Assembly Committee on.....

LABOR

Date: February 3 1981

Page: 1

MEMBERS PRESENT:

Chairman Banner

Vice Chairman Thompson

Mrs. Cafferata

Ms. Foley

Mr. Rackley

Mr. Jeffrey

Mr. Rhoads

MEMBERS EXCUSED:

Mr. Bennett

Mr. Hickey

GUESTS PRESENT:

See guest list attached

WITNESSES TESTIFYING:

N. C. Anthonisen, Summa Corporation Claude Evans, State AFL-CIO Joe E. Nusbaum, NIC Donald Heath, State Insurance Commissioner

Chairman Banner called the meeting to order at 5:00 P. M. and announced the committee would hear AB-49.

Makes certain changes to law on industrial insurance. AB-49:

Mr. N. C. Anthonisen, Personnel Services Manager for Summa Corporation, announced he wanted to begin his testimony on this bill by covering Sections 2 and 3 on the reserve funds. He pointed out the difference between contingency reserves and case reserves. Case reserves is the reserve established by the NIC for each individual accident. Contingency reserve is an additional amount of money over and above the case reserves. He is questioning the amount of money which should be established as a contingency reserve. He quoted from NRS 616.380 Subsection 3 (c) concerning collection of premiums. He then read Section 2 of AB-49 to clarify the points he wants to cover. He said that in essence a limit of 25 percent of the premium collected is being established by AB-49.

Minutes of the Nevada State Legislature

Assembly Committee on LABOR

Date: February 3, 1981

Page: 2

Mr. Anthonisen went on to say that at the next hearing he wants to present an amendment to the provision set forth in paragraph 2, Section 2 of $\underline{AB-49}$. The concept being the limit of 25 percent to be retained.

Mr. Anthonisen then explained to the committee a chart which he presented entitled "Extractions from NIC Financial Reports (Thousands)", pertaining to the amount of money the NIC has retained in the past. He showed a surplus amount of \$20 million in 1978 which was returned to the employers and \$15 million in 1979 which was also returned to the employers. He contended the basic cause of overcharging has not been corrected. The amendment he will recommend to Section 2 of $\underline{AB-49}$ will be in finite detail in reference to how the NIC would be required to distribute the surplus moneys. He mentioned that Regulation 37 was adopted by the NIC regarding distribution of rebates and that the committee would be hearing much about that regulation in the future.

Mr. Anthonisen referred to another chart entitled "Extracts from 1980 Acturial Report", showing a \$67 million net gain for the NIC during 1978 to 1980. He added that enormous amounts of interest are earned on these surpluses. He demonstrated on the chart how the NIC determined that it needed \$22 million for pension medical benefits and explained that the NIC presently holds in escrow \$330 million for future payments to employees who have been injured.

Mr. Anthonisen mentioned that the NIC tried to rescind an action to distribute the \$15 million back to the employers but that the Commissioner of Insurance in 1980 determined that the total amount of \$15 million should be distributed as previously arranged.

Mr. Anthonisen requested the support of the committee in recommending to the full legislature the 25 percent ceiling be established for the contingency fund.

Chairman asked for questions from the committee at this point.

Mr. Jeffreys asked about the net gain in the contingency reserves as demonstrated on the chart and Mr. Anthonisen clarified the amounts as shown. Mr. Jeffreys also asked if <u>AB-49</u> applied only to people who are covered by NIC or if it also applied to the self insured. Mr. Anthonisen replied that the amendment to the bill will recommend that it cover self employed under certain conditions. It would depend upon eligibility within a time frame of a three year period.

Mr. Banner explained to the committee that the reserves issue has been under study for the last 8 years and that as a result a study committee was formed in the 1979 session and that their recommendations will be heard this session.

Mr. Anthonisen preceded into case reserves. He referred to Section 3 of $\underline{AB-49}$ and read from same to the committee. He covered paragraphs 1 and 2 and said the essence is a question on the right to protest

Minutes of the Nevada State Legislature

LABOR Assembly Committee on...

Date: February 3, 1981

a reserve that has been established by the NIC that is felt to be excessive and want the right to take the question to a hearing before the Commissioner of Insurance. He read verbatim NIC Regulation 34, items 1, 2 and 3.

Mr. Anthonisen added that case reserves reduce the amount of money that goes into the contingency reserve. He said they increase the premiums paid by employers and reduce the amount of money employers get on rebates and retrospective rating funds.

Chairman Banner asked Mr. Anthonisen to finish his testimony and allow the other witnesses time to present their testimony. Anthonisen responded by summing up his presentation; he stated what he was attempting to do was give a complete picture as to the tremendous effect that overstated reserves have on every employer in the state. The fact that they over reserve by a considerable amount of money did increase the premiums of every employer in the It was his opinion that during fiscal year 1981, because of over reserving in the past the NIC is going to accumulate an additional surplus of something like \$35 million. His concern is about what is going to happen to that money. He said money was wrongfully taken from employers without the benefit of anything in the law and that he felt some action is required on the part of this committee. His last point was in reference to the Summa Corporation lawsuit filed against the NIC alleging excessive reserves. He asked the committee to read the court decision attached hereto as EXHIBIT A. Eighth Judicial District Court of Nevada, Case No. A194970

Chairman Banner recessed the meeting for 5 minutes. The meeting resumed at $5:55\ P.$ M. and Mr. Claude Evans, Executive Secretary Treasurer of the Nevada State AFL-CIO was the next witness.

Mr. Evans pointed out that he served on the Governor's Advisory Board and averaged at least two meetings a month for the last 8 or 9 months regarding the subject of reserves in the NIC. He said this was one of the prime concerns of the Advisory Board.

Chairman Banner asked if he made this presentation in front of his committee. Mr. Evans replied that he did many times and added that the Advisory Board through Mr. Ben Dasher, who is the chairman and also a very well known insurance executive in the Reno area; and was the one responsible for retaining the services of an individual named Mr. Burquist who is a renowned actuary in the field of insurance who reviewed the different programs and problems that Mr. Anthonisen brought up.

He told the committee there is available a report of Mr. Burquist to the Advisory Board and hoped the committee would read that report.

Mr. Evans pointed out to the committee that one of the primary reasons for excessive amount of money in the surplus fund is because in the last three years the prime rate went from 8½ percent to over 20 percent which contributed to the excess in reserves that were responsible and also rebated back to the employer in the amount of \$35 million.

Assembly Committee on.....

Date: February 3, 1981

Page: 4

Mr. Evans continued his testimony by reading from his prepared remarks to the committee, a copy of which is attached hereto as EXHIBIT B.

LABOR

In conclusion Mr. Evans told the committee he is opposed to AB-49.

Mr. Joe E. Nusbaum, Chairman of the Nevada Industrial Commission was prepared to speak to the whole bill but restricted his comments to the reserving and provisions for contingencies. He provided the committee with copies of Fiscal Note for NIC prepared February 2, 1981; Extracts from 1980 Actuarial Report and Extractions from NIC Financial Reports which are attached hereto as EXHIBIT C.

Mr. Nusbaum told the committee there is no overcharging involved in the factors which the charts represent. He said the reserves for medical costs have been inadequate.

Mr. Thompsen asked if the MGM Grand fire in 1980 would have had an adverse effect on the reserves and Mr. Nusbaum replied that the MGM Grand had just gone self-insured but that is an example of a major disaster that no one could predict and for which you have a provision for contingency reserves.

Mr. Nusbaum also cited as an example two claims against NIC. In 1979 there was a \$23,000 reserve on one of these claims and no reserve on the other because it had already closed. In 1980 the conditions of these two claimants seriously deteriorated and subsequently the NIC has spent \$149,000 on one and \$264,000 on the other. He explained that this is not a system where the estimating is consistently high or consistently low. The National Council on Compensation Insurance opposes adjustments of judgmental determinations on the reserves because of the great amount of time incurred in reviews. He said the Advisory Board spent many hours on this subject and recommended that NIC work with its consulting actuary and the Advisory Board's consulting actuary in developing a plan to allow more employer involvement and that this plan be discussed with representative groups of employers for their reaction. They will be reporting to the Advisory Board next week and hope soon to be meeing with a representative group of employers.

Mr. Nusbaum stated that AB-49 would prove to be extremely costly and that it would delay the introduction of loss experience into the system and ultimately would end up being detrimental to policy holders and the employers themselves.

Chairman Banner testified that this is his fifth term as Chairman of the Labor Committee and that last session he proposed the bill that set up the Advisory Committee. The Committee was well represented by management groups, labor people and the general public. It consists of nine members appointed by the Governor. Ther were numerous public hearings held at the convention center and other places. He attended most of those hearings and came to the conclusion that their findings are correct. Following this meeting there will be numerous bills that reflict their recommendations. Mr. Banner asked the committee to read the report of the Advisory

-11

Assembly Committee on.....

LABOR

Date: February 3, 1981

Page: 5

Board of Review for the Nevada Industrial Commission, January 1981. A copy of the report is on file in the secretary's office. This report will be the background for most of what the committee does concerning NIC.

Chairman Banner read the recommendations from the report to the committee:

" The Advisory Board, which is the board appointed by the Governor, unanimously recommends to the Commission that it explore the field of equity managers and contract with a firm to manage the portion of NIC's portfolio. The Commission concurred and has carried out this recom-A majority of the Advisory Board endorses the process used by the NIC in selecting investments managers. A majority of the Advisory Board recommends to the Commission that it initiate legislation which will allow NIC's investment manager to make direct mortgage loans, commercial mortgage loans and to participate in commercial loans. Commission concurred. The Advisory Board unanimously concurs in the adoption of supplemental investment policy to assure a maximum degree of investments in Nevada consistant with objectives of investments for a trust fund. In order to have a statutory direction that can be administered, the Advisory Board unanimously recommends legislation to amend the statute relating to the security of deposits to require that deposits be secured up to the daily average balance of each month. The Commission concurred. The Advisory Board unanimously recommends that the statutory fee for NIC to pay mortgage servicing institutions be changed 'not exceed the usual and customary fee charged by the trade'. The Commission concurred. The Advisory Board unanimously recommends a statutory change to allow routine mailings concerning employer accounts, delinquency notices to be sent by first class rather than certified mail, which would be an estimated saving of \$80,000. The Commission concurred. A majority of the Advisory Board recommends to the Commission that a public information position be established to coordinate with an outside advertising firm and a limit of \$100,000 per year be placed in cost of the contract with the advertising firm. The Commission concurs

Page: 6

and they budgeted \$50,000 in 1980/81 for a contract with an advertising firm. The Advisory Board unanimously recommends to the Governor and the legislature that the enactment of legislation to permit the paying of interview and moving expense in the difficult to recruit positions."

Chairman Banner mentioned to the committee that the fiscal note with the bill under consideration goes over a million dollars. He recommended the committee hold off on any action until the additional bills are presented.

Mr. Don Heath, Commissioner of Insurance spoke about $\underline{AB-49}$ as providing for a two way system of workman's compensation. His prepared testimony is attached hereto as EXHIBIT D.

In summary Mr. Heath stated that if $\underline{AB-49}$ were to pass in its present form his office would need additional staff in Carson City and Las Vegas to handle the hearings and possible litigation resulting therefrom. A preliminary schedule of budget expenditures in that eventuality is \$243,163 and is spelled out it detail in EXHIBIT D.

Chairman Banner thanked Mr. Heath for his testimony and told him that his response to the committee was very much appreciated. Mr. Heath replied that he is available for the committee's questions and that his staff also works on the self-insured questions and considerations.

Chairman Banner stated that time had run out for this particular hearing and will continue at a later date.

Ms. Foley moved to adjourn the meeting. Mrs. Cafferata seconded the motion and the meeting adjourned at 6:35 P. M.

Respectfully submitted,

Janice Fondi

Committee Secretary

LABOR & MANAGEMENT COMMITTEE

GUEST LIST

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×	NAME	REPRESENTING		YOU TO SPEAK
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	TERRYBANKIN	SMITHY GAMBLE LTD		
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FILED EXHIBIT A CASE NO. A194970 2 DEPARTMENT NO. .. VII la 18 11 57 13 '80 3 DOCKET "P" LORETTA BOWMAN CLERK 4 DOROTHEA RASOUL 5 6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 7 IN AND FOR THE COUNTY OF CLARK 8 9 DESERT PALACE, INC., a Nevada corporation, and SUMMA CORPORATION, 10 A Delaware corporation, 11 Petitioners, 12 VS. DECISION AND JUDGMENT 13 NEVADA INDUSTRIAL COMMISSION, JOE E. NUSBAUM, JAMES S. LORIGAN 14 and HAL G. CURTIS, as members thereof; and STATE OF NEVADA, 15 Respondents. 16 17 This matter is before the Court for Judicial Review 18 of the Decision of the Nevada Industrial Commission dated 19 February 8, 1980, providing for a distribution of funds to 20 qualified employers. It was brought on for hearing on 21 Petitioner's pleading denominated Motion for Summary Judg-22 ment, on October 13, 1980. Robert D. Faiss, F. Harvey 23 Whittemore and David C. Whittemore appearing as counsel 24 for Petitioners and Frank A. King, Jr. and Donald R. Brophy 25 appearing as counsel for Respondents. After hearing the 26 arguments of counsel, the case was submitted to the Court 27 for Decision. 28 On November 28, 1978, the Nevada Industrial Commission 29 declared a \$20,000.00 rebate of premium contributions to 30 eligible Nevada employers. On September 28, 1979 the 31 Nevada Industrial Commission distributed said sum to 32

-16

Petitioners claim error in this distribution as follows:

1. The rules setting forth distribution eligibility and criteria were adopted without public notice or input.

2. In the hearing held after distribution the Nevada Industrial Commission merely approved its prior actions without giving any consideration to the evidence presented or offered.

As premium contributors to the insurance fund of the Nevada Industrial Commission, Petitioners are entitled to the due process of law mandated by the Nevada Revised Statutes, the Nevada Constitution and the United States Constitution. The denial of a pre-distribution hearing (even after demand had been made) was a flagrant, arbitrary, unreasonable and capricious act which caused a denial of vested rights of Petitioners.

The "Johnny come lately" post-distribution hearing manifested an unreasonable attitude of the commission in its attempt to correct any error in procedure when its prior actions were merely approved apparently giving no heed to the offered evidence and presenting no evidence. The hearing was a sham.

The exclusion of the Landmark account of Petitioner Summa was reasonable since the cut-off ending June 30, 1978 was the end of a fiscal year and was a proper period.

The exclusion of the KLAS account of Petitioner Summa and the Thunderbird account of Petitioner Desert Palace was improper and without reason since the rights to and basis for rebate of premium contributions accrued one year prior to June 30, 1979. No reason exists for this exclusion.

The evidence offered by Petitioners to the Nevada Industrial Commission clearly establishes that the reserves required were excessive and no evidence to the contrary was presented.

After due consideration of this case on review the Court determines that the decision of the Nevada Industrial Commission must be reversed in part and judgment entered in favor of Petitioners.

Judgment is ORDERED, ADJUDGED AND DECREED:

- That the Nevada Industrial Commission issue an additional rebate to Desert Palace, Inc. in the sum of \$58,491.00 plus interest from September 28, 1979; and
- That the Nevada Industrial Commission issue an additional rebate to Summa Corporation in the sum of \$87,352.00 plus interest from September 28, 1979.

Dated: This & day of November, 1980.

CARL I CHRISTENSEE!

CARL J. CHRISTENSEN DISTRICT JUDGE

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February 3, 1981

Testimony of Claude Evans, Executive Secretary-Treasurer of the Nevada State AFL-CIO before the Committee on Labor and Management on February 3, 1981. Assembly Bill 49

Mr. Chairman and Members of the Committee:

Section 1, 2 and 3 pertain to actuary experience and should be left to the judgement of the professional actuaries regarding the actuarial reserves. This is a matter that should not be legislated.

Section 4 is very difficult for me to understand. It is my understanding that reimbursement to a state employee is $19 \, \phi$ per mile and I am sure that ambulance service that may be necessary or taxi fare for injured workers exceeds this limitation.

The Workman's Compensation Program was designed to pay 100% of the cost involved in medical treatment and rehabilitation of an injured worker and this section of the law would completely negate that premise.

Section 5 actually puts a statute of limitations of 5 years on re-opening of an injured worker's claim. For example, under present law if an individual loses a leg and is replaced by an artificial leg, when that leg wears out it can be replaced by re-opening the claim. This may be 6, 7, 8 or 9 years down the road. Under this proposed legislation anything after 5 years the injured worker would not be able to re-open the claim and would have to bear the cost of prosthesis or other necessary medical care related to the injury himself.

NRS 616.125, line 22 of page 2 increases the present Commission from 3 to 5 members: one member who is an actuary, one member who is a doctor, one member who is a certified public accountant, one member who is a representative of an employer's association and one member who is a representative of an employee's association. We feel that in these days of austerity it is not a good idea to increase the membership of the Commission and feel that this legislation is unnecessary, unwieldy and would be very difficult to administer the Worker's Compensation program with this type of Commission.

Testimony of Claude Evans Executive Secretary-Treasurer, AFL-CIO Assembly Bill 49 February 3, 1981 Page 2

There are additional pieces of legislation forthcoming that would address this question in the near future.

Section 10 Article 4, line 43 of page 3 indicates that if the injured worker does not attend the Commission's facility for rehabilitation, the expenses will only be paid up to 80% of the expenses incurred. This is completely opposed to the theory of no-fault insurance, where the injured worker gives up the right to sue for 100% coverage of his medical expenses and we are strongly opposed to such a change in the legislation.

The proposed change on page 4, Article 3, line 24 we have no objection to and it is my understanding that the Commission is already working towards this goal.

Page 5, line 16 indicates that a claim must be accompanied by a physician's certificate substantiating the claim. The problem with this procedure is that many times the claim file will be lying on the physician's desk and the injured worker will go weeks and sometimes months prior to receiving compensation if this change in the law is made.

Ladies and Gentlemen of this Committee: After thorough perusal of A.B. 49, we are strongly opposed and feel that this legislation should be defeated and considered no further by this Committee.

Thank you. I will be glad to answer any questions regarding this testimony you may have.

<i>'</i>	FISCA	L NOTE	T C BDR A.B S.B	
ATE AGENCY Jency Submitting Nevada		*	Prepared Fel	bruary 2, 1981
Revenue and/or Expense Items	Fiscal Year 1980-81	Fiscal Year 1981-82 \$512,000 to \$924,000	Fiscal Year 1982-83 \$ 563,000 to \$1,016,000	Continuing \$ 563,000+ to \$1,016,000+
Total				
Explanation (Use Consection 3. Since there timated costs must be relatively and serving and consistent at the serving and explanation of the serving and explanation (Attach Explanation).	is no other stated to similar full tend to be techner staff, 25% to sion of the Deparvaluation staff, e or two attorney apparently increductor and accordance of Adapace YES	e that allows such nctions in the Nev hnical and lengthy 50% of cost of clument of Administry to 100% increas and support serveases the number of the such that the support serveases the number of the support serveases the su	hearings on case ada workers' comp because of the s aimant appeals ation. \$: se. ices. f commissioners e positions. space, etc.	pensation system. subject matter. 147,000 to 294,000 162,000 to 324,000 40,000 to 698,000 from 3 to 5 and \$70,000 25,000 (next page 595,000 (next
DEPARTMENT OF ADMINIST	RATION COMMENT	S Dat	e	

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 LOCAL GOVERNMENT FISCAL IMPACT (Legislative Counsel Bureau Use Only)

Date__

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Section 12. Providing State Industrial Attorney services for all appeals officer applies may increase cost in two ways; increased percentage of appeals handled by the Industrial Attorney staff, and increased number of appeals. Estimate 25% to 50% increase. \$63,000 to \$126,00

EXTRACTIONS FROM NIC FINANCIAL REPORTS

(in thousands)

	1976	1977	1978	1979	1980
PREMIUM	53,860	72,751	92,819	111,259	128,278
UNDERWRITING GAIN (LOSS)	(6,053)	887	4,015	464	(202)
INVESTMENT GAIN (LOSS)	4,916	5,096	7,093	11,098	13,409
REEVALUATION OF RESERVES GAIN (LOSS)	(2,021)	(5,400)	19,922	4,211	8,167
NET GAIN/ (LOSS)	3,158	582	31,030	15,673	21,374
CONTINGENCIES	11,856	11,404	40,559	37,787	45,575
REBATE			20,000	15,000	
NET FOR CONTINGENCIES	11,856	11,404	20,559	22,787	45,515
PERCENT OF PREMIUM	22.01	15.68	22.15	20.48	35.48

EXTRACTS FROM 1980 ACTUARIAL REPORT

REVISION IN RESERVES

IN MILLIONS GAIN OR (LOSS)

Change in interest assumption	\$10.7
Compensation Claims	17.4
Regular Medical Claims	2.4
SUB TOTAL	\$30.5
Pension Medical Claims	(\$22.0)
Miscellaneous Medical Claims	(0.3)
SUB TOTAL	(22.3)
GRAND TOTAL	\$ 8.2

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EXHIBIT D

ΛΒ 49

2/3/81

ASSEMBLYMEN and ASSEMBLYWOMEN:

You have before you Assembly Bill 49. As you all know, Section 3 of AB 49 addresses reserves for claims set by the Nevada Industrial Commission. More specifically, Section (3)(2) provides that an employer may request a hearing before me to protest the amount of the actual reserve set by the Nevada Industrial Commission.

Considering its ramifications, I thought I should come before you to provide you with some interesting issues and figures.

In 1980, 69,784 industrial claims were filed with the Nevada Industrial Commission. Of these claims, 12,647 had reserves established for them.

With your authorization of self-insurance of workmen's compensation in the last session, the figure will be affected, it the little it will be contested in a hearing, the possibility exists that a hearing could be requested by the employer in all reserve cases. This will create a great burden on my staff. In fact, my present staff could not handle it.

It is my opinion that if this legislation were to pass, in its present form, my office would need additional staff in Carson City and Las Vegas to handle the hearings and possible litigation resulting therefrom.

Page 2

Realizing that only the larger reserves, say greater than \$10,000 : would be protested, I asked some of my staff members to prepare a preliminary budget for the additional personnel.

I have received this budget and it is available to all of you. It is based upon the premise that:

- 1. Only 1% of the 12,647 reserved claims would be protested to hearing;
- 20% of those heard would be appealed to the District Court;
- 3. An office in Las Vegas and and office in Carson City would be necessary;
- 4. I hearing officer and senior legal stenographer would be required for each office;
- 5. All necessary expenses to set up and run these two offices.

Please note that this budget is based simply on the above premise. NIC could not provide us with the exact number of claims that were reserved for over \$10,000 (even if that figure is a good projection for a protest threshold). It is based upon my staff member's opinion as to the number of hearings that will be requested and the personnel that will be needed for those hearings.

I hope that this information provides you with some guidance in your deliberations. If you have any questions, my staff and I are available to answer them to the best of our ability.

Thank you.

PROPOSAL FOR AB 49

Offices in Las Vegas and Carson City. One (1) hearing officer, one (1) secretary for each officer, all equipment and supplies, all travel and court costs and miscellaneous expenses.

Total 1980 Reserves Cases = $12,647 \times .01 = 126$ 20% of cases appealed to District Court

1% is a very conservative estimate of the amount of cases which employers would request a hearing. NIC could not provide us with the number of reserves over \$10,000.

01	SALARIES:	5100-5600			
	5100 5100	Hearing officer Sr.Legal Steno		\$20,155.46 \$11,267.68	\$40,310.92 22,535.36
	5200 - 5600	Benefits for HO Benefits for Secy.	· · · · · · · · · · · · · · · · · · ·	23% 23%:	9,271.51 5,183.13
					\$77,300.92

02	OUT-OF-S	FATE TRAVEL 6100-6150	
		2 per. x 1 trip per year training (1 week)	
	6100 6130 6150	Per diem (\$40 x 2 pers. x 5 da.) Public transp. Out-of-State air fare (West Coast trip, round trip @ \$250.00)	400.00 100.00 500.00
			\$ 1,000.00
03	IN-STATE	TRAVEL 6200-6250	

	l per. x l trip per month for 5 days	
6200 6210 6250	Per diem (\$40 x 5 da. x 12 mo.) Motor pool (\$3 da.+.14¢ mi/\$8.50 x 60 da.) In-state air fare (\$100 per trip)	\$ 2,400.00 690.00 1,200.00 \$ 4,290.00
		4 1/2/01/0

04	OPERATING	EXPENSES 7010-7330	
	7010	Office Supplies 2 ofcs. x \$2,000 per.	\$ 4,000.00
	7030	Communications Expenses 2 ofcs.x \$250/mo.	6,000.00
	7040	Printing, duplication, copying \$300/mo	7,200.00
	7060	Contractual services	1,000.00
	7080	Legal and court expenses:	28