

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

Minutes of the Special Meeting of the
Board of Directors of the District

December 31, 1981

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Upon notice duly given, the Board of Directors of the Southern California Rapid Transit District met at a special meeting in the District Board Room, 425 South Main Street, Los Angeles, California, at 9:45 a.m. on Thursday, December 31, 1981, at which time Vice-President Ruth E. Richter called the meeting to order.

Directors Present:

Marvin L. Holen
Michael W. Lewis
Carl Meseck
Nick Patsaouras

Jay B. Price
Ruth E. Richter
George Takei

Directors Absent:

Jan Hall
Thomas G. Neusom

Charles H. Storing
Gordana Swanson

Staff Present:

Richard T. Powers, General Manager Pro Tempore
George L. McDonald, Manager of Planning & Marketing
Joe B. Scatchard, Controller-Treasurer-Auditor
John S. Wilkens, Manager of Employee Relations
Rich Davis, General Superintendent of Maintenance & Equipment
Tony Fortuno, Director of Marketing
Helen M. Bolen, District Secretary

Also present were members of the public, the news media and Don Hodgman of O'Melveny & Meyers.

General Manager Pro Tempore Powers explained that the purpose of this special meeting was to present the details of the sale and lease-back agreement that has been worked out with Border Pipe Line Company, a wholly-owned subsidiary of ARCO.

Mr. Scatchard, the Controller-Treasurer-Auditor, reported that the Board had passed a resolution authorizing the District to enter into this transaction; however, there were a couple of last minute changes in the agreement on which Board action is necessary.

The transaction is based on the sale and lease-back, for tax purposes only, of 770 General Motors RTS II buses owned by the District. ARCO has signed an agreement to assume the responsibility of Border Pipe Line Company if that company is unable to carry out the agreement for any reason.

Mr. Scatchard also spoke to the imposition of sales tax on this transaction, indicating that on the advise of counsel the District will pay the sales tax and then challenge the imposition of the tax and seek a refund. The term of the agreement is 13 1/2 years. There is a termination provision in the agreement with a schedule of termination payments. The termination provision provides indemnification of Border Pipe Line Company in the remote possibility of the cessation of business by the District.

Mr. Scatchard concluded his comments by indicating that UMTA has agreed to the sale of the 770 buses. UMTA's approval was received with the provision that since the Equipment Trust Certificate method of financing was involved in the original purchasing of the buses, the District would agree not to spend the money received from the lease-back agreement until UMTA has had the opportunity to study further the details of the agreement with Border Pipe Line Company.

Director Patsaouras inquired if the minor changes brought before the Board at this time were of sufficient importance to allow the unsuccessful bidder to challenge the contract in court.

General Manager Pro Tempore Powers responded that the changes that are before the Board are not peculiar to the demands of ARCO, or its subsidiary, that when the District went out for bids on the lease-back arrangement, the language was rather general, and that these changes are the result of negotiations after award to ARCO. Mr. Hodgman of O'Melveny & Meyers further commented indicating that litigation with merit would be extremely remote.

Director Meseck commented that this agreement is advantageous to the District even after paying the sales tax. The refund, if received, will make it an even better deal. Director Lewis asked why we were planning to pay the sales tax if counsel has advised that this may not be a taxable transaction. He said he would prefer to not pay the tax and let the State Board of Equalization try to collect the tax from the District. Director Holen concurred, indicating that realistically the District has a

better case for withholding the sales tax monies rather than seeking a refund.

Mr. Hodgman indicated that this is a delicate point and he would prefer to consult with his firm's tax advisors; however, he urged the Board to give authority to proceed either way. After conferring with ARCO counsel, Mr. Hodgman informed the Board that ARCO does not have strong feelings on this point, if the District will agree to hold ARCO harmless if the sales tax is withheld.

Director Holen questioned the duration of the agreement, indicating that the District has a bus replacement policy of 12 years; 13 1/2 years in this agreement could affect that policy. Mr. Scatchard responded that 13 1/2 years is the maximum amount of time permitted under the Economic Recovery Tax Act of 1981. He further commented that in the history of the District, he does not recall when buses have been disposed of in less than 14 years and the penalties the District would incur in the thirteenth year to pay off the agreement are extremely small. Director Holen asked Mr. Scatchard to calculate the cost of a 12-year life on the agreement and what the amount of reserves required would be.

On motion of Director Holen, seconded and carried as noted below, the following resolution was adopted:

Ayes:	Holen, Lewis, Meseck, Patsaouras, Price, Richter, Takei
Noes:	None
Abstain:	None
Absent:	Hall, Neusom, Storing, Swanson

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WHEREAS, the Board of Directors of the Southern California Rapid Transit District has received information concerning a proposed transfer and lease agreement with Border Pipe Line Company covering 770 standard buses; and

WHEREAS, the Board of Directors recognizes that under certain conditions the District could be liable for casualty or termination payments which could be greater than the cash payment received by the District; and

WHEREAS, the District has received Urban Mass Transportation Administration's approval of the agreement which contains a temporary restriction on the use of the cash payment to be received by the District; and

WHEREAS, the District will be required to pay sales tax on the buses sold under the agreement, but intends to seek a refund of the sales tax paid on advice of Counsel, or District may treat the liability for sales tax in a different manner with the approval of Border Pipe Line Company;

NOW, THEREFORE, BE IT RESOLVED, that the General Manager is authorized to enter into a transfer and lease agreement with Border Pipe Line Company dated December 31, 1981, covering 770 standard buses for a period of 13 1/2 years; form of agreement subject to approval of the General Counsel.

Sharon Ferguson appeared before the Board concerning her stolen reduced fare card. Staff was directed to replace her card without delay. Director Patsouras commented that he would like to see the District take a philosophical approach not to penalize people who need help because of a few people in our society who may take advantage of the system. He further stated that he feels that our operation should be directed to helping people in good faith and if the District suffers some loss, he is willing to take that loss.

The meeting adjourned at 10:20 a.m.


District Secretary