

Chapter 777

Ports Generally; Ports Division

Chapter 777

NOTES OF DECISIONS

1. In general

The word "port," as used herein, denotes an area that may include different municipalities and unincorporated areas, and not merely a single harbor or haven for shipping. *Straw v. Harris*, (1909) 54 Or 424, 103 P 777.

An area already included within the limits of a duly organized port cannot be formed into a separate and distinct port. *Priest v. James*, (1928) 125 Or 72, 265 P 1092.

Ports exercise both governmental and proprietary functions. *Seafeldt v. Port of Astoria*, (1933) 141 Or 418, 16 P2d 832.

The powers granted ports are broad and comprehensive. *Id.*

Any reasonable doubt as to the extent of the powers conferred upon ports is to be determined in favor of the public. *Id.*

This chapter provides a charter for ports organized under its provisions. *Webber v. Bailey*, (1935) 151 Or 488, 51 P2d 832.

2. Constitutionality

There was nothing unconstitutional about the 1909 Act providing for the incorporation of ports. *Straw v. Harris*, (1909) 54 Or 424, 103 P 777; *Bennett Trust Co. v. Sengstacken*, (1911) 58 Or 333, 113 P 863.

The 1909 Act was a general law, within the meaning of Ore. Const., Art. XI, §2. *Straw v. Harris*, (1909) 54 Or 424, 103 P 777; *Kalich v. Knapp*, (1914) 73 Or 558, 142 P 594, 145 P 22, Ann Cas 1916E, 1051.

The fact that incorporation of a port may indirectly amend the charter of a city forming a part thereof did not render the 1909 Act unconstitutional. *Straw v. Harris*, (1909) 54 Or 424, 103 P 777; *Kalich v. Knapp*, (1914) 73 Or 558, 142 P 594, 145 P 22, Ann Cas 1916E, 1051.

The title of the 1909 Act sufficiently expressed its purposes. *Straw v. Harris*, (1909) 54 Or 424, 103 P 777.

FURTHER CITATIONS: *State v. Chandler*, (1946) 180 Or 28, 175 P2d 448; *Port of Umatilla v. Richmond*, (1958) 212 Or 596, 321 P2d 338.

ATTY. GEN. OPINIONS: Necessity for an election before taxes are first levied in a new port, 1958-60, p 56; State Land Board sale of land located in port, 1962-64, p 16; refund of tax paid on motor vehicle fuel, 1962-64, p 82; leasing by State Land Board of tidelands located within port, 1962-64, p 104; port's authority to provide water for irrigation, domestic or recreational use, 1966-68, p 444; issuing revenue bonds for irrigation water system, (1969) Vol 34, p 895; port as a municipality under federal grant statute, (1971) Vol 35, p 480.

LAW REVIEW CITATIONS: 45 OLR 284.

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CASE CITATIONS: *Waterman v. So. Coos Gen. Hosp. Dist.*, (1958) 213 Or 654, 326 P2d 1037.

ATTY. GEN. OPINIONS: Duty to obtain certificate of number for port boats, 1960-62, p 292; port as a municipality under federal grant statute, (1971) Vol 35, p 480.

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NOTES OF DECISIONS

1. Under former similar statute

(1) Territorial limits of a port which did not include county as a whole

(a) In general. The purpose of the last sentence of the statute was to prevent landowners from being taxed for the improvement of ports whose development would be of no benefit to them. *State v. Port of Bay City*, (1913) 64 Or 139, 129 P 496.

The statute did not contemplate absolute accuracy in the exclusion of land that drained into another water-shed where the general trend of the land was toward the bay of the port. *Id.*

(b) Territory not includable. A port could include an area having a drainage basin separate and distinct from that of the other constituent areas. *Straw v. Harris*, (1909) 54 Or 424, 103 P 777; *Hale v. Sengstacken*, (1911) 192 Fed 641.

The "natural water-shed" included all the arms and inlets entering a particular bay or like body of water. *Hale v. Sengstacken*, (1911) 192 Fed 641.

The courts would not sanction any substantial deviation from the rule that restricted the territory that could be included in a port to areas within the natural water-shed of the drainage basin. *State v. Port of Bayocean*, (1913) 65 Or 506, 133 P 85.

The fact that a small parcel in another drainage basin was included in a port did not necessarily vitiate the proceedings. *State v. Johnson*, (1915) 76 Or 85, 144 P 1148, 147 P 926.

Formation of a port along the upper reaches of a river did not inhibit formation of a subsequent one at its mouth. *Id.*

FURTHER CITATIONS: *State v. Port of Cascade Locks*, (1942) 169 Or 197, 127 P2d 351; *State v. Chandler*, (1946) 180 Or 28, 175 P2d 448; *Port of Bandon v. Oliver J. Olson & Co.*, (1959) 175 F Supp 736.

777.050

NOTES OF DECISIONS

1. In general

A port created in accordance with the provisions of this enactment is neither a county, city nor town. *Straw v. Harris*, (1909) 54 Or 424, 103 P 777.

Some of the functions of government are exercisable by ports. *State v. Port of Astoria*, (1916) 79 Or 1, 154 P 399.

2. Purchase and disposal of property

A port may sell docks, wharves, etc., that it has purchased when changed conditions render sale in the best interests of the taxpayers. *Dix v. Port of Port Orford*, (1929) 131 Or 157, 282 P 109.

The sale or rental of a dredge held by a port in a proprietary capacity is within the powers conferred upon such entities. *Seafeldt v. Port of Astoria*, (1933) 141 Or 418, 16 P2d 943.

A port has no authority to buy a dredge for the purpose of renting it out to private persons, but may rent it to them after its purchase for authorized purposes. *Id.*

3. Liability in damages

A port may become liable for damages under the employers' liability law. *Mackay v. Port of Toledo*, (1915) 77 Or 611, 152 P 250.

4. Actions and suits

A port is a municipal corporation and may be sued in its corporate character. *Mackay v. Port of Toledo*, (1915) 77 Or 611, 152 P 250; *State v. Port of Astoria*, (1916) 79 Or 1, 154 P 399.

Designation of a port *eo nomine* in a complaint against it did not operate as an admission of its corporate existence if it was further described as a pretended corporation. *State v. Port of Bayocean*, (1913) 65 Or 506, 133 P 85.

ATTY. GEN. OPINIONS: Agreements supporting application for federal aid for planning and development, 1960-62, p 230.

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NOTES OF DECISIONS

It was evidently the intent of the legislature to give ports full powers to improve the bays and waters over which they are given jurisdiction. *Hale v. Sengstacken*, (1911) 192 Fed 641.

The improvements authorized may extend to an entire bay. *Id.*

A dredge purchased by a port for harbor improvement purposes, etc., is held by it in a proprietary, and not a governmental, capacity. *Seafeldt v. Port of Astoria*, (1933) 141 Or 418, 16 P2d 943.

The right of a port to regulate and control the use of a dredge owned by it is a necessary incident of its ownership. *Id.*

A dredge purchased for authorized purposes may be rented to a private person, so long as it is not needed for port purposes. *Id.*

Condemnation of land for the statutory purposes, including leasing, is for a public use and constitutional. *Port of Umatilla v. Richmond*, (1958) 212 Or 596, 321 P2d 338.

FURTHER CITATIONS: *State v. Chandler*, (1946) 180 Or 28, 175 P2d 448.

ATTY. GEN. OPINIONS: Port's power to enter into contracts for improvement of harbors, 1948-50, p 184; ownership and regulation of water and land in a port district, 1960-62, p 452.

LAW REVIEW CITATIONS: 12 OLR 243.

777.110

NOTES OF DECISIONS

The fact that a port is authorized to contract directly with the United States does not prevent it from renting a dredge to a private person for use in execution of a

government contract. *Seafeldt v. Port of Astoria*, (1933) 141 Or 418, 16 P2d 943.

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NOTES OF DECISIONS

Under former similar statute condemnation of land for the statutory purposes, including leasing, is for a public use and constitutional. *Port of Umatilla v. Richmond*, (1958) 212 Or 596, 321 P2d 338.

Under former similar statute in determining the amount of land to be taken, commission was entitled to consider probable future needs as well as those of the present. *Id.*

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NOTES OF DECISIONS

A port incorporated under this statute is entitled to exercise powers conferred upon such entities by subsequent legislation. *State v. Port of Astoria*, (1916) 79 Or 1, 154 P 399. Overruling *Farrell v. Port of Portland*, (1908) 52 Or 582, 98 P 145.

FURTHER CITATIONS: *State v. Chandler*, (1946) 180 Or 28, 175 P2d 448; *State Land Bd. v. Sause*, (1959) 217 Or 52, 342 P2d 803; *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

ATTY. GEN. OPINIONS: Speed limits for boats in port districts, 1960-62, p 227; ownership and regulation of water and land in a port district, 1960-62, p 452; conforming state with federal regulations, 1962-64, p 35; leasing tidelands by State Land Board, 1962-64, p 104; regulation of structures in waters within cities and ports, (1968) Vol 34, p 370; port as a municipality under federal grant statute, (1971) Vol 35, p 480.

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CASE CITATIONS: *State v. Chandler*, (1946) 180 Or 28, 175 P2d 448; *Swanson v. Coos County*, (1971) 4 Or App 587, 481 P2d 375.

ATTY. GEN. OPINIONS: Certificate of number for port boats, 1960-62, p 292.

LAW REVIEW CITATIONS: 48 OLR 117.

777.132

ATTY. GEN. OPINIONS: Issuing revenue bonds for irrigation water system, (1969) Vol 34, p 895; constructing nuclear power plant for lease to private utility, (1970) Vol 34, p 927; taxability of interest on bonds to be issued by Port of Morrow for irrigation system connected with proposed private nuclear power plant, (1971) Vol 35, p 635.

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NOTES OF DECISIONS**1. In general**

The commissioners are mere agents for the performance of certain duties, and not officers within the meaning of the constitutional provisions that limits tenure of a public office to four years. *Bennett Trust Co. v. Sengstacken*, (1911) 58 Or 333, 113 P 863.

2. Meetings of board

The provisions fixing the time and place of the organization meeting are merely directory, and substantial compliance is sufficient. *Bennett Trust Co. v. Sengstacken*, (1911) 58 Or 333, 113 P 863.

3. Powers of commissioners

The commissioners may exercise any additional powers granted port districts by way of amendment of the original Act without first procuring the authorization of voters. *State v. Port of Astoria*, (1916) 79 Or 1, 154 P 399. *Overruling Farrell v. Port of Portland*, (1908) 52 Or 582, 98 P 145.

Sale of a wharf belonging to the port is within the power of the commissioners when such measure will best subserve the interests of the taxpayers. *Dix v. Port of Port Orford*, (1929) 131 Or 157, 282 P 109.

4. Testing title to office

The proper procedure to test the title of a person claiming to be a commissioner is that outlined in ORS 30.510. *Bennett Trust Co. v. Sengstacken*, (1911) 58 Or 333, 113 P 863.

ATTY. GEN. OPINIONS: Term of commissioner appointed to fill vacancy and elected at the next subsequent general election, 1942-44, p 439; term of successor filling vacancy created by resignation during term, 1962-64, p 455; determining successful candidates, 1966-68, p 575; failure to give special election ballot to part of voters, 1966-68, p 644; candidates to be named on general election ballot, (1968) Vol 34, p 18; determination of general election candidates from field of primary election candidates for two vacancies; nominations to vacancy on general election ballot, (1970) Vol 35, p 116.

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ATTY. GEN. OPINIONS: Effect of subdistricting, (1968) Vol 34, p 263.

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ATTY. GEN. OPINIONS: Effect of subdistricting, (1968) Vol 34, p 263.

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ATTY. GEN. OPINIONS: Effect of subdistricting, (1968) Vol 34, p 263.

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ATTY. GEN. OPINIONS: Failure to elect to fill vacancy, 1960-62, p 235; term of successor filling vacancy created by resignation during term, 1962-64, p 455.

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CASE CITATIONS: *Port of Brookings v. Mather*, (1966) 245 Or 230, 421 P2d 695.

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NOTES OF DECISIONS

Powers conferred by amendment to a former similar statute could be exercised by ports organized prior to the date of enactment of the Act amended. *State v. Port of Astoria*, (1916) 79 Or 1, 154 P 399. *Overruling Farrell v. Port of Portland*, (1908) 52 Or 582, 98 P 145.

777.195 to 777.258

NOTES OF DECISIONS

Under former similar statute a port acted in a proprietary capacity in the maintenance and operation of docks, wharves, etc. *Dix v. Port of Port Orford*, (1929) 131 Or 157, 282 P 109.

Under former similar statute a port could sell docks, wharves, etc., that it had purchased when changed condi-

tions rendered sale in the best interests of the taxpayers. *Id.*

FURTHER CITATIONS: *State v. Chandler*, (1946) 180 Or 28, 175 P2d 448; *Port of Umatilla v. Richmond*, (1958) 212 Or 596, 321 P2d 338; *Carruthers v. Port of Astoria*, (1968) 249 Or 329, 438 P2d 725.

ATTY. GEN. OPINIONS: Authority of State Land Board to sell or lease shorelands to a port, 1938-40, p 457; ownership and regulation of water and land in a port district, 1960-62, p 452; leasing tidelands by State Land Board, 1962-64, p 104; port's authority to provide water for irrigation, domestic or recreational uses, 1966-68, p 444; issuing revenue bonds for irrigation water system, (1969) Vol 34, p 895; constructing nuclear power plant for lease to private utility, (1970) Vol 34, p 927; port as a municipality under federal grant statute, (1971) Vol 35, p 480.

LAW REVIEW CITATIONS: 4 WLJ 518.

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ATTY. GEN. OPINIONS: Effect of subdistricting, (1968) Vol 34, p 263.

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ATTY. GEN. OPINIONS: Procedure for change of name, 1960-62, p 211.

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LAW REVIEW CITATIONS: 4 WLJ 518.

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ATTY. GEN. OPINIONS: Deposit of port funds in banks as governed by laws applicable to political subdivisions, 1956-58, p 144.

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CASE CITATIONS: *Webber v. Bailey*, (1935) 151 Or 488, 51 P2d 832.

777.430

NOTES OF DECISIONS**1. In general**

Indebtedness of a port is a general obligation of the municipality. *Morris, Mather & Co. v. Port of Astoria*, (1932) 141 Or 251, 15 P2d 385.

2. Taxation generally

A port has no authority to tax land lying without its corporate limits, and, in the event it attempts to do so, it may be restrained. *Leach v. Port of Tillamook*, (1912) 62 Or 345, 124 P 642.

The power to levy and collect the amount of taxes required to discharge a port's obligations is not merely permissive, but mandatory. *Morris, Mather & Co. v. Port of Astoria*, (1932) 141 Or 251, 15 P2d 385.

The "amount" sufficient to pay the yearly interest on bonds, etc., means an amount which takes into consideration delinquency. *Id.*

A bond holder is not compelled to look only to the special tax herein authorized for payment of his securities. *Id.*

3. Levy of tax

An attempt to levy a special tax for more than is required to pay the yearly interest and such portion of the principal

as matures within the year is in excess of the authority of the commissioners. *State v. Johnson*, (1916) 80 Or 107, 156 P 579.

Any levy which yields less than the sum needed to discharge principal and interest is insufficient. *Morris, Mather & Co. v. Port of Astoria*, (1932) 141 Or 251, 15 P2d 385.

A financial emergency can no more justify failure of a port to levy a sufficient tax to meet its obligations than could a heavy debt excuse an individual from selling his properties in order to pay his creditors. *Id.*

ATTY. GEN. OPINIONS: Necessity for an election before taxes are first levied in a new port, 1958-60, p 56; tax levy by new district before tax base established, 1958-60, p 206; proposed constitutional tax limit, (1968) Vol 34, p 203.

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NOTES OF DECISIONS

County tax officers cannot be compelled to extend a tax that was not legally levied. *State v. Johnson*, (1916) 80 Or 107, 156 P 579.

FURTHER CITATIONS: *Webber v. Bailey*, (1935) 151 Or 488, 51 P2d 832.

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CASE CITATIONS: *Carruthers v. Port of Astoria*, (1968) 249 Or 329, 438 P2d 725.

ATTY. GEN. OPINIONS: Issuing revenue bonds for irrigation water system, (1969) Vol 34, p 895; constructing nuclear power plant for lease to private utility, (1970) Vol 34 p 927.

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CASE CITATIONS: *Carruthers v. Port of Astoria*, (1968) 249 Or 329, 438 P2d 725.

LAW REVIEW CITATIONS: 4 WLJ 518.

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LAW REVIEW CITATIONS: 4 WLJ 518.

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CASE CITATIONS: *Webber v. Bailey*, (1935) 151 Or 488, 51 P2d 832.

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CASE CITATIONS: *Webber v. Bailey*, (1935) 151 Or 488, 51 P2d 832.