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THE LIGHTERAGE ORDINANCE 1931

Western Samoa

No. 5, 1931.



AN ORDINANCE

made by the Administrator of the Territory of Western Samoa with the advice and consent of the Legislative Council of that Territory, and in pursuance of the Samoa Act, 1921.

Short Title.

1. This Ordinance may be cited as "The Lighterage Ordinance, 1931."

Interpretation.

2. In this Ordinance if not inconsistent with the context:
"Administrator" means the Administrator of Western Samoa;
"Cargo" includes goods, effects, produce, merchandise and live and dead stock of every description;
"Gazette" means the Western Samoa Gazette;
"Inter Island Vessel" means any vessel under one hundred tons register which plies for the carriage of cargo or passengers or both between Samoa and any islands in the South Pacific Ocean and which is owned by or under charter to any person carrying on business in Samoa and is used in connexion with such business.
"Lighterage" or "Lighterage Work" means and includes
 - (a) the due conveyance of all cargo entering or leaving the port of Apia between the shore and the overseas vessel in which such cargo so enters or leaves,
 - (b) the due storage of all cargo received for lighterage,
 - (c) the due delivery of all cargo received for lighterage;

(d) the due conveyance storage and delivery as aforesaid of all cargo entering the port of Apia on or in any inter island vessel but only when the whole or part of such cargo is consigned to two or more consignees other than or in addition to the owner or charterer of such vessel,

(e) the due storage and delivery as aforesaid of all cargo entering the port of Apia and landed directly on a wharf from an overseas vessel or from an inter island vessel if the cargo of the inter island vessel is consigned to two or more consignees other than or in addition to the owner or charterer thereof.

"Overseas Vessel" means any vessel other than an inter island vessel in the port of Apia which has arrived from any port outside Samoa or is waiting to sail to any such port;

"Port of Apia" means the port of Apia as defined by "The Samoa Customs Consolidation Order, 1923";

"Samoa" means the Territory of Western Samoa as defined in the second schedule to "The Samoa Act, 1921";

"Wharf" means a wharf within the meaning of "The Samoa Customs Consolidation Order, 1923."

License for
Lighterage

3. (1) The Administrator may from time to time and for such period and upon such terms and conditions as he shall think fit grant to any person a license to undertake and perform exclusively the lighterage work for the Port of Apia.

(2) If and when the Administrator is satisfied that the granting of such a license is necessary or expedient in the public interest he may prepare or cause to be prepared the terms and conditions upon which he will grant the same.

(3) As soon as practicable after the preparation of the said terms and conditions the Administrator shall invite applications for the grant of the license by public advertisement in a newspaper published and circulating in Samoa.

(4) Every applicant for the said license shall set out in his application in such manner as the Administrator may specify

(a) the consideration that he is willing to pay for the privileges to be granted under the license.

(b) the charges he will levy in respect of the said lighterage work

(c) such other matters and things that the Administrator may require

And such applicant shall contemporaneously with the making of his application deposit such sum as the Administrator may require to be held by the Administration as security for the due performance by the applicant of the terms and conditions subject to which the said license may be granted.

(5) The Administrator may refuse to grant any application.

(6) The terms and conditions upon and subject to which any license has been granted under this section may be enforced by the Administrator in the same way as if the said terms and conditions comprised a contract between the Administrator and the licensee.

(7) The Administrator may by writing under his hand cause to be forfeited to the Administration of Samoa the sum deposited in accordance with subsection (4) hereof or such part thereof as the Administrator may consider adequate as a penalty for the breach or non performance of any of the said terms and conditions but subject thereto the said sum shall be returned to the applicant upon the expiration of the said license.

4. (1) It shall not be lawful for any person (other than the licensee) during the continuance of a license granted under the provisions of the last preceding section hereof

Protection of Licensee

(a) to commence or carry on or take part in the business of lighterage in the Port of Apia,

(b) to undertake or take part in lighterage work of any description in the Port of Apia either on his own behalf or on behalf of any other person.

(2) Any person who acts in contravention of the provisions of the last preceding subsection commits an offence and shall be liable to a penalty of one hundred pounds for each offence together with an additional penalty of twenty pounds for each day after the first during which the said offence shall continue.

(3) The High Court shall have power on the application of any licensee to restrain any person from infringing or continuing to infringe the licensee's rights under any license granted to him under section 3 hereof and to award damages for any loss the licensee may have suffered by reason of such infringement.

(4) Any proceedings under the last preceding subsection shall be by way of motion in accordance with the rules of the Court.

5. (1) The Administrator may at any time when a license under the provisions of section 3 hereof is not in force by proclamation published in the Gazette prohibit any person other than a servant of and acting for the Administration from

Control by Administration

(a) commencing or carrying on the business of lighterage in the Port of Apia,

(b) undertaking or taking part in lighterage work of any description in the Port of Apia either on his own account or on behalf of any other person.

(2) Any person who acts in contravention of the provisions of any proclamation made under the provisions of the last preceding subsection commits an offence and shall be liable to a penalty of one hundred pounds for each offence together with an additional penalty of twenty pounds for each day after the first during which the said offence shall continue.

6. (1) No action of any kind shall lie against His Majesty, the Administration of Samoa, or the Administrator

Protection of Administration

(a) for or in respect of any act, matter, or thing done or omitted by any licensee while acting under or purporting to act in pursuance of a license granted under the provisions of section 3 hereof,

(b) at the suit of any licensee for or in respect of the infringement by any person of the licensee's rights under the said license,

(2) Nothing in the last preceding subsection shall affect the rights or the liabilities (whether civil or criminal) of any other person.

Licenses to
have lien
over lighter-
ed cargo

7. (1) The licensee shall have a lien over all lightered cargo for the amount of any charges thereon lawfully leviable by him.

(2) In the event of a sale of any such cargo by the Collector of Customs under Section 128 of "The Customs Act, 1913" the Collector after first satisfying any duty charged on such goods may satisfy the lien thereon of the licensee.

(3) If the consignee of lightered cargo shall fail to pay the lighterage charges thereon lawfully payable by him within three months from the date on which the licensee accepted the said cargo for lighterage the licensee may at any time thereafter (but with the consent in writing of the Collector first had and obtained) sell the said cargo by public auction and apply the proceeds of such sale towards the satisfaction of his said lien and the costs of the sale.

General
Exemptions

8. The provisions of this Ordinance shall not apply to

- (a) ships' stores while being conveyed between the shore and an overseas vessel in boats belonging to the vessel,
- (b) articles or things in the nature of personal luggage or effects while being conveyed to or from the shore in a boat licensed to ply for the carriage of passengers for hire in the Harbour of Apia or in a boat used for private personal purposes.

Assented to this 17th day of December, 1931.

H. HART,

Administrator.

(L.S.)

By Authority:
The Samoa Times Printing and Publishing Company, Ltd.,
Apia, Western Samoa.

1931