

Chapter 776

Pilots and Pilotage

Chapter 776

NOTES OF DECISIONS

The word pilotage is used in an all-inclusive sense to mean every service performed by a pilot in accordance with his license and any acts of the pilot necessary to the ultimate performance of that service. *Powell v. State Bd. of Pilot Commrs.*, (1960) 244 Or 122, 355 P2d 224.

FURTHER CITATIONS: *Barbey Packing Corp. v. The S. S. Stavros*, (1959) 169 F Supp 897; *Brown v. Dept. of Rev.*, (1969) 3 OTR 481.

LAW REVIEW CITATIONS: 40 OLR 256.

776.025

NOTES OF DECISIONS

1. Under former similar statute

The state could permit pilots to cruise for vessels beyond the three mile limit. *The Whistler*, (1882) 8 Sawy 232, 13 Fed 295.

The state could enact laws regulating pilotage in the absence of federal legislation. *The Alcalde*, (1887) 30 Fed 133.

Since the Columbia River is a navigable water of the United States, the jurisdiction of Oregon over navigation thereon was not exclusive. *Id.*

Oregon had no authority to regulate the activities or compensation of pilots appointed by Washington. *Id.*

Congress could, if it desired, assume exclusive jurisdiction over the pilotage of vessels, although it was not required to do so. *State v. Ring*, (1927) 122 Or 644, 259 P 780, *aff'd*, 276 US 607, 48 S Ct 338, 72 L Ed 728.

FURTHER CITATIONS: *Powell v. State Bd. of Pilot Commrs.*, (1960) 224 Or 122, 355 P2d 224.

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CASE CITATIONS: *Ring v. Patterson*, (1931) 137 Or 234, 1 P2d 1105.

ATTY. GEN. OPINIONS: Authority of Governor to appoint more than three pilot commissioners, 1934-36, p 213.

LAW REVIEW CITATIONS: 40 OLR 255.

776.115

NOTES OF DECISIONS

1. In general

Where the board has jurisdiction to fix or review rates complained of, the only judicial review available is that provided by statute. *Powell v. State Bd. of Pilot Commrs.*, (1960) 224 Or 122, 355 P2d 224.

2. Under former similar statute

The charge for piloting a vessel over the Columbia River

bar was the same whether the pilot went aboard at the outermost buoy or at any distance beyond. *The Ullock*, (1884) 9 Sawy 634, 19 Fed 207.

A rule which provided that an offer of pilot service had to be made with "the usual code of signal" was ambiguous, if there was no code of such character. *Id.*

The courts would not interfere with the acts of the board unless they were arbitrary and in disregard of the statute. *Snow v. Reed*, (1887) 14 Or 342, 12 P 636.

It was the positive duty of the board to revoke the license of a pilot who had failed to discharge the duties imposed upon him. *Id.*

The board's jurisdiction over the licensing of pilots was exclusive. *Ring v. Patterson*, (1931) 137 Or 234, 1 P2d 1105.

Members of the commission functioned as quasi-judicial officers in exercising the discretion vested in them by the statute. *Caples v. McNaught*, (1934) 147 Or 72, 31 P2d 780.

The number of pilots that should be licensed rested in the board's discretion. *Id.*

The statute did not fix any minimum charge for pilots' services. *Id.*

FURTHER CITATIONS: *The Borrowdale*, (1889) 39 Fed 376; *State v. Turner*, (1898) 34 Or 173, 55 P 92, 56 P 645; *Portland Steamship Operators Assn. v. Bd. of Pilot Commrs.*, (1962) 232 Or 495, 375 P2d 420; *Brown v. Dept. of Rev.*, (1969) 3 OTR 481.

ATTY. GEN. OPINIONS: Procedure to be followed in conducting investigation of collision between vessels, 1924-26, p 292; suspension of license for violation of rules, 1926-28, p 316; right of board to take disciplinary action against a pilot after renewal of his license, 1926-28, p 324; prescribing physical qualifications for applicants, 1938-40, p 14; payment of compensation and expenses of Board of Pilot Commissioners, 1938-40, p 603; procedure by board for suspension of pilot whose federal license has been suspended, 1944-46, p 437; establishing regulation, including insurance premiums in rates, 1956-58, p 246.

LAW REVIEW CITATIONS: 17 OLR 145; 40 OLR 255.

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NOTES OF DECISIONS

Where the board has jurisdiction to fix or review rates complained of, the only judicial review available is that provided by statute. *Powell v. State Bd. of Pilot Commrs.*, (1960) 224 Or 122, 355 P2d 224.

LAW REVIEW CITATIONS: 40 OLR 258.

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NOTES OF DECISIONS

Under a former similar statute, on calling a meeting, the president was required to give due notice to the other commissioners. *Snow v. Reed*, (1887) 14 Or 342, 12 P 636.

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NOTES OF DECISIONS

1. Under former similar statute

The courts had no authority to issue pilots' licenses. Ring v. Patterson, (1931) 137 Or 234, 1 P2d 1105; Caples v. McNaught, (1934) 147 Or 72, 31 P2d 780.

An applicant could not compel issuance of a license in his favor by mandamus. Id.

Unless a person was known to have the necessary qualifications, he was not to be licensed as a pilot. Snow v. Reed, (1887) 14 Or 342, 12 P 636.

The fact that an applicant had a federal license did not make it necessary to issue him a state license. Ring v. Patterson, (1931) 137 Or 234, 1 P2d 1105.

A licensed pilot was not entitled to enjoin the commission from issuing licenses to applicants merely because there had been a marked decrease in ship movements. Caples v. McNaught, (1934) 147 Or 72, 31 P2d 780.

ATTY. GEN. OPINIONS: Necessity for stenographic report of examination of applicants, 1936-38, p 87.

776.325

NOTES OF DECISIONS

1. In general

The word pilotage is used in an all-inclusive sense to mean every service performed by a pilot in accordance with his license and any acts of the pilot necessary to the ultimate performance of that service. Powell v. State Bd. of Pilot Commrs., (1960) 224 Or 122, 355 P2d 224.

2. Under former similar statute

Knowledge of tides, currents, shoals, etc., did not alone make a competent pilot. Edwards v. S. S. Panama, (1861) 1 Or 418, Fed Cas No. 10,702.

A person tainted with suspicion of intemperance was not to be given a license. Snow v. Reed, (1887) 14 Or 342, 12 P 636.

A person who desired to pilot foreign ships was required to have greater qualifications than one serving only coastwise vessels. Ring v. Patterson, (1931) 137 Or 234, 1 P2d 1105.

ATTY. GEN. OPINIONS: Determination as to whether or not an applicant is qualified, 1926-28, p 482; interpretation of requirements, 1930-32, p 547; prescribing physical qualifications for applicants, 1938-40, p 14; authority for rules stating when pilotage services may be withheld, 1956-58, p 246.

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NOTES OF DECISIONS

Under former similar statute the right to renewal was a vested and valuable one, of which the licensee could not be divested without notice. Patterson v. Pilot Comm'rs, (1897) 30 Or 301, 47 P 786.

Under former similar statute there was no merit in the contention that the statute applied only when nonrenewal was based upon a ground that was personal to the particular pilot. Id.

ATTY. GEN. OPINIONS: Refusal of license because of inactivity for more than one year, 1920-22, p 307; necessity for notice before revocation of license, 1920-22, p 371; authority of board to refuse renewal to applicants beyond a stated age, 1936-38, p 88.

LAW REVIEW CITATIONS: 40 OLR 255.

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ATTY. GEN. OPINIONS: Payment of compensation and expenses of Board of Pilot Commissioners, 1938-40, p 603.

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NOTES OF DECISIONS

1. Under former similar statute

Where the board had jurisdiction to fix or review rates complained of, the only judicial review available was that provided by statute. Powell v. State Bd. of Pilot Commrs., (1960) 224 Or 122, 355 P2d 224.

Findings of fact would not support an order unless based upon evidence. Portland Steamship Operators Assn. v. Board of Pilot Commrs., (1962) 232 Or 495, 375 P2d 420.

The requirement that findings be supported by identifiable evidence rested upon the ground that a party adversely affected by the administrative order should have an opportunity for cross-examination and to offer evidence in rebuttal. Id.

Findings supported by evidence were required so the court, in reviewing administrative action, could determine whether the administrative agency acted within the limits of the authority granted to it. Id.

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NOTES OF DECISIONS

1. Under former similar statute

(1) In general. A pilot was a person whose business was to take charge and control of a vessel at a particular place for the purpose of guiding it through a river or channel or from or into a port. State v. Turner, (1898) 34 Or 173, 55 P 92, 56 P 645.

A tugboat master who directed the movements of a vessel lashed to his craft through instructions issued to its crew was not subject to prosecution under the statute. Id.

The state had authority to require a pilot having a federal license to take out an Oregon license also. State v. Ring, (1927) 122 Or 644, 259 P 780, aff'd, 276 US 607, 48 S Ct 338, 72 L Ed 728.

The same standard of care is required of a pilot regardless of whether he was hired under a compulsory or noncompulsory pilotage Act. Barbey Packing Corp. v. S.S. Stavros, (1959) 169 F Supp 897.

(2) Constitutionality. The statute was not nullified by the fact that it was broad enough to cover that part of pilot regulation which had been assumed by Congress. State v. Ring, (1927) 122 Or 644, 259 P 780, aff'd, 276 US 607, 48 S Ct 338, 72 L Ed 728.

So much of the statute as conflicted with U.S.C.A., ch. 10, was dormant and unenforceable, but not unconstitutional. State v. Ring, (1927) 122 Or 644, 259 P 780, aff'd, 276 US 607, 48 S Ct 338, 72 L Ed 728; Wadsworth v. Brigham, (1928) 125 Or 428, 259 P 299, 266 P 875.

FURTHER CITATIONS: Brown v. Dept. of Rev., (1969) 3 OTR 481.

776.415

NOTES OF DECISIONS

The same standard of care is required of a pilot regardless of whether he was hired under a compulsory or noncompulsory pilotage Act. Barbey Packing Corp. v. S.S. Stavros, (1959) 169 F Supp 897.

LAW REVIEW CITATIONS: 40 OLR 255, 256.

776.425**NOTES OF DECISIONS**

Under former similar statute, a pilot was not in command of the vessel he was navigating, but, on the contrary, was subject to the control of the master. *McGrath v. Nolan*, (1936) 83 F2d 746.

FURTHER CITATIONS: *The Alcalde*, (1887) 30 Fed 133.

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ATTY. GEN. OPINIONS: Authority for rules stating when pilotage services may be withheld, 1956-58, p 246.

776.465**NOTES OF DECISIONS****1. Under former similar statute**

The proceedings authorized did not need to be conducted with the strictness prevailing in a court of justice. *Snow v. Reed*, (1887) 14 Or 342, 12 P 636.

The requirement of notice had to be substantially complied with. *Id.*

The commissioners could employ an attorney to advise them at the hearing. *Id.*

The fact that the members of the board failed to be present at the time fixed for the hearing did not deprive it of jurisdiction. *Id.*

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CASE CITATIONS: *Brown v. Dept. of Rev.*, (1969) 3 OTR 481.

776.520**NOTES OF DECISIONS**

Under former similar statute a pilot's association was not responsible for the negligence of a member in navigating a vessel unless he was engaged in association business at the time. *McGrath v. Nolan*, (1936) 83 F2d 746.

FURTHER CITATIONS: *Brown v. Dept. of Rev.*, (1969) 3 OTR 481.

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LAW REVIEW CITATIONS: 40 OLR 255.