

Chapter 274

Submersible and Submerged Lands

274.005

CASE CITATIONS: *Corvallis Sand & Gravel Co. v. State Land Bd.*, (1968) 250 Or 319, 439 P2d 575; *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.* (1968) 250 Or 612, 443 P2d 205.

ATTY. GEN. OPINIONS: Right to use navigable waters for storage of logs, assignability of right, (1968) Vol 34, p 370.

274.025

ATTY. GEN. OPINIONS: Right to sell bed of navigable lake which subsequently became uncovered, 1932-34, p 170; granting option to game commission to purchase part of the bed of Summer Lake, 1940-42, p 228; right to use navigable waters for storage of logs, assignability of right, (1968) Vol 34, p 370.

274.040

NOTES OF DECISIONS

1. In general
2. Limitation on right of disposal
3. Accretions to islands
4. Effect of deed or lease

1. In general

The state has authority to sell tidelands. *Hinman v. Warren*, (1877) 6 Or 408.

When that part of the shore to which one claims title as tideland by deed from the state becomes submerged by the gradual shifting of the river, he loses title thereto and it becomes revested in the state. *Wilson v. Shively*, (1884) 11 Or 215, 4 P 324; *Hume v. Rogue R. Packing Co.*, (1908) 51 Or 237, 83 P 391, 92 P 1065, 96 P 865, 131 Am St Rep 732, 31 LRA(NS) 396.

The owner of upland bounding on navigable water has no title in the adjoining lands below high-water mark, and no right to build wharves thereon, except as expressly permitted by statute. *Bowlby v. Shively*, (1892) 22 Or 410, 30 P 154, aff'd, *Shively v. Bowlby*, (1893) 152 US 1, 14 S Ct 548, 38 L Ed 331.

The policy has been and is to convey tidelands to purchasers, subject to the paramount rights of navigation and commerce. *Astoria Exch. Co. v. Shively*, (1895) 27 Or 104, 39 P 398, 40 P 92.

The state, upon its admission into the Union, became the owner of the bed and banks of the Willamette River up to the line of ordinary high water, subject only to the paramount right of navigation and the right of Congress to regulate commerce between the states. *Pac. Elevator Co. v. Portland*, (1913) 65 Or 349, 133 P 72, 46 LRA(NS) 363.

Plaintiffs' conditioning their bid and their obligation as lessees on obtaining permission to drive piling was a material variation from the bid invitation. *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

2. Limitation on right of disposal

The title which a shore-owner obtained under 1872 p. 129, as amended 1874 p. 76, is subordinate to the public right of passage and navigation. *Wilson v. Welch*, (1885) 12 Or 353, 7 P 341.

While the state owns the shores of its bays, harbors and inlets between high and low water, its ownership is a trust for the public and it cannot sell them so as to deprive the public of their enjoyment, nor take away riparian rights except for public use and after a just compensation. *Id.*

The state may transfer its tidelands, so far as the jus privatum is concerned, subject to the jus publicum, which cannot be granted, and by which the state prevents any use of them which would materially interfere with navigation or commerce on bordering waters. *Corvallis & E.R. Co. v. Benson*, (1912) 61 Or 359, 121 P 418.

Title of meander land on shore of navigable lake purchased from the state is subject to the right of the riparians to access. *Darling v. Christensen*, (1941) 166 Or 17, 109 P2d 585. **Distinguished in** *McCarthy v. Coos Head Tbr. Co.*, (1956) 208 Or 371, 302 P2d 238.

State Land Board could not validly lease tidelands to third party without providing means for exercise of statutory preference right and notice to upland owner. *McCarthy v. Coos Head Tbr. Co.*, (1956) 208 Or 371, 302 P2d 238.

State Land Board had duty to prescribe rules to permit upland owner to exercise his statutory preference rights to lease tidelands. *Id.*

Upland owner is entitled to notice of his preference right, to know the tidelands to which it refers and the price that he is required to pay or the procedure by which that price could be determined. *Id.*

3. Accretions to islands

Accretions to a river island, which although covered by water to a depth of four to six feet for a large part of the day, lay between low and high tide in the river, could reasonably be inferred to be tidelands within this section. *Taylor Sands Fishing Co. v. State Land Bd.*, (1910) 56 Or 157, 108 P 126.

Where tidelands bordering on a navigable river are purchased from the state to obtain places on which to draw seines into shallow water, the law of accretions applies, and the state thereafter has no authority to lease land forming by accretion further out in the river, the effect of which would be to destroy the rights of the grantee of the lands to which that leased was added by accretion. *Id.*

The grantee of tide flats, constituting a tideland island, is entitled to the accretion lodging thereon, though the island as originally granted has moved, so that none of it remains within its location at the time of the grant. *Van Dusen Inv. Co. v. W. Fishing Co.*, (1912) 63 Or 7, 124 P 677, 126 P 604.

4. Effect of deed or lease

Tideland deeds from the state under 1872 p. 129, as amended by 1874 p. 76, 1876 p. 69 and 1878 p. 41, which laws had a provision similar to ORS 274.060, did not convey

the exclusive right of catching floating fish as appurtenant to the lands granted. *Hume v. Rogue R. Packing Co.*, (1908) 51 Or 237, 83 P 391, 92 P 1065, 96 P 865, 131 Am St Rep 732, 31 LRA(NS) 396.

Deeds conveying all the tidelands in front of certain lots mentioned therein extended the title thereunder to low-water mark, wherever that might be, then or afterward. *Fellman v. Tidewater Mill Co.*, (1915) 78 Or 1, 152 P 268.

When the state has leased or conveyed the tidelands bordering on tidal waters the riparian rights are lodged in the tidelands owner or lessee. *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

FURTHER CITATIONS: *De Force v. Welch*, (1883) 10 Or 507; *Shively v. Welch*, (1884) 20 Fed 28; *Olney v. Moore*, (1886) 13 Or 238, 11 P 187; *Grant v. Ore. Nav. Co.*, (1907) 49 Or 324, 90 P 178, 1099.

ATTY. GEN. OPINIONS: Necessity of notice to abutting property owner of the highest bid received, 1920-22, p 55; title to tidelands not included in deed to purchaser acquired after publication of notice of sale, 1922-24, p 77; sale and leasing of tidelands on Columbia River, 1924-26, p 50; conferring upon abutting upland owners preference right to lease shore lands adjoining uplands, 1924-26, p 592; notice as to receipts of bids for leasing of shore lands abutting or fronting on tide and overflow lands, 1924-26, p 661; sale or lease of tidelands which contain clam beds, 1928-30, p 137; purposes for which shore lands may be leased, 1930-32, p 42; authority of State Land Board to sell sand spit to State Highway Commission, 1930-32, p 506; when riparian owner has preference right to lease island, 1934-36, p 200; authority of State Land Board, without advertisement, to sell to State Highway Commission land for right of way between high and low water lines along the Columbia River, 1936-38, p 209; right to take shellfish by owners of tidelands, 1940-42, p 327; type of notice given to upland owners, 1950-52, p 173; ownership of tide and overflow land upon the Millicoma River as affected by 1876 p. 70, 1950-52, p 406; right of upland owner fronting island in river to purchase island offered at public sale by State Land Board, 1952-54, p 58.

Lease or sale by State Land Board of overflow lands for boat slips to game commission, 1956-58, p 32; authority of State Land Board to sell submerged lands, 1958-60, p 179; authority of State Land Board to lease submerged coast lands for oil and gas discovery, 1960-62, p 99; State Land Board authority to grant easement in tide and overflow lands prior to 1961 amendment, 1960-62, p 104; easement for suspended cable car, 1960-62, p 258; easement for airport over tidelands, 1962-64, p 64; leasing tidelands in port district, 1962-64, p 104; authority of State Land Board to lease to municipality without advertising for bids, 1964-66, p 241.

274.060

NOTES OF DECISIONS

Under a former similar statute, tideland deeds from the state under 1872 p. 129, as amended by 1874 p. 76 and 1876 p. 79, and 1878 p. 41, did not convey the exclusive right of catching floating fish as appurtenant to the lands granted. *Hume v. Rogue R. Packing Co.*, (1908) 51 Or 237, 83 P 391, 92 P 1065, 96 P 865, 131 Am St Rep 732, 31 LRA(NS) 396.

ATTY. GEN. OPINIONS: Acquiring private ownership of tide and overflow land as carrying exclusive shellfish privilege, 1940-42, p 327; the right of the public to take and remove shellfish from the waters over tidelands conveyed by the State Land Board, 1944-46, p 503.

274.210

ATTY. GEN. OPINIONS: Leasing the bed of a lake which has been drained for agricultural purposes to a private party, 1942-44, p 50; authority to issue permits for raising or lowering the level of navigable lakes, 1946-48, p 183.

274.260

LAW REVIEW CITATIONS: 3 WLJ 347.

274.430

NOTES OF DECISIONS

Legislation by the state cannot affect the title of the United States. *United States v. Oregon*, (1935) 295 US 1, 26, 55 S Ct 610, 79 L Ed 1267.

ATTY. GEN. OPINIONS: Authority of State Land Board to sell unsurveyed lake bed land, 1924-26, p 213; control of game commission over Eel Lake, 1938-40, p 405; leasing the bed of a lake which has been drained for agricultural purposes to a private party, 1942-44, p 50.

LAW REVIEW CITATIONS: 3 WLJ 346, 347, 352.

274.440

NOTES OF DECISIONS

In case of the draining of a navigable lake the riparian owners have the right "to fill out the least fractional subdivision or subdivisions of any section owned by such riparian owners and which is rendered fractional by the meander line of such lake or lakes". It follows that such an owner is not liable for breach of warranty when the strip of land uncovered as result of this drainage would not "fill out" the subdivision rendered fractional by the meander of the lake, and where in consequence the title to such land was vested in him at the time of the execution of his deed. *Luscher v. Reynolds*, (1936) 153 Or 625, 56 P2d 1158.

FURTHER CITATIONS: *United States v. Oregon*, (1935) 295 US 1, 26, 55 S Ct 610, 79 L Ed 1267.

LAW REVIEW CITATIONS: 3 WLJ 346, 347.

274.470

ATTY. GEN. OPINIONS: Authority of State Land Board to sell unsurveyed lake bed land, 1924-26, p 213.

274.530

NOTES OF DECISIONS

State Land Board has power to reject only bid submitted. *Salem Sand & Gravel Co. v. Olcott*, (1920) 97 Or 253, 191 P 776.

The purpose of the Act was to recover for the irreducible school fund the value of gravel, rock and sand removed from property belonging to the state and to empower the State Land Board to supervise removal of such materials and obtain payment therefor. *State v. McVey*, (1942) 168 Or 337, 121 P2d 461, 123 P2d 181.

Prior to a 1967 amendment "Navigable portions of navigable streams" referred to longitudinal rather than lateral limits of navigability; and within the navigable length of a stream the state is prima facie owner of the bed thereof below ordinary high-water marks. Id.

The statute applies to the removal of sand and gravel from that part of a navigable river between the high and low-water marks; the legislature did not intend to limit it to the part between low-water marks. Id.

Freedom from liability for rent is granted only for removal of material for the purposes expected, whether for commercial or noncommercial use. *State Land Bd. v. Port of Portland*, (1962) 232 Or 607, 376 P2d 661.

FURTHER CITATIONS: *Corvallis Sand & Gravel Co. v. State Land Bd.*, (1968) 250 Or 319, 439 P2d 575.

ATTY. GEN. OPINIONS: Authority to lease bed of Santiam River, 1920-22, p 140; leasing of portions of bed of navigable streams, 1922-24, p 608; whether sand and gravel can be taken from creek without payment of royalty as a question of fact depending upon whether creek is navigable, 1926-28, p 140; advertising for bids before renewing contract for taking sand, rock, and gravel from navigable streams, 1928-30, p 511; charge of state board as confined to royalty on basis of price per cubic yard for material removed, 1930-32, p 694; control of submerged land formed by avulsion in the bed of a navigable stream, 1932-34, p 375; discretion of board to determine "cubic yard" of material, 1922-24, p 659; requirement of royalty leases to remove gravel from a nonnavigable portion of an otherwise navigable stream, 1948-50, p 128; authority of state officials over removal of sand and gravel from submerged lands of the Columbia River, 1948-50, p 323; royalty for sand used for Columbia River flood control, 1958-60, p 254; authority of State Land Board to lease submerged coast lands for oil and gas discovery, 1960-62, p 99; authority for cash bonus as a bid condition, 1966-68, p 529.

LAW REVIEW CITATIONS: 48 OLR 309.

274.550

NOTES OF DECISIONS

Freedom from liability for rent is granted only for removal of material for the purposes expected, whether for commercial or noncommercial use. *State Land Bd. v. Port of Portland*, (1962) 232 Or 607, 376 P2d 661.

Free use of the material is limited to use on land in Oregon. *State Land Bd. v. W.-Pac. Dredging Corp.*, (1966) 244 Or 184, 416 P2d 667; *State Land Bd. v. Gen. Constr. Co.*, (1970) 2 Or App 53, 465 P2d 731.

The legislative intent in paragraphs (a) and (b), of subsection (1) are not different. *State Land Bd. v. Gen. Constr. Co.*, (1970) 2 Or App 53, 465 P2d 731.

FURTHER CITATIONS: *State v. Port of Portland*, (1942) 168 Or 120, 121 P2d 478; *State v. McVey*, (1942) 168 Or 337, 121 P2d 461, 123 P2d 181.

ATTY. GEN. OPINIONS: Title to lands in bed of Columbia River caused by accretion or dredging, 1940-42, p 528; sand and gravel removed in dredging operations by United States becoming subject to royalty when thereafter taken for commercial uses, 1940-42, p 665; types of "fills" authorized, 1956-58, p 52; removal of gravel from cove for slope and fill protection, 1956-58, p 148; royalties on sand and gravel for channel or harbor improvement or flood control, 1958-60, p 254; sale or use of beds of navigable rivers, 1960-62, p 391.

274.560

ATTY. GEN. OPINIONS: Authority to accept bonds covering period less than term of lease, 1922-24, p 464; authority to permit or forbid a gravel company from subletting any portion of gravel bar leased to said company, or from assigning such lease, 1934-36, p 56; "exclusive privilege" construed, 1960-62, p 26.

274.590

CASE CITATIONS: *State Land Bd. v. W.-Pac. Dredging Corp.*, (1966) 244 Or 184, 416 P2d 667.

274.615

ATTY. GEN. OPINIONS: Sale or use of beds of navigable rivers, 1960-62, p 391.

274.630

ATTY. GEN. OPINIONS: Granting several leases to one applicant, 1960-62, p 270; authority for cash bonus as a bid condition in gravel leases, 1966-68, p 529.

274.640

ATTY. GEN. OPINIONS: Granting several leases to one applicant, 1960-62, p 270.

274.705

CASE CITATIONS: *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

274.710

ATTY. GEN. OPINIONS: Easement for suspended cable car, 1960-62, p 258; ownership and regulation of water and land in a port district, 1960-62, p 452.

274.765

CASE CITATIONS: *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

ATTY. GEN. OPINIONS: Granting several leases to one applicant, 1960-62, p 270; authority for cash bonus as a bid condition in gravel leases, 1966-68, p 529.

274.785

ATTY. GEN. OPINIONS: Granting several leases to one applicant, 1960-62, p 270.

274.885

ATTY. GEN. OPINIONS: Authority of State Land Board to lease submerged coast lands for oil and gas discovery, 1960-62, p 99.

274.915

CASE CITATIONS: *Corvallis Sand & Gravel Co. v. State Land Bd.*, (1968) 250 Or 319, 439 P2d 575.

ATTY. GEN. OPINIONS: Authority of State Land Board to lease to municipality without advertising for bids, 1964-66, p 241; right to use navigable waters for storage of logs, assignability of right, (1968) Vol 34, p 370.

LAW REVIEW CITATIONS: 48 OLR 307.

274.925

ATTY. GEN. OPINIONS: Responsibility of board regarding proposal of a port to create and develop land for later disposition, 1964-66, p 363; transfer of land created prior to public ownership of upland, (1968) Vol 34, p 177.

274.930

ATTY. GEN. OPINIONS: Transfer of land created prior to public ownership of upland, (1968) Vol 34, p 177.

LAW REVIEW CITATIONS: 3 WLJ 352.

274.935

ATTY. GEN. OPINIONS: Ownership of land fill placed on land, privately-owned until submerged by navigable river, (1969) Vol 34, p 829.