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CHAIRPERSON JAMES :

1 Under old business Commissioner Wilhelm?

2 COMMISSIONER WILHELM: I would like to  
3 request the Commissioners to ask Mr. Terwilliger our  
4 counsel for an opinion which I hope will have the  
5 results of laying to rest an issue we've talked about  
6 off and on. This Commission was obviously designed by  
7 Congress to bring together people of diverse viewpoints  
8 to do a job. And I know that we're all trying to do  
9 that job in the best way that we can with a minimum of  
10 bureaucratic paper shuffling.

11 If I understood, and I may not have, if I  
12 understood Mr. Terwilliger's earlier memo it did not  
13 appear to definitively opine on whether or not this  
14 Commission is part of the legislative branch of the  
15 government. I am advised by our union's counsel that  
16 if we are part of the legislative branch the Conflict  
17 of Interests provision of Section 208 would not apply  
18 and therefore we can avoid what appears to me an  
19 unworkable waiver procedure. Because if I understand  
20 the waiver procedure you have to ask for it from the

1 appointing authority on each and every issue. Which is  
2 obviously not practical.

3           So I am hopeful that conclusive legal  
4 opinion on this issue would settle this for the  
5 duration of the Commission's life. And so I would  
6 propose that we ask Mr. Terwilliger to provide us with  
7 such a legal opinion, I don't mean at this moment, but  
8 perhaps over the next several weeks, or by the time of  
9 the next meeting. And in doing so certainly, perhaps,  
10 he would be open to consulting with any interested  
11 Commissioners and or counsel for any of the interested  
12 Commissioners.

13           And so to that end, I would move that the  
14 Commission authorize Mr. Terwilliger or request Mr.  
15 Terwilliger or request to the Chair, if that is  
16 appropriate, to provide with us with a legal opinion  
17 addressing specifically the question of whether this  
18 Commission is part of the legislative branch and  
19 therefore exempt from the provisions of Section 208.

20           CHAIRPERSON JAMES: Second?

1 COMMISSIONER LOESCHER: Second.

2 CHAIRPERSON JAMES: All in favor?

3 COMMISSIONERS: Aye.

4 CHAIRPERSON JAMES: Any opposed?

5 (No verbal response)

6 CHAIRPERSON JAMES: Thank you, well the  
7 Chair will ask our general counsel if he will review  
8 that information for us. In conjunction with that I  
9 would refer commissioners to Tab 4 of their briefing  
10 books that does have the report that Mr. Terwilliger  
11 provided for us. Are there any questions for him or  
12 any discussion of that at this particular time?

13 COMMISSIONER LOESCHER: Madam Chairman?

14 CHAIRPERSON JAMES: Mr. Loescher.

15 COMMISSIONER LOESCHER: As you know I share  
16 the opinion exactly with our legal counsel and that has  
17 been my position since, from day one.

18 CHAIRPERSON JAMES: Let the record show.

19 COMMISSIONER LOESCHER: But now the  
20 question is so what. What does it change in terms of

1 the conduct of the Commission as opposed to when we  
2 first started.

3 MR. TERWILLIGER: I'm not sure, because of  
4 the Commission's adoption in its rules and by  
5 resolution to adhere as closely as possible to the  
6 dictates of the Federal Advisory Committee Act, that it  
7 makes all that much difference as a practical matter.

8 As a legal matter I think it makes  
9 substantial difference in terms of the, the so-called  
10 designated federal official and the role of the General  
11 Services Administration, these would be the operations  
12 of the Commission. If you're not subject to the  
13 Federal Advisory Committee Act then the Commission is  
14 freed of the requirements of the Federal Advisory  
15 Committee Act and therefore to the extent that the  
16 Commission may feel that taking some action or going  
17 about something in a certain way would tend to  
18 introduce an unnecessary level of bureaucracy or be  
19 inconsistent with the Charter of the Commission as you

1 all see necessary to carry it out. You do not need to  
2 feel that the Advisory Committee Act would control.

3 CHAIRPERSON JAMES: Any other questions? I  
4 want to thank our General Counsel and thank our  
5 commissioners on that.