

Chapter 780

Improvement and Use of Navigable Streams

Chapter 780

ATTY. GEN. OPINIONS: Legislative power over submerged lands in navigable rivers and streams, 1950-52, p 274.

780.010

ATTY. GEN. OPINIONS: Legislative power over submerged lands in navigable rivers and streams, 1950-52, p 274.

780.040

NOTES OF DECISIONS

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See also cases under ORS 780.050.

1. In general

This section and H 4228 [ORS 780.050] are not a grant; they simply authorize upland owners to construct wharves in front of their land; they do not vest any right until exercised; they are a license, revocable at the pleasure of the legislature, until acted upon or availed of. *Bowlby v. Shively*, (1892) 22 Or 410, 420, 30 P 154, *aff'd*, 152 US 1, 14 S Ct 548, 38 L Ed 331.

A riparian owner's wharf may not be taken for public use without just compensation. *Lewis v. Portland*, (1893) 25 Or 133, 135, 35 P 256, 42 Am St Rep 772, 22 LRA 736.

The upland owner is given a preference right or license to occupy land under water for wharfage purposes, the exercise of which becomes a vested right. *Grant v. Ore. Nav. Co.*, (1907) 49 Or 324, 90 P 178, 1099.

This section and LOL 5202 [ORS 780.050] are in aid of navigation and commerce, and therefore a valid use of the property that came to the state upon its being granted statehood. *Pacific Elevator Co. v. Portland*, (1913) 65 Or 349, 382, 401, 133 P 72, 46 LRA(NS) 363.

An owner of a wharf constructed under authority of this section and OCLA 121-202 [ORS 780.050] is not required to use it in any particular manner. *Miles v. Spokane, Portland & Seattle Ry. Co.*, (1945) 176 Or 118, 155 P2d 938.

2. Transfer of wharf privilege

A reservation of privileges around a riparian lot constitutes a reservation of the wharfing privilege. *Parker v. Rogers*, (1879) 8 Or 183.

The landowner may transfer to another the privilege to build a wharf. *McCann v. Ore. Ry. & Nav. Co.*, (1886) 13 Or 455, 463, 11 P 236; *Welch v. Ore. Ry. & Nav. Co.*, (1899) 34 Or 447, 450, 56 P 417.

An owner who transfers his wharf privileges is estopped from objecting to the maintenance of a wharf on the faith of his conveyance, even though he acquires from the state the tideland between the upland and the wharf. *McCann v. Ore. Ry. & Nav. Co.*, (1886) 13 Or 455, 463, 11 P 236;

Welch v. Ore. Ry. & Nav. Co., (1899) 34 Or 447, 450, 56 P 417.

Where a party conveys land bounded by water, it will not be presumed that he reserves wharf rights in front of the land conveyed. *Rasmussen v. Walker Whse. Co.*, (1913) 68 Or 316, 327, 136 P 661.

3. Land not in incorporated town

This section and H 4228 [ORS 780.050] apply to area which was unincorporated when such sections were passed, the boundaries of the city having been extended beyond such land. *Lewis v. Portland*, (1893) 25 Or 133, 135, 35 P 256, 42 Am St Rep 772, 22 LRA 736; *Pacific Elevator Co. v. Portland*, (1913) 65 Or 349, 382, 133 P 72, 46 LRA(NS) 363.

4. Location of wharf

Riparian owners are entitled to wharf within side lines drawn at right angles with the thread of the stream and intersecting the boundary lines of the land at ordinary high-water mark; and the right is not affected at all by the establishment of wharf lines. *Montgomery v. Shaver*, (1901) 40 Or 244, 66 P 923.

A wharf right may be lost to the upland owner by prescription; so a riparian owner erecting and using a wharf which encroaches on the waterfront of an adjacent riparian owner acquires title by adverse possession. *Id.*

The riparian owner may not construct a wharf except in front of his upland. *Oregon Coal & Nav. Co. v. Anderson*, (1913) 124 CCA 286, 206 Fed 404, 408.

This section must be read in conjunction with ORS 780.050 and when within a city a wharf must be constructed in conformance with municipal regulations and upon application to city officials. *Port of Portland v. Reeder*, (1955) 203 Or 369, 280 P2d 324.

5. Extension of wharf to deep water

The shore owner may extend wharves from his land into navigable water so far as is necessary or convenient to accommodate shipping, provided he does not impede navigation and conforms to restrictions imposed upon him by the town. *Parker v. Taylor*, (1879) 7 Or 435, 446.

The owner may extend a wharf to the ship's channel or navigable water. *Montgomery v. Shaver*, (1901) 40 Or 244, 66 P 923.

FURTHER CITATIONS: *Feldman v. Tidewater Mill Co.*, (1915) 78 Or 1, 152 P 268; *Gatt v. Hurlburt*, (1930) 132 Or 415, 286 P 151; *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.*, (1968) 250 Or 612, 443 P2d 205.

ATTY. GEN. OPINIONS: Pier built across tidelands as a trespass upon state property, 1928-30, p 526; regulation of structures in waters within cities and ports, (1968) Vol 34, p 370.

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NOTES OF DECISIONS

See also cases under ORS 780.040.

A city may prohibit or control the erection of wharves beyond low-water mark in navigable streams. *Portland v. Montgomery*, (1900) 38 Or 215, 62 P 755.

This section does not empower a municipality to authorize a riparian owner to extend his wharf in front of the lands of an adjoining riparian owner. *Montgomery v. Shaver*, (1901) 40 Or 244, 66 P 923.

H 4227 [ORS 780.040] and this section are intended to give the municipal corporation power to limit the extension of wharves on navigable waters beyond low-water mark, and does not pretend to give the town any interest in or control over the shore between high-and low-water mark. *Case v.*

Toftus, (1889) 39 Fed 730, 5 LRA 684; *Case v. Loftus*, (1890) 43 Fed 839, 841.

A vested right did not accrue when a wharf was constructed without the consent of city officials. *Port of Portland v. Reeder*, (1955) 203 Or 369, 280 P2d 324.

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

ATTY. GEN. OPINIONS: Authority of State Land Board to require permits for installation of wharves, piers or booms, 1946-48, p 291.