

Chapter 508

Licenses

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508.006

ATTY. GEN. OPINIONS: Licensed commercial fisherman retaining fish or fishing for personal use, 1964-66, p 451.

508.025

NOTES OF DECISIONS

Under former similar statute the legislature intended all persons, whether employer or employe, actually engaged in catching salmon to be licensed. *Alsos v. Kendall*, (1924) 111 Or 359, 227 P 286.

A licensing under the provisions of the former fish code did not give fixed gear fisherman franchises, nor create contracts or vested rights, so as to make legislation prohibiting the use of fixed gear violative of the contracts clause of U.S. Const. Art. I, §10. *Anthony v. Veatch*, (1950) 189 Or 462, 220 P2d 493, 221 P2d 575, app. dis. 340 US 923, 71 S Ct 499, 95 L Ed 667; *Miles v. Veatch*, (1950) 189 Or 506, 220 P2d 511, 221 P2d 905.

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508.030

CASE CITATIONS: *Monroe v. Withycombe*, (1917) 84 Or 328, 165 P 227.

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508.035

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ployer, 1962-64, p 471; duty of Washington wholesaler to be licensed to deliver or pick up fish in Oregon, 1964-66, p 407.

508.045

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508.106

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508.235

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508.240

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508.260

ATTY. GEN. OPINIONS: Boat license renewals and fees, 1962-64, p 330; collecting fees from Indians with treaty rights, 1962-64, p 361.

508.285

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508.290

ATTY. GEN. OPINIONS: Statement of dollar cost of initiative amendment, 1964-66, p 23.

508.410

NOTES OF DECISIONS

Under former similar statute, the location of any fixed fishing appliance or seine had to be specified in detail in the application for a license. *Williams v. Seufert Bros. Co.*, (1920) 96 Or 163, 188 P 165, 189 P 636; *Ex parte Desjeiro*, (1907) 152 Fed 1004.

508.415

NOTES OF DECISIONS

Under former similar statute, the state was the real party in interest in an action to foreclose a lien for poundage fees, notwithstanding the fact that surety bonds had been filed to secure the payment of the fees. *State v. Swensk*, (1939) 161 Or 281, 89 P2d 587.

Under former similar statute, there was no waiver of the lien in favor of the state by reason of the fact that the surety bonds for the payment of poundage fees due were exacted. *Id.*

FURTHER CITATIONS: *State v. Jutstrom Fish Co.*, (1935) 149 Or 362, 39 P2d 355.

ATTY. GEN. OPINIONS: Determination of bond required as within authority of commission, 1924-26, p 62.

508.450

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508.465

ATTY. GEN. OPINIONS: Transfer of licenses on reorganization of corporate licensee, 1962-64, p 471.

508.470

ATTY. GEN. OPINIONS: Boat license renewals and fees, 1962-64, p 330.

508.475

NOTES OF DECISIONS

A right paramount to the constitutional right to fish, common to all citizens, is not obtained by the licensee by renewal. *Driscoll v. Berg*, (1931) 137 Or 499, 293 P 586, 1 P2d 611.

FURTHER CITATIONS: *Williams v. Seufert Bros. Co.*, (1920) 96 Or 163, 188 P 165, 189 P 636.

508.505

NOTES OF DECISIONS

The poundage fee is a license or privilege tax on the business or occupation. *State v. Jutstrom Fish Co.*, (1935) 149 Or 362, 39 P2d 355; *State v. Franklin*, (1940) 163 Or 500, 98 P2d 724.

The mere fact that fish are taken in waters over which the state has no jurisdiction does not alter the obligation to pay the poundage tax. *State v. Jutstrom Fish Co.*, (1935) 149 Or 362, 39 P2d 355.

Fish caught beyond the three-mile limit lose their character as imports when brought to port and sold to a dealer in this state and immediately beheaded, re-iced and shipped to points outside the state, rendering such dealer subject to the tax. *Id.*

A refusal to pay a poundage tax on fish of true import character or on those shipped in interstate commerce will not render the principal and surety upon a bond guaranteeing payment of poundage tax liable thereon. *Id.*

The defenses of a tax on imports and the burdening of interstate commerce are not withdrawn from a principal and a surety upon a bond in an action thereon. *Id.*

Both principal and surety are estopped to assert the invalidity of the statute where by reason of the bond guarantee-

ing payment of the poundage tax the state is induced to issue a license to the principal. *Id.*

A partner was liable for poundage fees regardless of the name in which the license was issued. *State v. Franklin*, (1940) 163 Or 500, 98 P2d 724.

FURTHER CITATIONS: *Booth Fisheries Co. v. Kendall*, (1924) 111 Or 377, 227 P 291.

ATTY. GEN. OPINIONS: Enforcement by fish commission of provisions requiring payment of poundage fee, 1924-26, p 273; poundage fees collectible from plants and dealers located in or doing business in Oregon, 1924-26, p 319; poundage fee as burden upon interstate commerce, 1930-32, p 284; poundage fee on fish purchased in another state, 1930-32, p 346; authority to collect a poundage fee from fish purchased or received by Oregon canners from places located within Washington, 1930-32, p 355; extent of fish commission's authority to require reports, 1960-62, p 173; denial of license for nonpayment of poundage fees, 1962-64, p 328; collecting fees from Indians with treaty rights, 1962-64, p 361; licenses and fees to harvest or sell nonfood fish, 1962-64, p 388; poundage fees on fish landed outside Oregon, 1962-64, p 406; taking crab and other shellfish from the Rogue River, 1964-66, p 4; statement of dollar cost of initiative amendment, 1964-66, p 23; duty of Washington wholesaler to be licensed to deliver or pick up fish in Oregon, 1964-66, p 407; poundage fee on steelhead taken incidentally, (1969) Vol 34, p 743.

508.510

ATTY. GEN. OPINIONS: Poundage fees on fish landed outside Oregon, 1962-64, p 406; duty of Washington wholesaler to be licensed to deliver or pick up fish in Oregon, 1964-66, p 407.

508.515

ATTY. GEN. OPINIONS: Denial of license for nonpayment of poundage fees, 1962-64, p 328; poundage fees on fish landed outside Oregon, 1962-64, p 406.

508.520

ATTY. GEN. OPINIONS: Duty of Washington wholesaler to be licensed to deliver or pick up fish in Oregon, 1964-66, p 407.

508.525

NOTES OF DECISIONS

1. Constitutionality

Creditors were not deprived of "due process of law" by the statutory lien for poundage fees. *State v. Franklin*, (1940) 163 Or 500, 98 P2d 724.

This provision is not unconstitutional as being in violation of the equal protection and privileges and immunities clauses. *Id.*

The obligations of contract or the due process clause were not impaired by enforcing against an assignee of a conditional sales contract the state lien for poundage fees. *State v. Swensk*, (1939) 161 Or 281, 89 P2d 587.

2. Lien

To create a lien it is sufficient that the equipment was part of a plant engaged in canning and that the fish for which poundage fees are claimed were packed in that plant; no showing as to use of particular machine on the fish is necessary. *State v. Swensk*, (1939) 161 Or 281, 89 P2d 587.

It is the use of the machinery and equipment, and not its ownership, upon which the lien is based. *Id.*

An assignee of a conditional seller of fish canning equipment took the property subject to a lien in favor of the state for poundage fees owed by the cannery. Id.

3. Foreclosure

Equity has jurisdiction to foreclose a statutory lien; such jurisdiction may not be denied on the ground that the state has adequate remedy at law on bonds filed to cover poundage fees. *State v. Swensk*, (1939) 161 Or 281, 89 P2d 587.

The state was the real party in interest in an action to foreclose a lien for poundage fees, notwithstanding the fact that surety bonds had been filed to secure the payment of the fees. Id.

4. Estoppel and waiver

Estoppel against the state will not arise by reason of laches of the fish commission. *State v. Swensk*, (1939) 161 Or 281, 89 P2d 587.

The state is not estopped by reason of delay in bringing suit and by reason of the fact that the owner expended money in removing its property from the cannery. Id.

The fish commission has no power to waive a lien in favor of the state for poundage fees due. Id.

There was no waiver of the lien in favor of the state by reason of the fact that the surety bonds for the payment of poundage fees due were exacted. Id.

ATTY. GEN. OPINIONS: Foreclosure of lien for unpaid poundage fees on salmon and other fish, 1932-34, p 337; enforcement of lien for poundage fees against property leased by owner to person carrying on operations for which fees may be assessed, 1934-36, p 173; duty of fish commission to collect amount of interest fixed by court decree for closing poundage lien, 1936-38, p 361.

508.530

ATTY. GEN. OPINIONS: Extent of commission's authority to require reports, 1960-62, p 173; denial of license for non-payment of poundage fees, 1962-64, p 328; duty of Washington wholesaler to be licensed to deliver or pick up fish in Oregon, 1964-66, p 407.

508.535

ATTY. GEN. OPINIONS: Duty of Washington wholesaler to be licensed to deliver or pick up fish in Oregon, 1964-66, p 407.

508.540

ATTY. GEN. OPINIONS: Denial of license for non-payment of poundage fees, 1962-64, p 328.