



CITY OF SAN DIEGO

SAN DIEGO, CALIFORNIA

OFFICE OF
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April 23, 1926.

To the Honorable, The Mayor and Common Council
of The City of San Diego, California.

Gentlemen:

Document No. 187621, being the application of M. E. Metcalf and B. A. Bascue, for tide land lease, has been referred to this office. The petition states that the lease is desired for the purpose of constructing and maintaining on the tide lands a crystal ice palace auditorium that will bring winter sports to San Diego, and that between seasons the auditorium can be used for auto shows, conventions and public gatherings.

The question arises at once as to whether or not the tide lands held by the City of San Diego under a grant from the State of California can be used for the purpose outlined. The tide land act under which the city controls the tide lands (Statutes of 1911, page 1357, as amended), contains the following section:

"The City of San Diego shall have and there is hereby granted to it the right to make upon said premises all improvements, betterments and structures of every kind and character proper, needful and useful for the development of commerce, navigation and fishing, including the construction of all wharves, docks, piers, slips and the construction and operation of a municipal belt line railroad in connection with said dock system."

In the early case of Ward v. Mulford, 32 Cal. 365, the Supreme Court had occasion to pass upon the character of owner-

ship of tide lands by the State of California, and it was there said:

"The land which the state holds by virtue of her sovereignty, as is well understood, is such as is covered and uncovered by the flow and ebb of the neap or ordinary tides. Such land is held by the state in trust and for the benefit of the people. The right of the state is subservient to the public rights of navigation and fishery, and theoretically, at least, the state can make no disposition of them prejudicial to the right of the public to use them for the purposes of navigation and fishery, and whatever disposition she does make of them her grantee takes them upon the same terms upon which she holds them, and of course subject to the public rights above mentioned."

The City of San Diego therefore is limited in its control of tide lands and in disposing of tide lands, to develop them for purposes of commerce, navigation and fisheries. The City of San Diego cannot itself use the tide lands for purposes other than those outlined. A lessee of a tide land lease could not therefore use them for any purpose other than that outlined in the act granting the tide lands to the City. We are compelled to the opinion, therefore, that the petition in question cannot legally be granted, unless it could be shown that a skating rink of the character outlined in the petition comes within the meaning of the terms "commerce, navigation and fisheries."

This question has often been raised and presented to the Common Council. On October 13, 1915, this office advised the Common Council that no portion of the public tide lands could be used for playground purposes. On February 1st, 1916, the Common Council was advised that the tide lands could not be used for the purpose of establishing thereon a proposed city

market. On October 26th, 1917, the Common Council was advised that the tide lands could not be used for the purpose of constructing thereon a building to be used as a permanent exhibition of farm products, farm implements and machinery, and on June 18th, 1918, it was held by the City Attorney's office that the tide lands could not be used for the purpose of carrying on the business of a public restaurant.

It must be apparent to every one that carrying on the business of a skating rink does not aid navigation, and such business could not possibly be construed as relating to fisheries. Commerce has many times been defined by the Supreme Courts of the United States and of the various states, including that of California. The definition generally given defines commerce as being not only the exchange of commodities, but intercourse with foreign nations and the transportation of passengers. It is generally meant to include intercourse between the various states and nations, traffic of all kinds, and navigation on the seas. The business of conducting an ice rink does not fit in with any of these definitions, and in our opinion cannot be upheld as a use consistent with the use specified by the tide land act for the tide lands of the Bay of San Diego.

The Act of 1911 granting the tide lands to the City provides that in the event the City violates any of its terms or provisions the land shall be forfeited to the State. In view of this clause, we are constrained to advise your Honorable Body that the petition in question must be denied, for the reason that

tide lands cannot be used for the purpose of maintaining a skating rink thereon. To permit such use would be to jeopardize the city's control over said tide lands.

In view of the fact that knowledge has come to us that the Harbor Commission proposes using certain of the tide lands for recreation centers, baseball grounds, etc., it is respectfully suggested that a copy of this opinion be sent by the Common Council to the Harbor Commission for its consideration.

Respectfully submitted,

S. J. Higgins
City Attorney.

SJH/S

DOCUMENT No. 188419

APR 26 1926

Filed

ALLEN H. WRIGHT

FRED W. SICK

City Clerk

By

Deputy

COMMUNICATION

FROM

City Attorney

Re tideland lease for skating
rink

*File
Sick*

Presented to Finance Board

APR 26 1926