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1. SKYWAY PARK AND SKYWAY LODGE—UNITED STATES DID NOT ACCEPT EXCLUSIVE JURISDICTION—PROPERTY ACQUIRED BY NATIONAL HOUSING AGENCY—AUTHORITY TITLE 42, SECTION 1521 ET SEQ., U. S. C., LANHAM ACT.
2. WHEN SUCH LAND TRANSFERRED TO ANOTHER GOVERNMENTAL DEPARTMENT—UNITED STATES MAY ACCEPT EXCLUSIVE JURISDICTION—TITLE 40, SECTION 255, U. S. C.
3. WHEN PROPERTY ACCEPTED BY UNITED STATES, INHABITANTS LOSE THEIR RIGHT TO VOTE AS ELECTORS OF SKYWAY PARK PRECINCT, BATH TOWNSHIP, GREENE COUNTY, OHIO.
4. EXCLUSIVE JURISDICTION OF PROPERTY HAS BEEN ACCEPTED BY UNITED STATES—LETTER, NOVEMBER 4, 1949, SENT TO GOVERNOR OF OHIO BY DEPARTMENT OF AIR FORCE OF UNITED STATES.

SYLLABUS:

1. The United States did not accept exclusive jurisdiction over Skyway Park and Skyway Lodge which were acquired by the National Housing Agency under authority of Title 42, Section 1521, et seq., U.S.C., commonly known as the Lanham Act.

2. When such land has been transferred to another governmental department, the United States may then accept exclusive jurisdiction by authority of Title 40, Section 255, U. S. C.

3. When exclusive jurisdiction of Skyway Park and Skyway Lodge has been accepted by the United States, the inhabitants lose their right to vote as electors of Skyway Park Precinct, Bath Township, Greene County, Ohio.

4. Exclusive jurisdiction of Skyway Park and Skyway Lodge has been accepted by the United States by a letter of November 4, 1949, which was sent to the Governor of Ohio by the Department of Air Force of the United States.

Columbus, Ohio, April 28, 1950

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of Elections of Greene County have requested this office for a ruling as to whether or not the residents of what is known in Greene County as Skyway Park and Skyway Lodge (who are otherwise qualified to vote) now have the right to vote at the coming primary election in this county.

"Skyway Park and Skyway Lodge were originally acquired by the Federal Housing Authority as housing projects numbers OH-33263 and OH-33286, in civil action numbered 247 in the U. S. District Court for the Southern District of Ohio, wherein the U. S. A. was petitioner and George W. Warner and others were defendants. The original acquisition was under authority of the Lanham Act (Title 42, Section 1521 et seq. U. S. C.) which Act authorized the acquisition of lands for the purpose of providing housing for persons engaged in national defense activities and their families which said act provides as follows:

'Notwithstanding any other provision of law, the acquisition by the administrator of any real property pursuant to this Act (sub chapters II-IV) shall not deprive any state or political subdivision thereof * * * of its civil or criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property.'

"It was contested in the case of Ralph O. Spahr versus Robert E. Crone et al in Case 31911 of the Supreme Court of the State of Ohio that the residents of Skyway Park and Skyway Lodge did not have civil rights to vote within the area of Greene County and the State of Ohio. The Court held differently both the Common Pleas Court and the Supreme Court and attached hereto is a copy of the Opinion of Judge McDowell who decided the case in Common Pleas Court in this County.

"It is now purported that the Secretary of the Air Force, under date of November 4, 1949, has communicated by letter to the Governor of the State of Ohio that the Secretary of the Air Force has now accepted, for the U. S. Government, exclusive jurisdiction in Skyway Park and Skyway Lodge, basing such acceptance of exclusive jurisdiction upon the transfer of this territory from the National Housing Administration to the War

Department for permanently assigned persons to the Army Air Forces, Technical Base, Wright Field, Dayton, Ohio.

“Since the original acquisition was under the Lanham Act which guaranteed to the occupants of the area all civil and political rights, can an intra-departmental transfer now deprive the occupants of that area, who are otherwise qualified to vote, of their right of political suffrage?”

“Shall the Board of Elections at the coming primary upon May 2, 1950, provide that the residents of Skyway Park and Skyway Lodge, who are otherwise qualified to vote, be permitted to vote at said primary election?”

The United States acquired the territory in question under the authority of the Lanham Act, Title 42, Section 1521, et seq., U. S. C. The Governmental agency in control of this land at that time is now known as the National Housing Agency. By authority of Title 42, Section 1524, U. S. C., the jurisdiction of the National Housing Agency was transferred to the Department of Air Forces. The Department is now attempting to assume exclusive jurisdiction over territory acquired by the National Housing Agency under the Lanham Act.

For the purpose of clarification, let us consider the situation as it was before the Secretary of the Department of Air Forces of the United States wrote the letter of November 4, 1949, to the Governor of Ohio. That is, assume that the only jurisdiction had was acquired under the Lanham Act.

There is no question that the United States has the authority to acquire exclusive jurisdiction over land acquired by it with the consent of the state. See Title 40, Section 255, U. S. C. The State of Ohio has ceded its exclusive jurisdiction by Section 13771, General Code, which states:

“That exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.”

Also see Sections 13770 and 13772, General Code. It is further evident that the United States does not have to accept exclusive jurisdiction over property acquired by it. See *Murray v. Gerrick Co.*, 291 U. S. 315; *Atkinson v. State Tax Comm. of Oregon*, 303 U. S. 20. When the terri-

tory was acquired by the United States, the provision of Title 42, Section 1547, U. S. C. specifically repudiated the idea that exclusive jurisdiction was taken by the United States. This section provides as follows:

“Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to sub-chapters II-IV of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term ‘State’ shall include the District of Columbia.”

Thus, the United States showed its intention not to assume exclusive jurisdiction at that time. It can be seen that this section expressly allowed the inhabitants to retain their civil rights under the State and local laws. This has been held to include the right to vote. See *Johnson v. Morrill*, 126 P(2d), 873.

In the case of *Johnson v. Morrill*, supra, the fact situation was very similar. Land was acquired for housing projects for defense workers under the Lanham Act. The Court held that because of the express refusal in the Lanham Act of exclusive jurisdiction that the inhabitants of such territory retained their right to vote. From the above, it is apparent that the acquiring of land under the Lanham Act above does not take away the right of the inhabitants of the territory to vote.

The question now arises as to whether or not the Department of Air Forces of the United States may accept exclusive jurisdiction of the described territory so that the inhabitants lose their right to vote in Ohio. In other words, may the United States through its Department of Air Forces now accept exclusive jurisdiction after it has refused this exclusive jurisdiction when it first acquired the land through the National Housing Agency? It seems clear that if the United States does assume exclusive jurisdiction over a territory the inhabitants lose their right to vote in the state on the theory of non-residence within the state. See *Arledge v. Mabry*, 52 N. M. 303, 197 P(2d) 890.

Title 40, Section 255, U. S. C. supra, provides in part as follows:

“Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired

by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

It is apparent that the United States does not have to obtain exclusive jurisdiction over lands or interests therein which have been acquired by it. This section further provides that the head of any department or agency of the government may, in such cases and at such times as he deems desirable, accept from the state exclusive jurisdiction of lands which he has under his immediate custody or control. This is to be done by his filing a notice of acceptance with the Governor of the state in which such lands are situated. Although I can find no case directly on point, the courts have indicated that the United States may accept exclusive jurisdiction over land taken under authority of the Lanham Act. In the case of *Ralph O. Spahr v. Robert E. Crone, et al.*, Common Pleas Court of Greene County, Ohio, Case Number 25,658, the court's opinion stated in part as follows:

"While the jurisdiction over Skyway Park had been transferred from the National Housing Agency to the War Department, nevertheless, the property was acquired under the Lanham Act for housing purposes and under the above section it must be presumed that at the time of acquisition exclusive jurisdiction was not obtained and such presumption must continue until under the above section the necessary action is taken to acquire exclusive jurisdiction."

The "above section" referred to is Title 40, Section 255, U. S. C. This case was an action to contest the election of certain county officials on the theory that the inhabitants of the territory which was acquired under the Lanham Act were not eligible to vote. The court held that a letter written to the Governor of Ohio on September 28, 1948, by the Secretary of the Department of Air Forces of the United States did not give the United

States exclusive jurisdiction over Skyway Park, the same housing project described in your request. Exclusive jurisdiction was denied on the theory that the letter stated that the United States accepted exclusive jurisdiction over "lands acquired by it for military purposes." That is, since Skyway Park was not acquired for military purposes, the United States showed no intention of accepting jurisdiction over it. The case holds, by implication, that the United States does have the power to accept exclusive jurisdiction by authority of Title 40, Section 255, U. S. C. The motion to certify to the Supreme Court of Ohio was denied in this case. In the case of *Johnson v. Morrill*, *supra*, the court stated at page 877 of 126 Pacific Reporter, 2d Series, as follows:

"A fair construction of that section (Title 42, Section 1547, U. S. C.) may be said to be the following:

"Notwithstanding the fact that the United States may acquire exclusive jurisdiction over such defense housing projects, exclusive jurisdiction is not to be deemed to be created by pursuing the authority vested by this act. (Lanham Act)
(Parenthetical material added.)

I have examined the letter written on November 4, 1949, to the Governor of Ohio by the Assistant Secretary of the Air Force. In this letter the Department of Air Force expressly accepts exclusive jurisdiction over land which includes Skyway Park and Skyway Lodge.

In conclusion, therefore, it is my opinion that exclusive jurisdiction is not given to the United States by the Lanham Act alone. Further, it is my opinion that the United States may acquire exclusive jurisdiction over lands taken under the Lanham Act by accepting it according to Title 40, Section 255, U. S. C.

Respectfully,

HERBERT S. DUFFY,
Attorney General.