We didn't ask him to pay it.  
4 Did we? No. If you review -- if you review the previous  
5 Minutes, the ones we just approved, we didn't ask it.

6           MR. DEMAS: Can I clarify?

7           COMMISSIONER STITES: I wish you would.

8           MR. DEMAS: My name is Gus Demas. I'm the fiscal  
9 officer for the Assembly. And just wanted to clarify that  
10 anything paid on behalf of the Assembly or Senate is paid by  
11 the State Controller. The Legislature doesn't have a  
12 separate mechanism to pay anything.

13           So a car allowance that you requested -- and -- and I  
14 suppose it was optional. If some members didn't want to  
15 receive it, they didn't have to. But, nonetheless, the car  
16 allowance would ultimately have to be paid by the State  
17 Controller. That's the only mechanism that's in place.

18           COMMISSIONER STITES: If he paid it directly as a car  
19 allowance. So where did the Rules Committee get the  
20 revenues to fund the auto lease programs that both houses  
21 had? They said the Rules Committee was providing the  
22 funding. Where did they get that funding? They were  
23 purchasing vehicles, some up to -- upwards 55, \$60,000 for a  
24 vehicle. And then they were also paying them, depending on  
25 which -- whether it was Senate or Assembly, one was about

1 150 bucks, I think, and the other ones were -- or may have  
2 been a little larger than -- a little higher than that.  
3 They were paying each body a certain amount so that they  
4 could lease these vehicles back even though they were used  
5 for their personal and official use. So where were they  
6 getting that funding?

7 MR. DEMAS: Maybe we can separate the two issues, the  
8 issue of funding and the issue of actual payment.

9 The funding comes from the Operating Funds for the  
10 Assembly -- the Senate and the Assembly, and all of those  
11 payments are paid by the State Controller. So when the  
12 Assembly or Senate purchased the vehicle, that was paid by  
13 the State Controller. It came out of the Assembly or  
14 Senate's budget or appropriation, but it was paid by the  
15 State Controller.

16 COMMISSIONER STITES: So we're saying that the State  
17 Controller by directly -- if -- if we had asked, and we  
18 didn't. If he were asked to pay a simple straight vehicle  
19 allowance of \$300, he couldn't. But by giving the funds  
20 to -- directly to the legislative bodies, they could pretty  
21 much do what they wanted with them?

22 MR. DEMAS: No, that's not correct. Because, again,  
23 the State Controller makes every payment. So if we ask the  
24 State Controller, which I think is what your --

25 COMMISSIONER STITES: Yeah, I'm trying to get around

1 to why didn't they ask for the State Controller --

2 MR. DEMAS: If we --

3 COMMISSIONER STITES: -- to give them the allowance  
4 and fund it through a different source so we didn't have to  
5 run into this?

6 MR. DEMAS: It's not an issue of funding it through a  
7 different source. The -- the only source would be the two  
8 funds that are available, the Assembly Operating Fund, the  
9 Senate Operating Fund.

10 The only issue is the State Controller does not have  
11 the authority to pay a \$300 car allowance per the AG's  
12 opinion.

13 COMMISSIONER STITES: Maybe I'm missing it, Gus.

14 MR. DEMAS: They could still not give that money to  
15 the Legislature and have the Legislature pay it. There's no  
16 mechanism there for the Legislature to pay anything.

17 COMMISSIONER STITES: Okay.

18 MR. DEMAS: Everything that comes from the State  
19 Controller's office.

20 COMMISSIONER STITES: So the funds that supposedly  
21 are not now being spent to purchase new cars or to pay each  
22 Legislature a -- a reimbursement for leasing is the only way I  
23 can describe it, that money's still there I'm assuming,  
24 because operating costs haven't went down as far as I can  
25 tell. So the money they were using for that previous to our

1 Resolution, they still have?

2 MR. DEMAS: I'm not following the logic there.

3 The --

4 COMMISSIONER STITES: Well, I'm not following any of  
5 the logic so far, but, you know, it's just me, I guess.

6 MR. DEMAS: Well, the -- the funding to purchase the  
7 vehicles which were done every two years, primarily, that  
8 was part of the cost of running a fleet of vehicles. That  
9 was incorporated into the costs that we brought to the  
10 Commission in that most recent year, 37 cents and 42 per  
11 house. Those were the costs of -- of running those vehicles  
12 per mile. They were paid by the State Controller though,  
13 all the costs are paid from the State Controller's office.

14 COMMISSIONER STITES: Well, I don't want to belabor  
15 this any, but I -- I'm still confused on the issue, but we  
16 won't belabor it.

17 What I do recommend, that -- that if -- if they've  
18 determined that they're going to go to mileage and we've  
19 asked for a vehicle allowance in our Resolution, that  
20 perhaps we should consider amending the -- the Resolution to  
21 reflect that the Legislature will now use a mileage  
22 reimbursement with their own personal vehicles. That seems  
23 to be the direction they went into.

24 COMMISSIONER SOMERS: May I make one comment?

25 CHAIRMAN DALZELL: Please.

1           COMMISSIONER SOMERS: Two -- two points I guess on  
2 that, is that my interpretation of that is that -- is that  
3 the State Controller can pay anything that is -- that is  
4 authorized either under the old program because they could  
5 set it up themselves by Constitutional authority, or they  
6 can -- they can get another \$300 if we authorize \$300 as  
7 compensation and not as an allowance, because we're not  
8 authorized to establish an allowance, but we can give  
9 compensation. So if we want to give them compensation, we  
10 can give them another \$300 of compensation.

11           Either way it's taxable. And -- but I am a little  
12 confused and -- and, Gus, I'm not quite sure. I am a little  
13 confused as to how the mileage allowance changed. Why did  
14 it change? Why did it go up?

15           MR. DEMAS: If I can clarify, it didn't really go up,  
16 because the costs that we mentioned before were the costs of  
17 running those vehicles. It wasn't a mileage reimbursement  
18 at all. It was the cost, including the --

19           COMMISSIONER SOMERS: You mean you took all the costs  
20 and averaged it out and came up with that mileage number?

21           MR. DEMAS: Yes. Correct. Based on the miles driven  
22 by those vehicles. And don't forget that some of the costs  
23 were offset by payments that the members were making out of  
24 personal funds. They were payroll deducted, used to be ten  
25 percent of the monthly amount. This Commission increased it

1 in 2009 to be 18 percent on top of what they were paying.  
2 So they were contributing a certain amount towards the cost  
3 of the vehicle. But it did include all the costs. We had  
4 insurance, gasoline, maintenance. And, in essence --

5 COMMISSIONER SOMERS: And what was the -- what was  
6 the number, Gus?

7 MR. DEMAS: Thirty-seven cents for the Assembly, and  
8 it was about 42 for the Senate, I believe, per month.

9 COMMISSIONER SOMERS: Okay, and you're saying then  
10 without that program, scrapping the whole program, you  
11 basically went to IRS authorized --

12 CHAIRMAN DALZELL: Less -- less -- less than IRS  
13 authorized.

14 MR. DEMAS: Yes, it's less than --

15 COMMISSIONER SOMERS: And where did that number come  
16 from?

17 MR. DEMAS: The 53 cents was determined by both  
18 houses. They could legally go up to 55 and a half. They --  
19 they incorporated 53.

20 COMMISSIONER SOMERS: Because the IRS allows 55 and a  
21 half?

22 MR. DEMAS: The IRS allows 55 and a half.

23 COMMISSIONER SOMERS: Right. Correct.

24 MR. DEMAS: And State employees I believe are now  
25 reimbursed the 55 and a half.

1 COMMISSIONER SOMERS: Right.

2 MR. DEMAS: Because they automatically adopted the  
3 federal rate. So whenever it goes up, State employees  
4 receive the federal rate.

5 COMMISSIONER SOMERS: Thank you.

6 CHAIRMAN DALZELL: Any further discussion on the  
7 travel issue?

8 COMMISSIONER STITES: Yeah, a couple more comments,  
9 Mr. Chairman.

10 It appears that the Attorney General says that the --  
11 well, it -- it cites in there that the Legislature agrees  
12 that the Commission was not authorized to eliminate the auto  
13 lease program or substitute an allowance, and it also said  
14 that the Commission apparently does not understand the  
15 limits of their authority.

16 CHAIRMAN DALZELL: What -- what page are you on?

17 COMMISSIONER STITES: Well, I'm reading from my  
18 notes, but it's in the letter from the Attorney General.

19 The comment that we don't understand the limits of  
20 our authority is on the last page of that memo, page five,  
21 and it's in the notes. It's a footnote. The issue  
22 that . . .

23 CHAIRMAN DALZELL: Footnote. Footnote seven. Yes.

24 COMMISSIONER STITES: Yeah.

25 CHAIRMAN DALZELL: Right. That's there.

1           COMMISSIONER STITES: And the issue that the  
2 Legislature agrees that the Commission was not authorized to  
3 eliminate the vehicle or to substitute it -- 300 automobile  
4 allowance is in the body of the text on page three about  
5 midway. Technically the second paragraph just above legal  
6 analysis.

7           CHAIRMAN DALZELL: All right, I -- I see -- I see the  
8 reference to that?

9           COMMISSIONER STITES: Okay.

10          CHAIRMAN DALZELL: Continue.

11          COMMISSIONER STITES: Well, my -- my question is --  
12 and -- and -- this body was directed by the people.  
13 Somebody wrote an initiative. I think it was State Senator  
14 Roberti (phonetic) back in the day. And it was voted on by  
15 the people. So our authority comes from the people and not  
16 from the Legislature and not from the Attorney General's  
17 office.

18          And there's another rule out there called the law of  
19 unintended consequences, a lot of references are -- on laws  
20 and stuff that were established long before this Commission  
21 was established. Once this Commission was established we  
22 began to supersede them, just like the Constitution of the  
23 United States. They're having a big debate in Washington,  
24 DC over the commerce clause. That's something that's been  
25 interpreted and reinterpreted 15 -- a hundred times since

1 the Constitution was written.

2 We have the same thing here. This body is out here  
3 to address the issues of benefits and salaries of the  
4 Legislature, and that's what we do. And perhaps we took a  
5 different tact than previous Commissions, but as it says  
6 here, if they disagree with us, they have every right to  
7 take that to court. And if the Attorney General registers  
8 an opinion, again, I'll say that is an opinion. We respect  
9 the right to do it. But it doesn't restrict this body.

10 And my last question here, and I'd like to see this  
11 answered, who's going to verify the voracity of what the  
12 mileage is? Who's going to determine? I mean when I was on  
13 mileage, and I was on mileage at one point using my personal  
14 vehicle, I think it was about 27 cents a mile then, so  
15 that's a while back. We submitted a report to a supervisor,  
16 and the supervisor reviewed it, determined whether or not it  
17 was accurate or not. Who does it for these guys? They're  
18 all submitting reports now.

19 MR. DEMAS: May I answer that question?

20 COMMISSIONER STITES: Sure.

21 MR. DEMAS: Both houses receive a log from the  
22 Assembly members and senators detailing each trip that  
23 they're claiming mileage for. So -- and they've been given  
24 guidelines. Of course, it has to be for legislative  
25 purposes. But they're reimbursed for legislative business

1 for each trip. And it's -- it's listed out.

2 So the Rules Committee of each house has to approve  
3 those. And they review them. And -- so that -- that's the  
4 log that you're referring to I believe that you used to  
5 maintain.

6 And I -- if I can add one more other point, just very  
7 quickly, that mileage reimbursement is strictly that, for  
8 legislative business. It -- I -- I don't see how it can be  
9 considered compensation. And I think that's where the AG  
10 was going with their opinion.

11 COMMISSIONER STITES: We didn't say mileage was  
12 compensation. What we said was, is that the auto lease  
13 program was a benefit, and that's why we ruled on it.  
14 Mileage is a different story.

15 MR. DEMAS: Okay.

16 COMMISSIONER STITES: If they've opted to go to  
17 mileage instead of the allowance, that's fine. And I again  
18 resubmit the question, do we amend the Resolution to reflect  
19 that. Because if we don't, somebody's going to ask the  
20 question later on, and there's -- nobody's got a note on it,  
21 how -- how they not obey what they were asked to do or  
22 respond to what they were asked to do.

23 CHAIRMAN DALZELL: Would you like to . . .

24 Will you prepare a -- a motion for our next meeting  
25 to address that issue?

1           COMMISSIONER STITES: I don't have any problem with  
2 that.

3           CHAIRMAN DALZELL: All right.

4           COMMISSIONER STITES: But what I would also do, and I  
5 haven't addressed the issue, is the issue of a written  
6 motion. That's a little bit different from anything I've  
7 ever been subjected to in my times in dealing with  
8 committees and Robert's Rules of Order and the like. In  
9 most cases it's restrictive, and in most cases it will  
10 delay. Because there has to be some discussion over it. We  
11 have to decide as a body which way we're going to go with  
12 it.

13           And so it seems to me that unless we have three, four  
14 meetings in a year, we'll never come to a Resolution and  
15 agree upon it. And as this Commission evolves over the next  
16 couple of years, I see a lot more discussion on issues. So  
17 from a personal standpoint, and I know we haven't put it to  
18 a vote or -- has there even been anyone asked to vote -- is  
19 I don't believe that a written motion is in the best  
20 interest of the work we do here. I don't have a problem  
21 with writing, I write all the time. But I just think it's  
22 going to delay the process extensively.

23           CHAIRMAN DALZELL: Well, I -- I don't -- I  
24 respectfully disagree with you. I think that it will end up  
25 in two meetings a year rather than one. You know, if -- if

1 we were prepared to operate on the basis of an oral motion,  
2 we're not going to come back and talk -- talk about the  
3 motions.

4 You know, I -- I think the fact that in 2009 and 2011  
5 there were unintended consequences of -- I think in 2009 a  
6 rushed written motion. Or perhaps it was -- I was not here,  
7 you were -- or were you?

8 COMMISSIONER STITES: Yeah.

9 CHAIRMAN DALZELL: Yes, yes. You know, we're not --  
10 we're not doing the -- the people's work well if we -- two  
11 out of three years we -- we miss step.

12 So that's my belief is it will not delay us. And  
13 our -- our decisions do not go into effect immediately, so I  
14 don't think it will delay any actions that we take. If we  
15 have to meet twice instead of once, let's meet twice rather  
16 than -- rather than once to get it done right. That's my  
17 opinion.

18 COMMISSIONER MURRAY: Oh, Mr. Chairman, may -- may I  
19 just add a point?

20 John has a good point. And we have had the privilege  
21 of being involved in this body for several years now. From  
22 a logical, say, sequence of time, if we can create a motion  
23 now, an oral motion and get it started -- the next meeting's  
24 in May. The end of June we come to an end, we can't make  
25 any effect on anything until the following year.

1           So I respectfully do not agree with you that --  
2 that -- oh -- oh, the time value has any impact on this. So  
3 that's why I would ask you to reconsider having John maybe  
4 make an oral motion now, have us discuss it and put it  
5 all -- all in effect because the time delay is just going  
6 to, I would agree with John, totally extend the time frame  
7 and so we're giving them another year.

8           CHAIRMAN DALZELL: How -- how is acting in May giving  
9 them another year? I don't -- I don't follow that.

10           COMMISSIONER STITES: Because we don't have the  
11 motion. We have a writ -- if we're going to -- if we're  
12 going to rely upon written motions, and that will be -- so  
13 in May we get -- you see the motion, then you're going to  
14 see that you agree or -- then the discussion starts. And at  
15 the conclusion if we don't come to an agreement on the  
16 language of it, then we've either got to have another  
17 meeting or we move on.

18           I don't know how this is impacted anyway. You  
19 mentioned two instances in the past which are based, in your  
20 observation, upon records or perceptions, and you mentioned  
21 this 53 cents. I don't care if they take the mileage or  
22 not. They're still not going to be spending the money they  
23 were when they had their auto lease programs. So -- but  
24 we'll see that later on when we get mileage reports in the  
25 future.

1           But I just don't see the necessity of that. I don't  
2 know of any -- anybody that I've been involved in where  
3 they -- where they have a written motion before they can  
4 move on something.

5           COMMISSIONER SOMERS: Mr. Chairman, I have a  
6 question.

7           CHAIRMAN DALZELL: Sir.

8           COMMISSIONER SOMERS: Are we allowed under the Brown  
9 Act to circulate the motion initiated by one of the members  
10 to all of the members?

11          CHAIRMAN DALZELL: Counsel, I -- I -- I -- I think  
12 that direct communication with each other gets us in  
13 trouble. I don't know if it can be coordinated by the DPA  
14 or my counsel.

15          MS. MEITH No, you're correct, you can't -- you can't  
16 circulate -- I -- I think the -- the way that you -- you  
17 could prepare written materials and make them available that  
18 would be appropriate is you would prepare a written motion,  
19 and that would be part of the -- basically the book for the  
20 next meeting. So there may be two or three different  
21 versions of the motion on a topic, you discuss those, you  
22 strike out and underline the one that you like best and --  
23 and then we -- and then you leave that meeting with  
24 something that's actually written on -- on which you have  
25 all voted.

1 But to -- to write a motion and circulate it prior to  
2 a vote between yourselves I think is -- is potentially  
3 problematic even though -- the thing to be avoided is  
4 discussing how you're going to vote or signaling how you're  
5 going to vote, and the law's become more restrictive on that  
6 in the last few years.

7 So I -- I think the better practice might be  
8 submit -- submit written motions to Debbie, she could then  
9 make copies of them, they become part of the public record.

10 COMMISSIONER STITES: But still would be restricted  
11 from speaking about them. And if I write a motion, you know  
12 how I'm going to vote. I vote for the motion, that's why I  
13 put it out there.

14 I -- I just see it as being a -- restrictive. I -- I  
15 just think it restricts us, and I think it doesn't allow us  
16 that ability to -- to discuss issues and come to an  
17 agreement here in this -- during this meeting and supply a  
18 motion.

19 And, frankly, I don't see where it's created a problem.  
20 Nothing that we've done as a body here have we made a  
21 mistake. We've made motions, and there's -- now there's  
22 allegations that, oh, we made a mistake and it's costing the  
23 taxpayers more. What went on that -- in that Resolution was  
24 what we asked for.

25 Now, if they found a way to move around it or to

1 circumvent it or whatever, that's another issue that we can  
2 deal with in another meeting or at a later time here. But I  
3 just don't see the necessity for it.

4 CHAIRMAN DALZELL: Well, I -- there was also 2009  
5 on -- on the pension and the per diem issues and a 66-word  
6 motion I believe drafted after the fact. And we -- we got  
7 into trouble last year after we -- we -- we passed the  
8 motion, and then there were several version -- written  
9 versions of it that -- that came to us to sign. And we  
10 almost ended up with another meeting last year. I mean I  
11 have no intention whatsoever of -- of having a third meeting  
12 unless everybody asks for it. If everybody asks for it,  
13 sure. And if you would be more comfortable scheduling our  
14 next meeting in April rather than -- what is our . . .

15 COMMISSIONER STITES: It's May.

16 MS. MEITH It's tentatively in May, I believe.

17 COMMISSIONER STITES: It's May.

18 CHAIRMAN DALZELL: I know, but what is -- what is the  
19 requirement for notice, advance --

20 MS. MEITH Ten days. Ten days.

21 CHAIRMAN DALZELL: If you -- if you would be -- if  
22 your fears would be allayed of this passing the end of the  
23 fiscal year, we can certainly meet in April rather than --  
24 rather than May, which would then give May as a fallback if  
25 something happens. But I have no intention of this going

1 past a second meeting. And I think that in 2010 there were  
2 two meetings. So . . .

3 COMMISSIONER SOMERS: Mr. Chairman, maybe there's  
4 a -- the intent of having a written motion, I -- I agree  
5 with, frankly. I think it's a good idea. The -- and -- and  
6 maybe to the extent that -- that there are motions that come  
7 up or that -- that we want to talk about, that you direct  
8 one of us to do that, prepare something in writing that is  
9 at least a document that we can react to. I mean it gives  
10 us a starting point.

11 I don't think you're saying you're restricting people  
12 from making motions that are not in writing.

13 CHAIRMAN DALZELL: I --

14 COMMISSIONER SOMERS: But you're saying that you'd  
15 rather have something ahead of time that we can -- we can  
16 react to.

17 CHAIRMAN DALZELL: I'm saying I would greatly prefer  
18 written motions that can be debated, amended, but we have a  
19 written basis for what we're voting on rather than a -- a  
20 general sense of what it is.

21 COMMISSIONER SANDS: Mr. Chairman, I -- I also don't  
22 feel that a written motion is a bad thing. I think it's  
23 good to have a written motion. I think it's -- it's -- it  
24 feels good for me if I know I want to make a motion to have  
25 it in writing.

1           But I don't think it should be a mandatory thing. If  
2 you -- you know, say we have a written motion, it -- a lot  
3 of times after discussion you have amendments. So we have  
4 to make -- you know, you have to have a means to be able to  
5 prove that too.

6           And it just sounds to me like we're going to really  
7 need at least three meetings if we're going to have some  
8 motions next meeting, and then we have discussion,  
9 amendments, we've got a way to approve them the next  
10 meeting. I think that shouldn't be what we, you know, tie  
11 ourselves into, to -- to have something like that.

12           CHAIRMAN DALZELL: I have no interest and no  
13 intention of a third meeting --

14           COMMISSIONER SANDS: Okay.

15           CHAIRMAN DALZELL: -- unless we all ask for it.

16           COMMISSIONER SANDS: Then we will be able to -- if we  
17 want to just make a motion, we can make a motion, just --  
18 maybe we should sit and write it down right now, right --  
19 you know, as we're -- as we're speaking and then have it in  
20 writing and present it to you. Maybe that's -- would --  
21 would help at next meeting. Because a lot of times when  
22 you're just having discussion and you think, you know, you  
23 have another idea for something. You can't always know  
24 ahead of time. We're not really supposed to make decisions  
25 on things ahead of time without discussion in these

1 meetings.

2 CHAIRMAN DALZELL: Agreed. Agreed. Well, let --  
3 let's continue talking about the substance and then return  
4 after we've talked about the substance to how we want to  
5 address it.

6 I think that Commissioner Stites's motion or  
7 potential motion on mileage reimbursement is a fairly simple  
8 one, and if we gave him ten minutes and a pad of paper, he  
9 could come back with 20 words that said it. But it -- it  
10 may be more complicated. I don't know where this meeting is  
11 going to go next.

12 So I -- I suggest that we go with the -- the  
13 substance now, substantive issues and then return to a  
14 discussion of how we're going to proceed, whether we're  
15 going to proceed with motions today or have written motions  
16 prepared in advance of a -- of a second meeting.

17 Remind me, what were the circumstances that led to a  
18 second meeting in 2010? Do --

19 COMMISSIONER MURRAY: Information, I believe. I  
20 don't recall.

21 COMMISSIONER STITES: Information. We needed  
22 information. We had a general idea which way we wanted to  
23 go, as I recall, but we wanted to be able to support that  
24 decision with information that was being provided by the  
25 Legislature, and I think our chairman then, Mr. Murray,

1 needed time to make inquiries on his own through independent  
2 sources, as I recall.

3 COMMISSIONER SOMERS: Well, I think historically this  
4 Commission has usually had two meetings. And I'm in favor  
5 of two meetings, partly because I think -- because we're not  
6 able to talk to each other otherwise. The first meeting we  
7 tee up issues, we teed up directional movement. And then we  
8 get together a second time. And we can all think about it.  
9 We can listen to each other's opinions about it here in the  
10 meeting. And -- and then we can come to a second meeting  
11 and finalize it.

12 COMMISSIONER SANDS: That's what we've done a lot.  
13 It -- we -- we didn't have a quorum I remember one time.

14 CHAIRMAN DALZELL: Well, some -- somehow I made that  
15 sound more scary than I meant to sound, because that --  
16 that's pretty much what I had in mind.

17 Commissioner Stites, for our benefit restate the  
18 thrust of the motion that -- that you are suggesting.  
19 You're not making a motion now, but -- but tell us again and  
20 as specifically as you can what your thought is.

21 COMMISSIONER STITES: It was simply because they've  
22 determined that they can't pay an allowance, we would just  
23 bring our Resolution in line with the direction that was  
24 taken to allow them to be compensated under the Government  
25 Code section for their mileage. That's it. And I -- I

1 think that's just an added sentence. You just bump one out  
2 and plug the other one in. Because otherwise then it  
3 basically -- it appears that they've done something that  
4 they weren't directed to or that we -- they had conflict  
5 with.

6 COMMISSIONER SANDS: Where was the resolution?

7 CHAIRMAN DALZELL: Well --

8 COMMISSIONER STITES: It's not overly complicated.

9 CHAIRMAN DALZELL: No, it's not.

10 MS. MEITH Mr. Chair, may I interrupt for a minute.  
11 I -- I think I would need to research whether a motion to  
12 amend a Resolution that was effective last year is  
13 authorized and appropriate. Because as you pointed out,  
14 your authority over the coming year basically ends on June  
15 30th of that year. So the Resolution would stand as it was  
16 written up until such time as any amendment could take  
17 place. And I'm not sure you can amend retroactively. I --  
18 I simply don't know. So I would -- I would want to --

19 COMMISSIONER STITES: That's a question.

20 MS. MEITH: -- research that for you.

21 COMMISSIONER STITES: It's a question, and maybe we  
22 have to come to a whole new Resolution. Hard to say.

23 MS. MEITH I think you can act prospectively, but the  
24 Resolution as it was adopted is -- is -- you know, if --  
25 well, it was adopted. So that -- that would not be changed.

1 But -- but I could -- I could investigate that.

2 COMMISSIONER STITES: I'd rather what was happening  
3 be in line with what this body has suggested than not,  
4 otherwise it's just a big conflict.

5 MS. MEITH I see your point.

6 COMMISSIONER SOMERS: May I make one more point about  
7 that, and I'll go back to 2009 because you've mentioned it a  
8 couple of times. Is that in 2009 this body was criticized.  
9 I specifically was criticized for saying something about  
10 pensions that I didn't intend to. And -- and at the same  
11 time the Resolution was approved. And it was pointed out,  
12 well, what about pensions and what about that pension  
13 statement.

14 And the -- the legal advice at the time was that we  
15 can approve motions, but until we actually sign the motion,  
16 that we sign it in writing, it's really -- it's not legal  
17 and that we can alter unintended aspects of the motion at  
18 that point in time and openly correct in the Minutes the  
19 final -- whenever the Minutes are corrected. And that's  
20 what we did.

21 CHAIRMAN DALZELL: Thank you. Shall we move back to  
22 the bread and butter of why we're here and shall we -- shall  
23 we get to -- shall we get to compensation?

24 COMMISSIONER SANDS: So where are we on the agenda?

25 CHAIRMAN DALZELL: Well, let's see.

1 COMMISSIONER SANDS: Let's see about that first.

2 CHAIRMAN DALZELL: General (unintelligible).

3 COMMISSIONER SANDS: Are we -- yeah.

4 CHAIRMAN DALZELL: Well, current salary and salary  
5 comparison information.

6 COMMISSIONER SANDS: Do we have public testimony?

7 No.

8 MADAME CHAIR: There is no public testimony. No one  
9 signed up to speak.

10 COMMISSIONER SANDS: Okay. Okay, then we're on  
11 discussion.

12 CHAIRMAN DALZELL: So we are here to -- Commission  
13 discussion on State officer compensation and request for  
14 staff reports.

15 Well, if -- if I may, I -- I've had more time to read  
16 this year than I -- than I had last year. And I was very  
17 new when I came last year. And as I look at the enabling  
18 language in the Constitution -- I am looking at Article 3,  
19 Section 8, which creates us. And what the people of  
20 California said, and I now quote, the amount of the annual  
21 salary and the medical, dental, insurance and other similar  
22 benefits for other elected and appointed officers and  
23 officials in this State, my emphasis, with comparable  
24 responsibilities the judiciary and to the extent  
25 practicable, the private sector, recognizing, however, that

1 state officers do not receive and do not expect to receive  
2 compensation at the same levels as individuals in the  
3 private sector with comparable experience and  
4 responsibilities.

5           So among the data that has been requested that we  
6 have to review today, there is an awful lot of data, some  
7 more up to date than others, some more complete than others,  
8 but there's a lot of data about 49 other states and very  
9 little data about other elected and appointed officers and  
10 officials in this State, and no data about the judiciary,  
11 and no data which may or may not be practicable. I don't  
12 know how many private sector companies in California have  
13 revenues of \$130 billion a year.

14           But we -- we have no data from the private sector,  
15 none from the judiciary, and only several counties for  
16 elected and appointed officers. And -- so we -- we have a  
17 lot of data that we're not supposed to rely on and not very  
18 much data that we are supposed to rely on. And I, thus, ask  
19 before the next meeting that the staff gather as much  
20 information as possible for elected and appointed officers  
21 and officials in this State. I would limit that to city  
22 managers, county executives, district attorneys would be my  
23 request, and not just the several counties that have been  
24 asked for but to the extent possible certainly the largest  
25 counties and the judiciary.

1           And I don't -- I don't know what to say about the  
2 private sector. I think that -- that private sector is paid  
3 so much more than government on -- on this level that I  
4 would find it very hard to compare. I don't know what other  
5 commissioners feel -- feel about that. And it's -- private  
6 sector compensation is not as readily available as public  
7 sector compensation data is. But I would like to see more  
8 of the data that we're supposed to look at and less of the  
9 data that we're not supposed to look at.

10           Commissioner Stites.

11           COMMISSIONER STITES: Frankly, I -- I don't know that  
12 we've looked at any data that we are not supposed to look  
13 at. When it's defined there, it actually gives us, we'll  
14 say, permission or guidance to look at pretty much anything.  
15 And there's a little clause at the end of that sentence, it  
16 does reflect exactly what you said initially, but it also  
17 says we can look at other sources. And we do.

18           But I -- I don't have a problem. Any -- any  
19 information that we gather or that is directed to gather,  
20 it's all helpful. So we just take it and go at it. But,  
21 again, I'll state we haven't looked at anything we're not  
22 supposed to.

23           CHAIRMAN DALZELL: Well, yeah. Okay.

24           COMMISSIONER STITES: We looked at everything, or  
25 anything that anybody offers.

1 (Speaking over each other)

2 COMMISSIONER STITES: Gus can attest to that.

3 CHAIRMAN DALZELL: We are directed to base the salary  
4 and benefits on a specific body of comparisons. And there's  
5 no and other sources that you want to go look at in there.  
6 And I'm -- I'm not saying that we have looked at things we  
7 haven't -- we have not looked at. We have -- we have data  
8 here that is not included in the comparisons that we are  
9 directed by the Constitution as enacted by the people of  
10 California to look at. And I'd like to see more of that.  
11 And then we'll fight it out next time about -- about whether  
12 we look beyond what we're told to look at.

13 But usually there is a catch-all kitchen sink at the  
14 end of something like this, and there is not in the -- in  
15 the -- in the Constitution language adopted by initiative.  
16 Private sector, judiciary, and other elected and appointed  
17 officers and officials in this State.

18 So I -- I mean I can reduce my data request to  
19 writing, but I think I -- I've stated what I would like to  
20 see.

21 COMMISSIONER WALLACE: Chairman, I -- I would concur,  
22 particularly as it relates to the salaries and benefits for  
23 the judiciary. We have it for the other two arms of  
24 government. So that would be particularly relevant for me.

25 I'm also concerned or would recommend that we do

1 follow the Constitutional guidelines and use our own  
2 judgment to weigh -- weight the information based on our own  
3 assessment as to the relevancy, which would include getting  
4 private sector information. Although, I would -- would  
5 agree with you, personally I would weight that relatively  
6 low as a legitimate comparison of legislators and -- and  
7 Constitutional officials salaries.

8 COMMISSIONER SANDS: Yes. Mr. Chairman, if everyone  
9 could turn to Commission Review. When we -- we were  
10 established, there were -- I -- I want to talk about the  
11 Commission Review which is the percentage that the different  
12 electeds receive compared to the Governor's salary. So  
13 that's what that Commission Review is.

14 Then if we go to our -- I think the easiest thing is  
15 the last Resolution that we made under Resolution. It shows  
16 the Governor at 173,987, the Lieutenant Governor 75 percent  
17 less at 130,490, the Attorney General, 151, on down.

18 I guess I'm questioning, you know, like this  
19 Superintendent of Public Instruction, Superintendent of  
20 Schools. He's a department head. A lot of these are -- are  
21 department heads. So I guess I -- and I don't know if it's  
22 appropriate, but to compare what a department head like  
23 Caltrans or Department of Corrections or Health Care  
24 Services -- those kind of jobs which are appointed by the  
25 Governor, I guess. Are they? I guess they are.

1           CHAIRMAN DALZELL:  Yes.

2           COMMISSIONER SANDS:  They're appointed by the  
3 Governor.  They're -- you know, they -- they can be fired.  
4 You know, our people, you know, they're elected, they're  
5 pretty secure.  So I -- I -- I'm -- I'm just thinking that  
6 we might look at that.

7           How -- how do you feel?  Is that an appropriate  
8 question to -- to ask those -- to maybe look at these  
9 percentages, where they've been, where they are now, if  
10 that's still where we want to be?

11          MS. MEITH  Kathy, are you asking to look at the --  
12 the salaries for current appointed officials, department  
13 heads, like (unintelligible) --

14          (Speaking over each other)

15          COMMISSIONER SANDS:  I think so.  Because, you know,  
16 the -- the superintendent, he's a -- he's a department head.  
17 The Secretary of State, you know -- they -- they should  
18 almost be the same, the Secretary of State's a public -- the  
19 superintendent of schools.

20          CHAIRMAN DALZELL:  I think there are two different  
21 issues.  One is data request --

22          COMMISSIONER SANDS:  Uh-huh.

23          CHAIRMAN DALZELL:  -- for department heads or cab --  
24 Cabinet officers with -- within the Governor's Cabinet.  And  
25 I believe that that is exactly the type of information, they

1 are appointed officers and officials in this State with  
2 comparable responsibilities.

3 COMMISSIONER SANDS: Yeah.

4 CHAIRMAN DALZELL: And I think that's exactly what  
5 we're specifically directed to look at. So I would -- I  
6 think that that's a good data request.

7 And your second suggestion that we look at the --  
8 what in salary survey language would probably be called  
9 internal equity, with -- within this body of 12 or 15 --  
10 well, we get into the Legislature down at the bottom --  
11 perhaps ten have we gotten the relative standing right to  
12 each other is the second part I think of what you're saying.  
13 And I think that should the Lieutenant Governor really be  
14 that much less of a Governor or that much more than --

15 COMMISSIONER SANDS: Yeah, we -- I just think we  
16 should maybe look at that again. We -- it was done, you  
17 know, years ago.

18 CHAIRMAN DALZELL: Right. The -- the relationship  
19 between the different Constitutional officers.

20 COMMISSIONER SANDS: Yeah.

21 CHAIRMAN DALZELL: Yes, I -- I would be very  
22 interested in how -- in how they got there and do we think  
23 that's right. That's --

24 COMMISSIONER SANDS: That's right.

25 CHAIRMAN DALZELL: -- an appropriate question.

1           COMMISSIONER SANDS: Otherwise I think this year I  
2 don't see personally doing any kind of a decrease straight  
3 across the board. I think I'd rather look at these -- these  
4 just salaries individually for these people, kind of what  
5 they do. I guess -- I guess I could go online. I'm not  
6 sure -- I'm not maybe so political as some of you. But I  
7 don't exactly know exactly what they do, so I guess I better  
8 study that.

9           CHAIRMAN DALZELL: Well, I think that we are  
10 probably -- just to remind ourselves, we are probably  
11 precluded from raising or increasing any annual salaries  
12 even if we thought these were out of line, you know, these  
13 ten. I -- I don't -- we cannot because of the uncertainty  
14 of the estimated General Fund revenues. And the language  
15 within the Constitution as adopted by initiative. If we  
16 wanted to increase, I don't think that we could.

17           COMMISSIONER SANDS: Well, I'm sure wouldn't be  
18 recommending it.

19           CHAIRMAN DALZELL: Right. But I think that it would  
20 be instructive and productive for us to look at the  
21 relationships between the Governor, Lieutenant Governor,  
22 Attorney General, Controller, Treasurer, Secretary of State,  
23 Superintendent of Public Instruction, Insurance Commissioner  
24 and the member of the Board of Equalization and compare  
25 those with Cabinet offices.

1 COMMISSIONER WALLACE: Chairman, I have a question.

2 CHAIRMAN DALZELL: Yeah.

3 COMMISSIONER WALLACE: So for my clarification, are  
4 we precluded because of funding and budget issues, or would  
5 we be precluded from -- from increasing salaries for some  
6 other reason?

7 CHAIRMAN DALZELL: Well, the -- the language of the  
8 Constitution as adopted by initiative is that we may not  
9 increase the annual salary. If the Director of Finance  
10 certifies to the Commission based on estimates for the  
11 current fiscal year, there will be a negative balance on  
12 June 30th of the current fiscal year in the Special Fund for  
13 economic uncertainties. And I'm guessing that that will be  
14 so certified.

15 MS. MEITH: If I can clarify, Commissioner Wallace,  
16 that on June 1st the Director of Finance issues the  
17 letter -- I think it's supposed to be June 1st, it's  
18 generally within the first week of June -- that actually  
19 addresses that very point. So --

20 COMMISSIONER SANDS: You need to speak into the mic  
21 better.

22 MS. MEITH: Excuse me. Right?

23 Okay, so I was saying that on June 1st the Director  
24 of the Department of Finance, or right around June 1st,  
25 issues a letter that is directed to the Commissioner and

1 actually makes the statement about exactly that question,  
2 about the state of the General Fund. And so there's been --  
3 Resolutions could be contingent on the finding of that  
4 letter. So it's a separate -- it's a separate finding from  
5 the Commission's findings.

6 COMMISSIONER WALLACE: The -- the sequencing is  
7 interesting --

8 COMMISSIONER: Yes.

9 COMMISSIONER WALLACE: -- given that our authority  
10 ends --

11 CHAIRMAN DALZELL: June 3rd.

12 COMMISSIONER STITES: It was made that way, no doubt  
13 in my military mind.

14 COMMISSIONER SOMERS: Well, if -- if the opinion  
15 comes out then, then maybe this Commission should meet in  
16 June, not in May.

17 MS. MEITH: One point.

18 COMMISSIONER STITES: I think we did that before  
19 that --

20 COMMISSIONER SANDS: We did.

21 COMMISSIONER STITES: -- one year we met in June.

22 COMMISSIONER WALLACE: I believe in the past why we  
23 had --

24 (Speaking over each other)

25 COMMISSIONER STITES: -- after we had the June

1 meeting.

2 COMMISSIONER WALLACE: -- until June because we  
3 couldn't --

4 (Speaking over each other)

5 COMMISSIONER STITES: Because we had to react.

6 CHAIRMAN DALZELL: Do we think that there's -- yeah,  
7 we can. But do we think there's much doubt as to whether  
8 there'll be a negative balance?

9 COMMISSIONER MURRAY: I would agree --

10 COMMISSIONER STITES: Who knows.

11 COMMISSIONER MURRAY: -- that we were advised by  
12 the -- by the counsel at that time that we could not move on  
13 anything until that report came out.

14 CHAIRMAN DALZELL: Any increase or decrease?

15 COMMISSIONER MURRAY: Right.

16 MADAME CLERK: One point. They -- we are usually  
17 able to get the letter from Finance in early may. And we  
18 have been able to get it relatively easily. So we can  
19 try -- the staff can try to get that notification before the  
20 next meeting. And I can advise as to whether we can -- we  
21 can get that, if that would help.

22 CHAIRMAN DALZELL: I'm advised that the -- DP -- DPA  
23 expert on health benefits has some time conflict, so if we  
24 have any discussion where we might need their expertise on  
25 health benefits, now would be the time to raise them.

1 Do any Commission members have questions or concerns  
2 in that area?

3 COMMISSIONER STITES: I don't..

4 COMMISSIONER SANDS: No.

5 COMMISSIONER SOMERS: My -- I would have one question  
6 really for Ralph. And that's more what's happened over the  
7 last year, is are there any unintended consequences or any  
8 things that we should be aware of based on the action we  
9 took last year and to a certain extent the year before?

10 MR. COBB: No, I think what we did last year worked  
11 fine. And so I'm not really seeing that there were any  
12 issues with what we -- what we have in place now which is a  
13 20 percent reduction off of the health contribution paid to  
14 State managers. That adjusts each year by formula. And  
15 then an 18-percent reduction for the Constitutional  
16 officers, and 18 for both, an 18 percent reduction off of  
17 the contribution toward dental and vision benefits as the --  
18 as the contribution stood in 2009.

19 And DPA administers the dental and vision benefits  
20 for the Constitutional officers, so I'm familiar with what  
21 the premiums have done with respect to their dental and  
22 vision benefits. And there have not been any extraordinary  
23 premium increases. There have been some premium increases  
24 in dental and vision, but they haven't been extraordinary.  
25 And there will be no increase in dental or vision premiums

1 for the Constitutional officers for 2013. We have the rates  
2 locked in.

3 COMMISSIONER SOMERS: And Ralph, as I recall, based  
4 on our action two years ago the amount of the premium paid  
5 directly by the -- by the employee, if you will, went  
6 something like 14 percent to 30 percent or something. Am I  
7 roughly right on that?

8 MR. COBB: Well, it depends on what -- I'm not sure.  
9 I'm not -- I -- I -- I'm not sure if I recall what it was  
10 that we were looking at.

11 COMMISSIONER SOMERS: Do you collect that -- do you  
12 actually collect good information that?

13 MR. COBB: Yes. And I could -- you know, I could  
14 bring that back --

15 COMMISSIONER SOMERS: I would like to see that. I --  
16 I -- I would recommend we see that the next time.

17 MR. COBB: So you want to know the percent of the  
18 premium that the -- that the officers would pay?

19 COMMISSIONER SOMERS: Exactly.

20 MR. COBB: Okay. You know, for health it's -- it  
21 stays pretty close to 20 percent.

22 COMMISSIONER SOMERS: And health is really what I was  
23 thinking of, which is about 85 percent of all the benefit.

24 MR. COBB: Yes. And the -- that -- that -- now that  
25 we have the health contribution adjusting by formula, it

1 tracks pretty close to 20 percent. But I will get that  
2 specifically and give you the history of that.

3 COMMISSIONER SOMERS: That would be very helpful.  
4 Thank you.

5 CHAIRMAN DALZELL: Anything further on -- on  
6 benefits, questions or -- or discussion? No. Thank you.

7 All right, back -- back to salary. Any further  
8 discussion of that, or shall we wait until we see the data  
9 on the counties -- I mean I -- I know that we will see city  
10 managers -- I'm sure we'll see ten or 15 or 20 city managers  
11 that make more than -- more than the Governor, which is not  
12 going to lead us to give the Governor -- probably not going  
13 to lead us to give a -- the Governor a raise even if we  
14 could. But I -- I don't know about some of the other jobs,  
15 and I -- I don't know about -- I don't have a sense of  
16 the -- of the -- of the compensation of county chief  
17 officers.

18 COMMISSIONER SOMERS: Mr. Chairman, I do have one  
19 comment. In -- in -- first of all, with regard to private  
20 sector compensation, I think you're right, I don't -- I  
21 don't see any real reason to really look at that for lots of  
22 reasons that you've mentioned and others had mentioned.

23 With regard to compensation generally, compensation's  
24 driven by responsibility, it's driven by experience and  
25 qualifications, it's driven by the size of the talent pool,

1 basically what's the market demand and how -- how many good  
2 candidates are out there ultimately. And that reflects some  
3 of what we -- we see here. And we need to kind of keep that  
4 in mind, particularly market demand. If -- if a particular  
5 type of individual, sometimes lawyers, sometimes others  
6 are -- the -- the market is just paying more for those kinds  
7 of people and, therefore, that impacts ultimately so it's  
8 not strictly responsibility.

9         The other thing that struck me -- Gus, you and I had  
10 this conversation also, is that it's interesting how our  
11 State, like almost all states, even like the federal, pays  
12 Assembly members and senators the same thing. I mean one  
13 argument is -- was made that in New York they have almost  
14 twice as many legislators with a much smaller population  
15 base and, therefore, they've got a lot fewer people that  
16 they're representing.

17         Well, senators are representing twice as many people  
18 as assembly people in California. Should that alter their  
19 compensation? In this State since the 1840s we -- and like  
20 most other states that I've seen, we pay senators and  
21 Assembly people the same thing.

22         If -- if this were the private sector or if you were  
23 looking at compensation different from political realities  
24 about probably how that was set up, you wouldn't set it up  
25 that way. You would probably say senators shouldn't be paid

1 more than Assembly people. I'm only offering that as things  
2 that we need to think about in terms of how we think about  
3 some of these positions as well.

4 CHAIRMAN DALZELL: I could listen to you talk all  
5 day, it's really, really well thought out.

6 The whole application of a methodology that generally  
7 applies to managerial or executive people to legislators is  
8 really challenging. I think that we're going to have an  
9 easier time finding comparisons at the executive or  
10 managerial level than we are on the legislative body. But I  
11 think it -- that's a really interesting philosophical  
12 question on -- on Assembly and Senate.

13 Did you -- did you have a -- a comment?

14 COMMISSIONER STITES: The only thing I know -- excuse  
15 me. The only thing I understand about the difference  
16 between assembly and senate -- yes, they do represent more  
17 people, but they're also allowed more staff. They have more  
18 resources available to them to do the job, which I guess  
19 they view that as some kind of compensation. And if you go  
20 over to the Capitol building and you see someone who's been  
21 elected as a new senator coming from the Assembly, the first  
22 thing -- the first statement when they walk into the new  
23 office, oh, it's -- it's a lot bigger than the last one. So  
24 I guess they feel they're doing okay with that.

25 CHAIRMAN DALZELL: Do any commissioners have anything

1 additional to -- to bring up today?

2 COMMISSIONER MURRAY: In regard to anything?

3 CHAIRMAN DALZELL: In regard to anything.

4 COMMISSIONER MURRAY: Open door. Okay. First off, I  
5 would refer the chairman back to the publication by the DPA  
6 on scope of our authority.

7 To quote, on page five, and I don't know if you have  
8 that there, beyond the basic requirements to consider the  
9 Commission may consider whatever else it deem appropriate.  
10 In the past the Commission has used this discretion in the  
11 following ways and it -- several ways. So these are the  
12 guidelines that are governing body, for lack of a better  
13 term, as used to give us the scope of -- of -- of data we  
14 can draw from.

15 CHAIRMAN DALZELL: I -- I now understand what  
16 Commissioner Stites was referring to. Thank you for -- for  
17 that. I don't agree with it, but I understand what you were  
18 referring to.

19 COMMISSIONER MURRAY: Okay. Two, since it is -- I'm  
20 going to bounce around here a little bit, but there's been a  
21 lot of talk about the auto program and how the auto  
22 program -- our decision actually costs the State a lot more  
23 money. If I interpret that right -- I'll refrain from using  
24 a -- oh, the expletive I had in mind, but the Legislature  
25 can do whatever it wants. It can choose to have the 55

1 cent, 45 cent, it could choose to do the \$300. They are the  
2 ones that made the decision, not this Commission.

3 So to lay this back on us, that we cost the State, is  
4 absurd. And as far as I'm concerned, I would like to  
5 request that we get a copy of the study that was made on the  
6 auto proposal and why this cost the State more money. Okay?

7 COMMISSIONER SANDS: Yes, Mr. Chairman. You know,  
8 Chuck, along that line I came across some old notes of mine,  
9 and -- and I had a note that if we do, you know, abolish, so  
10 to speak, the \$300 car allowance, that it saves \$5 million  
11 in a few years.

12 COMMISSIONER MURRAY: Right.

13 COMMISSIONER SANDS: I haven't --

14 (Speaking over each other)

15 COMMISSIONER MURRAY: John -- John was -- John is the  
16 one who made --

17 COMMISSIONER SANDS: Yeah, it was \$5 million. And,  
18 no, we're not paying that.

19 COMMISSIONER MURRAY: Maybe so -- so -- so how we can  
20 go from a proposed cost saving of the five million to us  
21 making the contribution to -- oh, to the deficit of the  
22 State of California solely is absurd.

23 CHAIRMAN DALZELL: Well, I've been called worse.  
24 Well -- nothing personal.

25 COMMISSIONER MURRAY: I cleaned it up a little bit.

1           CHAIRMAN DALZELL: I've still probably been called  
2 worse. Probably be called worse later this afternoon.

3           I think that there's a fair amount of data in our  
4 binder last year, which I left out in my car, but if there's  
5 not, we can certainly include within our data request from  
6 staff the -- the basis for the calculation of the 37 cents a  
7 mile and the 42 cents a mile last year. But if I remember,  
8 it was fairly detailed in the binder last year, but I'm  
9 not -- I'm not sure.

10           COMMISSIONER STITES: I don't recall that. I think  
11 there were numbers that were -- were given us by the  
12 Legislature saying 37, 42, and we took them on face value,  
13 say, okay, that's what you said.

14           CHAIRMAN DALZELL: But there was also a list of -- of  
15 the car, the type of car, and the cost of the car. And I  
16 think that there might have been additional columns. But --

17           COMMISSIONER STITES: There were. There was a lot of  
18 data. We --

19           CHAIRMAN DALZELL: Yeah. Yeah.

20           COMMISSIONER STITES: We looked at a lot of data.

21           CHAIRMAN DALZELL: Right. All right, continue.

22           COMMISSIONER MURRAY: One more item. The  
23 undercurrent we've had throughout this whole thing is we've  
24 expanded the power that one twelve had -- had -- had given  
25 us. Bottom line, I would like to propose to -- to put it to

1 bed, let's get -- and I'll defer to counsel -- defer to the  
2 chairman to defer to counsel. Let's get an opinion what the  
3 scope of our authority is.

4 I personally, as I've said in the past, reviewed the  
5 legislative files that the -- our senator created in  
6 developing the law. I've gone to Loyola, I've gone through  
7 them. It seems well placed in there that we have the -- the  
8 total authority to cover what I refer to as ancillary or the  
9 fringe benefits. And so I'm -- I really don't like to have  
10 our Commission being abused saying, well, you can't do this,  
11 you can't do that, we think it's beyond your authority.  
12 Let's put it to bed.

13 CHAIRMAN DALZELL: Well, you know, last year I did  
14 refer to the June 15th, 2009, letter from Chief Counsel Bill  
15 Curtis and Assistant Chief Counsel Linda Mayhew from the DPA  
16 saying that -- that travel was outside our purview and that  
17 didn't put it to bed. We certainly can request counsel to  
18 do sort of a scoping memo on -- on the authority of the  
19 Commission. But I'm not sure it will put it to bed.

20 COMMISSIONER STITES: Mr. Chairman.

21 CHAIRMAN DALZELL: Mr. Stites.

22 COMMISSIONER STITES: I -- I -- I don't know if it  
23 will either, Chuck. But -- and you look again, you look at  
24 the Franchise Tax Board. The very people whose salaries  
25 we've taken action on are those who run those different

1 entities. It's pretty tough to get them to come out and  
2 say, oh, yeah, we support everything you do. Either they're  
3 going to attack us directly or they'll do it through their  
4 surrogates as they've consistently done over the past couple  
5 of years that we've been here. We --

6 (Speaking over each other)

7 COMMISSIONER STITES: I -- I think -- and we've said  
8 this before -- not to interrupt you. I'm sorry.

9 CHAIRMAN DALZELL: Go ahead.

10 COMMISSIONER STITES: If you've got a beef with it  
11 and you stand solidly behind that, let's go to court.  
12 That's all I've got to say, let's go to court, and you  
13 determine what -- they consistently say that they don't  
14 agree we have that authority. Then challenge that  
15 authority. Gill Cedillo, a former senator now, I believe,  
16 turned out -- said he was going to sue us. Nothing  
17 happened. I don't think they have any standing in any court  
18 of law in this State or at any federal level to stop us from  
19 our job. And our job is to represent the people. That's  
20 what we're doing.

21 And in the future, the very near future, if the State  
22 doesn't resolve their issues, their economic issues, I'm  
23 afraid this body again will be asked to take action to  
24 reduce costs to the California taxpayer, and they need to be  
25 aware of that. They're the people that fix it. We're not

1 involved in that process. Alls we're here to do is absolve,  
2 review statistics and see what compensation is just.

3 CHAIRMAN MURRAY: I would agree. My -- my -- my  
4 whole thing is if not we, who. I mean we are put up here to  
5 try to bring some outside influence on the compensation for  
6 the elected offices of the State of California. And if all  
7 we do is stay up here and say, well, you can't do that, you  
8 can't do that, you can't do that when most of us think we  
9 can, and for us to lay back and just let it go, that -- that  
10 isn't why we're up here, and we all should basically resign.

11 CHAIRMAN DALZELL: Well, I think that salary and  
12 medical benefits are probably 98 percent of the arguable  
13 total compensation, and I think that -- that we have  
14 absolute clear authority on insurance and on salary. And I  
15 believe that that is more than the lion's share of even the  
16 broadest interpretation. So I -- I don't think that a  
17 strict Constitutionalist's interpretation of our authority  
18 (unintelligible) us to any significant degree.

19 COMMISSIONER WALLACE: But can we still ask an  
20 opinion?

21 CHAIRMAN DALZELL: Absolutely.

22 COMMISSIONER WALLACE: Outside opinion.

23 CHAIRMAN DALZELL: Absolutely.

24 COMMISSIONER WALLACE: Okay. If I could address --  
25 well, I'll address our counsel. I have many, many files

1 from Loyola Law Library and research on the background of  
2 this case, and so I -- I'd be happy to share those with you,  
3 Melissa.

4 MS. MEITH Thank you. I'd appreciate that. And --  
5 and I'm trying -- I want to understand the scope of your  
6 question. So could you -- are you -- are you -- what  
7 particularly you're interested in, the salary comparison,  
8 basis, language, or just the -- the scope of the  
9 commission's authority vis-a-vis other authorities?

10 COMMISSIONER MURRAY: Basically -- I mean we -- we  
11 have a letter from the AG saying we've gone beyond our  
12 authority. And I think we have to try to refute that. And  
13 I think the only way we can is get an outside, oh, counsel  
14 and say, no, based on the background law the way it was  
15 built, was created, we do have the authority in here is why  
16 and how.

17 CHAIRMAN DALZELL: May I suggest a really specific  
18 question. We clearly have the authority for the salary, the  
19 medical and dental insurance. No -- no dispute about that.

20 What is meant by the term other similar benefits I  
21 think is the -- is the real focus of --

22 COMMISSIONER MURRAY: Which would --

23 CHAIRMAN DALZELL: I disagree with, right.

24 MS. MEITH And that was -- wasn't that the focus of  
25 the opinion two years ago from -- from counsel at that time?

1 COMMISSIONER MURRAY: Right.

2 CHAIRMAN DALZELL: Yes.

3 COMMISSIONER SANDS: Yeah.

4 CHAIRMAN DALZELL: That's correct.

5 MS. MEITH So is -- is this -- am I reviewing that  
6 opinion?

7 COMMISSIONER MURRAY: You can reveiw whatever you  
8 want.

9 COMMISSIONER STITES: You can do whatever you want.

10 COMMISSIONER WALLACE: I would also add that I would  
11 appreciate a better understanding of what -- how -- how  
12 salary is defined under the Constitution. The AG's letter  
13 suggests that the treatment of the automobile allowance  
14 constituted a salary -- did not constitute a salary,  
15 correct? And so I would like a better understanding of  
16 exactly how narrow the salary is defined.

17 MS. MEITH Whether and -- and -- and how?

18 COMMISSIONER WALLACE: And how.

19 MS. MEITH Yeah.

20 COMMISSIONER WALLACE: And what I would recommend  
21 based on the dialogue here is that Melissa review the files  
22 from Loyola that are being made available to you as well as  
23 the former legal counsel's opinion. And if we do not -- and  
24 if you -- your recommendation is not as clear as you would  
25 like it to be based on those materials, that we consider

1 seeking outside counsel support.

2 MS. MEITH All right.

3 COMMISSIONER WALLACE: Good point. Thank you.

4 CHAIRMAN DALZELL: Any further comments, any further  
5 business today?

6 Would we like -- given the fact that the earliest we  
7 will see the certification from -- from who?

8 COMMISSIONER MURRAY: Just say the certifying body.

9 CHAIRMAN DALZELL: Yeah, so the -- who does it come  
10 from? Help me.

11 MS. MEITH The Director -- the Director of Finance.

12 CHAIRMAN DALZELL: All right. That we probably will  
13 not get that until May, my suggestion about meeting in -- in  
14 May at the earliest, my suggestion about meeting in -- in  
15 April probably doesn't make sense. So we'll stick with May  
16 and -- and . . .

17 COMMISSIONER STITES: When is -- when is that  
18 generally available, early part of May? I remember it came  
19 in early that one year.

20 COMMISSIONER SOMERS: 29th of May or something.

21 MS. MEITH: I believe it's mid May, but I'll double  
22 check and send a note out.

23 COMMISSIONER WALLACE: That's a scheduled date, I  
24 believe, the 29th of May.

25 COMMISSIONER STITES: Well, we'll -- should we kind

1 of hang out and wait until we --

2 (Speaking over each other)

3 COMMISSIONER STITES: -- can determine that thing's  
4 coming in before we schedule the next meeting? And it will  
5 probably be toward the end of May.

6 COMMISSIONER SANDS: No, I was -- honestly, I thought  
7 it was around the 14th, the week of the 14th.

8 COMMISSIONER STITES: I did too, that's why I said  
9 third week of May --

10 COMMISSIONER SANDS: Yeah.

11 COMMISSIONER STITES: -- it would -- would be --

12 COMMISSIONER WALLACE: I say it's not -- I believe  
13 the statute is not later than May 29th or . . .

14 COMMISSIONER: Yeah.

15 CHAIRMAN DALZELL: Anything further? Anything  
16 further? Counsel?

17 MS. MEITH Chair, you were going to just review your  
18 list. If -- I -- I think it's important that we're clear on  
19 what staff reports are being expected. We've been taking  
20 notes, but if anyone wants to add anything or clarify  
21 anything, now would be a good time.

22 CHAIRMAN DALZELL: All right, would you state what's  
23 on your list?

24 MADAME CLERK: A salary survey indicating the county  
25 city managers, county CEOs, department heads, agencies,

1 secretaries for the State. That is something that -- that  
2 we would provide.

3           Ralph Cobb from benefits was to provide percentage of  
4 the premium the officers will pay for health, I believe. I  
5 believe you asked for the basis for the 37 cents or 42 cents  
6 per mile. I don't know if that's something that we can get.

7           MS. MEITH: Judicial salaries, which we can get.

8           MADAME CLERK Correct, judicial salaries. And I  
9 think that's it.

10           CHAIRMAN DALZELL: Commissioner Stites, were you  
11 satisfied with the explanation on the verification of the  
12 mileage, or would you like to see a more detailed  
13 explanation with sample logs from the Legislature?

14           COMMISSIONER STITES: Yeah, if it wouldn't put them  
15 out too much, I'd like to see how they're reporting it and  
16 whatever forms they're using. I would imagine in the future  
17 this body should probably make a motion or request  
18 information from them to determine how much money's being  
19 spent in -- next year sometime maybe. Just -- I know  
20 they're going to collect it and put it into a big batch and  
21 we'll make direct comparisons and . . . I doubt they'll  
22 spend -- I doubt there's anyone out there that's driving  
23 more than 600 miles a month. So that's why I think --

24           CHAIRMAN DALZELL: I'll bet you.

25           COMMISSIONER STITES: Not unless one of the big --

1 the big Senate districts and they've got to -- you know,  
2 they virtually go swimming to get any place. I just don't  
3 see it.

4 CHAIRMAN DALZELL: I bet you. Then I think that we  
5 asked -- we -- we have asked for two legal opinions, one  
6 which we just identified which is what is the scope of  
7 salary and what is the scope of other benefits.

8 And the second was an earlier one where what options,  
9 if any, do we have to pursue our request from the Franchise  
10 Tax Board for an opinion on the taxable status, what are --  
11 what are our options as a Commission.

12 Were there any others, commissioners?

13 (Speaking over each other)

14 COMMISSIONER MURRAY: I would -- I would -- I would  
15 just add the point, and -- and maybe -- maybe order if -- if  
16 the first study says we don't have any -- any authority over  
17 the -- the per diem, requesting a legal report is sort of  
18 moot. So I'd say put that one first, and then we'll go to  
19 item two rather than spin our wheels on a report that is  
20 irrelevant. Am I clear?

21 CHAIRMAN DALZELL: What did we ask for -- what report  
22 did we ask for that might be mooted by the legal opinion if  
23 it -- if we accept it?

24 COMMISSIONER MURRAY: On the per diem. We -- we  
25 asked do -- do we have any action against the Franchise Tax

1 Board for opinion that refers to the per diem. And if we  
2 don't -- if it is ruled in the other opinion that we don't  
3 have any power over it, it's sort of moot to ask for it.

4 CHAIRMAN DALZELL: Good point. Do we agree? All  
5 right.

6 Anything further? Hearing -- hearing nothing, we are  
7 adjourned. And thank you.

8 (End of recording)

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CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

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I, DONNA K. NICHOLS, a Certified Shorthand Reporter in and for the State of California, duly commissioned and a disinterested person, certify;

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That the foregoing transcript is a record of the audible statements of all parties made on the DVD recording.

Dated: April 17, 2012

*Donna Nichols*

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DONNA K. NICHOLS, RPR  
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