

Decision No. 965

ORIGINAL

In the matter of the Application of CALIFORNIA AND HAWAIIAN SUGAR REFINING COMPANY, a corporation, for the approval of a sale and award by the Board of Supervisors of the County of Contra Costa, State of California, of a wharf franchise in said county of Contra Costa to said California and Hawaiian Sugar refining Company, and of Ordinance No. 131, granting the same.

Application No. 749.

Donald Y. Campbell for applicant.

THELEN, Commissioner.

O P I N I O N.

This is an application for the approval by this Commission of the sale and award by the Board of Supervisors of Contra Costa county, of a wharf franchise in said county to the California and Hawaiian Sugar Refining Company and of Ordinance No. 131 of said Board of Supervisors, approved September 15, 1913, granting the franchise.

The application to this Commission is made under the provisions of Chapter 557 of the Laws of 1913, reading as follows:

"Section 1. Section 2906 of the Political Code of the State of California is hereby amended to read as follows:

'2906. The boards of supervisors of every county in this state may, upon approval of the Railroad Commission, grant authority to any person or corporation to construct a wharf, chute, or pier, on any lands bordering on any navigable bay, lake, inlet, creek, slough or arm of the sea, situate in or bounding their counties, respectively, with a license to take tolls for the use of the same for the term of twenty years.' "

The amendment to the existing section 2906 of the Political Code consists in the insertion of the words "upon approval of the Railroad Commission." Heretofore the power to grant such franchises has vested exclusively in the boards of supervisors. It is now provided that none of these wharf franchises shall take effect until they are approved by the Railroad Commission.

Some doubt has been expressed as to whether this statute is applicable to a corporation such as the California and Hawaiian Sugar Refining Company, which corporation is operated primarily for the purpose of refining raw sugars. If the Company collects tolls for the use of its wharves, it will thereby bring itself within the class of wharfingers who are public utilities, under the provisions of the Public Utilities Act. In such event, the statute would seem to be clearly constitutional as applicable to such a company. On the other hand, if the Company collects no tolls and in no way engages in a public utility business, but uses the wharves and warehouses solely for its own purposes in connection with its refining of raw sugars, there may be some question as to whether the statute is constitutional in so far as it applies to such a company. This Commission, however, must assume that the statutes of the Legislature are constitutional and must proceed to exercise the powers which the Legislature directs it to exercise. If any statute affecting the powers and duties of this Commission is to be declared unconstitutional in any respect, the declaration must be made by the courts and not by this Commission.

The applicant in this proceeding has requested this Commission's approval to the grant of the wharf franchise so that there may be no question as to any flaw in its title.

Applicant is a California corporation, engaged principally in the refining of raw sugars at the town of Crockett, on the straits of Carquinez, in Contra Costa County. It is the owner and has heretofore enjoyed the use of two certain wharf franchises, one of them granted by the Board of Supervisors on February 5, 1883, to A. D. Starr for a term of 20 years, and the other granted by the Board of Supervisors on May 3, 1887, to Starr and Company for a like term. On December 1, 1902, each of these franchises was renewed and extended by the Board of Supervisors of Contra Costa county to the California and Hawaiian Sugar Refining Company for a period of 20 years.

On August 4, 1913, petitioner applied to the Board of Supervisors of Contra Costa County, under the act approved March 22, 1905, commonly known as the Broughton Act, and the amendment thereof, approved March 3, 1909, for a new wharf franchise for the period of 20 years, which franchise is the subject of this application. Applicant asks for authority to maintain and operate wharves on certain lands situate on the southerly shore of the straits of Carquinez, in Judicial District No. 12, Supervisors' District No. 2, Road District No. 1, Contra Costa County, State of California, being a portion of the southwest quarter of section 32, township 3 north, range 3 west, M.D.B. & M. The land included in this application for a wharf franchise covers a portion of the lands described in the two existing franchises and also certain additional land. The land sought to be used under the new wharf franchise is alleged to be public tide land belonging to the State of California. Applicant has recently constructed a wharf or pier resting upon concrete piles or piers and has built thereon a concrete and steel warehouse. Applicant feels that in order to protect this investment, it should have a new franchise running for 20 years. Applicant also intends hereafter from time to time to spend additional substantial amounts in the construction of wharves and buildings on the property covered by the proposed franchise.

On September 15, 1913, by said Ordinance No. 131, the Board of Supervisors of Contra Costa county awarded to applicant the wharf franchise as applied for upon the payment by the applicant of the sum of \$250.00. The franchise contains the usual provisions of the Broughton Act to the effect that the grantee of the franchise must, during the life of the franchise, pay to Contra Costa county 2% of the gross annual receipts of the tolls arising from the use, operation and possession of the franchise, provided, however, that no percentage shall be paid for the first five years succeeding the date and taking effect of the franchise. Just how this percentage is to be computed is not clear, but it is not necessary to pass upon this question at this time.

Section 5 of the ordinance provides that it shall take effect 30 days after its passage and after publication thereof at least one week within 15 days from and after the date of its passage, and also only upon the approval of the Railroad Commission. The action on the part of the Board of Supervisors of Contra Costa county shows that they are satisfied with the application. I see no reason for reaching a contrary conclusion and recommend that the application be granted.

I submit herewith the following form of order:

O R D E R.

CALIFORNIA AND HAWAIIAN SUGAR REFINING COMPANY having applied to this Commission, under the provisions of Chapter 557 of the Laws of 1913, for its approval of the sale and award by the Board of Supervisors of Contra Costa county, State of California, of a wharf franchise in said county of Contra Costa to said California and Hawaiian Sugar Refining Company, and for the approval of Ordinance No. 131 of said Board of Supervisors granting said franchise, and a public hearing having been held upon said application, and no good reason appearing to the contrary,

IT IS HEREBY ORDERED that the sale and award of said wharf franchise by said Board of Supervisors to said California and Hawaiian Sugar Refining Company be and the same is hereby approved and that Ordinance No. 131 of said Board of Supervisors granting to said California and Hawaiian Sugar Refining Company said franchise be and the same is hereby approved; and,

IT IS FURTHER ORDERED, that the applicant file with the Clerk of the Board of Supervisors of said Contra Costa county a certified copy of this order.

This order shall go into effect and full force immediately.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission

of the State of California.

Dated at San Francisco, California, this 23<sup>rd</sup> day of  
September, 1913.

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*Alex Gordon*

*Wm. Thelen*

*Edwin C. Edgerton*

Commissioners.