

other sections of the Education Code has considered the plight of schools forced to close because of an emergency including impassable roads.

Section 11651 provides:

"Where a school in a district maintaining more than one school is closed for a part of a term by order of a city or county board of health . . . , or because of fire, flood, *impassable roads*, epidemic, or other emergency, . . . the average daily attendance of the school shall be estimated separately, as provided in Section 11653, and added to the average daily attendance of the other schools of the district." (Italics added.)

Section 11653 provides:

"Whenever the average daily attendance of any school district during any fiscal year has been materially decreased during any fiscal year because of fire, flood, *impassable roads*, epidemic, or other emergency, . . . which fact shall be established to the satisfaction of the Superintendent of Public Instruction by affidavits of the members of the governing board of the school district and the county superintendent of schools, the average daily attendance of the district for the fiscal year shall be estimated by the Superintendent of Public Instruction in such manner as to credit to the school district for determining the apportionments to be made to the district from the State School Fund approximately the total average daily attendance which would have been credited to the school district had the emergency not occurred. . . ." (Italics added.)

Section 17553 makes provision for a district to receive the same apportionment from the State School Fund that it otherwise would have received if it is prevented from maintaining school the minimum number of days prescribed by section 17551 for certain designated reasons including "extraordinary conditions".

It is obvious that the Legislature, thus having made provision for computation of average daily attendance and apportionment from the State School Fund when a school is closed due to an emergency, did not intend that days lost for the reasons enumerated in those sections could be made up by holding classes on days that would otherwise be a holiday.

If the governing board is concerned with lost instruction days, we find no reason why the school term could not commence earlier in the year or close later in the year.

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Opinion No. 59-184—August 26, 1959

**SUBJECT:** TIDELANDS REVENUE—City of Hermosa Beach may not use, to level public beach for recreational purposes where statutory grant to the city does not include use of tidelands for recreation.

**Requested by:** ASSEMBLYMAN 46th DISTRICT.

**Opinion by:** STANLEY MOSK, Attorney General.  
S. Clark Moore, Deputy.

The Honorable Charles Edward Chapel, Assemblyman, 46th District, has requested the opinion of this office on the following question:

May the City of Hermosa Beach use tidelands trust income to redistribute sand that has accumulated against a retaining wall thereby impairing the public's access to the adjoining beach?

The conclusion may be summarized as follows:

The City of Hermosa Beach may not expend tidelands trust revenue in order to level a public beach for recreational uses where the statutory grant to said city does not include the use of the granted tidelands for recreational purposes.

#### ANALYSIS

The City of Hermosa Beach owns a public beach located upon both tidelands granted in trust and uplands granted by private parties. The part located upon granted tidelands is only a small portion of the beach and the remainder is a strip of land some 200 feet wide that extends from the line of ordinary high tide to a concrete abutment known as Strand Wall. The purpose of the Strand Wall is to prevent sand from shifting onto Strand Walk, a public walk on the beach. Gaps in the wall provide access to the adjoining beach. Over the years the wind has caused the sand to accumulate against this wall and at the present time it is beginning to shift across it and block the entrances to the beach from Strand Walk. By expending tidelands revenues, the city wishes to redistribute this sand onto the uplands beach in order to protect Strand Walk and to make the beach more accessible and usable by the public. It is our understanding that such redistribution of sand is totally unrelated to commerce and navigation.

In 1919 the state of California granted to the City of Hermosa Beach, in trust, all tidelands within its boundaries. (Stats. 1919, ch. 479, pp. 941-942.) This grant, in part, provided that:

"Said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor and for the establishment and construction of bulkheads or breakwaters for the protection of lands within its boundaries, or for the protection of its harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion or accommodation of commerce and navigation, and the protection of the lands within said city, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; . . ."

The aforesaid statutory grant does not designate recreational use of the granted tidelands as an express trust use, nor does it specifically refer to public beaches or parks.

Any interest which a city has in tidelands acquired by grant from the Legislature is subject to a public trust for the benefit of the entire state. (*Mallon v.*

*City of Long Beach*, 44 Cal. 2d 199, 209.) Tidelands trust monies may not be used for general municipal purposes. (*City of Long Beach v. Morse*, 31 Cal. 2d 254.)

This office has heretofore held in 33 Ops. Cal. Atty. Gen. 152 that tidelands trust funds may be used to maintain and operate a public beach on granted tidelands where the grant (Stats. 1925, ch. 102, p. 235, and Stats. 1935, ch. 158, pp. 793-795) expressly designates the maintenance of a "public park, parkway, highway, [or] playground" as a tidelands trust purpose. As heretofore stated, in the instant case there is no provision in the grant designating recreation as a tidelands trust purpose. Since recreational use is not a statutory trust purpose under this particular tidelands grant, there is no legislative authorization for the City of Hermosa Beach to expend tidelands trust income on maintenance and operation of its public beaches even if located on granted tidelands. Clearly, tidelands trust monies cannot be used to maintain a public beach on uplands.

As the lands in question were granted in trust for commerce and navigation, any proposed expenditure by the city of tidelands trust funds must benefit commerce and navigation.

For the reasons hereinabove set forth, it is concluded that tidelands trust funds cannot be used for leveling the public beach area herein involved or to redistribute sand thereon.

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Opinion No. 59-160—August 27, 1959

**SUBJECT:** INDUSTRIAL LOAN COMPANY—Paid-in capital necessary after September 18, 1959, to open or commence business in branch office.

**Requested by:** COMMISSIONER OF CORPORATIONS.

**Opinion by:** STANLEY MOSK, Attorney General.  
Victor Griffith, Deputy.

Honorable John G. Sobieski, Commissioner of Corporations, has requested the opinion of this office on the following question:

What is the minimum paid-in capital requirement where an existing industrial loan company plans to open or commence business in a branch office after September 18, 1959?

The conclusion may be summarized as follows:

Before opening or commencing business in a branch office after September 18, 1959, an industrial loan company shall have, and shall thereafter maintain, so long as the branch is operated, paid-in capital in the amount of \$25,000 in addition to the \$300,000 capital required by Financial Code section 18203.5.

#### ANALYSIS

Financial Code (all references herein are to the Financial Code unless otherwise specified) section 18203 provides:

"The capital stock of any corporation incorporated under this division shall not be less than the following amounts: