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OHIO, STATE OF — NO JURISDICTION OVER FISH AND GAME ON LANDS OWNED BY UNITED STATES—PROVISO, UNLESS BY SPECIAL STATUTE JURISDICTIONAL RESERVATION TO STATE—SECTION 13770 ET SEQ. G. C.

SYLLABUS:

*By virtue of the provisions of Sections 13770, 13771 and 13772, General Code, the State of Ohio has no jurisdiction over fish and game on lands owned by the United States, unless such jurisdiction has been reserved to the state by special statute.*

Columbus, Ohio, October 14, 1940.

Hon. Don Waters, Commissioner,  
Division of Conservation and Natural Resources,  
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion reading as follows:

“Will you kindly determine for us the status of fish and game on lands owned by the Federal Government within boundaries of Ohio?”

Article I, Section 8, clause 17 of the United States Constitution provides:

“The Congress shall have power \* \* \*.

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.”

With reference to the foregoing provision it was stated in the case of Fort Leavenworth Railroad Co. vs. Lowe, 114 U. S. 525, at page 532:

“When the title is acquired by purchase by consent of the Legislature of the States, the federal jurisdiction is exclusive of all state authority.”

In the case of Commonwealth vs. Clary, 8 Mass. 72, it was held that the courts of Massachusetts could not take cognizance of offences committed upon lands in the city of Springfield purchased with the consent of the Commonwealth by the United States for the purpose of erecting arsenals upon them. The court said:

“No offences committed within that territory are committed against the laws of this Commonwealth, nor can such offences be punishable by the courts of the Commonwealth unless the Congress of the United States should give to the said courts jurisdiction thereof.”

However, the United States may have sovereign jurisdiction over lands

acquired by it in a manner other than by purchase. It may acquire jurisdiction by the states expressly granting jurisdiction to it. Therefore, it is necessary to examine Sections 13770, 13771 and 13772, General Code, which provides:

Section 13770, General Code:

“That the consent of the state of Ohio is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom houses, court houses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.”

Section 13771, General Code:

“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.”

Section 13772, General Code:

“The jurisdiction ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state; provided that nothing in this act contained shall be construed to prevent any officers, employes or inmates of any national asylum for disabled volunteer soldiers located on any such land over which jurisdiction is ceded herein, who are qualified voters of this state from exercising the right of suffrage at all township, county and state elections in any township in which such national asylum shall be located.”

Thus the State of Ohio has expressly ceded to the United States exclusive jurisdiction in and over any land acquired in Ohio for the purposes of the government through purchase, condemnation, or otherwise.

In Opinions of the Attorney General for 1932, Vol. II, page 828, the then Attorney General ruled as disclosed by the syllabus:

“The Ohio cigarette sales and license taxes are not applicable

to the sale of cigarettes upon the grounds of the two federal aviation fields, namely, Wright and Patterson Fields, in Montgomery County.”

It was stated at page 829:

“The above quoted statutes (Sections 13770, 13771 and 13772, General Code) expressly provide for the cession by Ohio to the United States of exclusive jurisdiction over lands acquired by the latter through purchase, condemnation or otherwise for any governmental purpose. \* \* \*

Section 13770, supra, expressly refers to said seventeenth clause of the Constitution, and it is clear that, by such reference, it was the legislature’s intention, respecting lands whose title the United States acquired in any manner for any governmental purpose, to cede to the federal government the same kind of jurisdiction which is, by operation of clause No. 17, ceded when title is acquired by purchase with the state legislature’s consent.”

(Parenthetical matter mine.)

In the case of *State, ex rel. Schulten, et al. vs. Day, Treas.*, 4 O. O. 146, the second headnote reads:

“Under the provisions of Article I, Section 8, and clause 17, of the Constitution of the United States, and Sections 13770, 13771 and 13772, General Code of Ohio, the United States is vested with exclusive jurisdiction in all cases whatsoever over land acquired by it for needful purposes of government, and the state has no authority to levy a sales tax on cigarettes sold in a cafeteria operated on property so acquired and held by it.”

With reference to the ownership of fish and game in this state, it is provided in Section 1391, General Code:

“The ownership of, and the title to all fish, clams, mussels, wild birds and quadrupeds in the state of Ohio, not confined and held by private ownership, legally acquired, is hereby declared to be in the state, which holds it in trust for the benefit of all the people, and only in accordance with the terms and provisions of the General Code and the rules and regulations of the conservation council shall individual possession be obtained. \* \* \* ”

Obviously, the foregoing section only applies to fish and game in Ohio which would not include fish and game located on lands acquired by the United States by virtue of the foregoing provisions of law. In *Opinions of the Attorney General for 1933, Vol. III*, page 2008, the then Attorney General said at page 2010:

“It would appear to me that within the meaning of the Ohio

statutes, property owned by the United States for governmental purposes, is just as distinct and apart from the State of Ohio as is the District of Columbia, except for the service of criminal and civil process."

It must be borne in mind that in certain special legislative enactments granting the United States authority to acquire specific tracts of land, the State of Ohio has reserved concurrent criminal jurisdiction. However, unless such jurisdiction is specifically reserved, the federal government has exclusive jurisdiction in and over such lands.

Therefore, in specific answer to your inquiry, I am of the opinion that by virtue of the provisions of Sections 13770, 13771 and 13772, General Code, the State of Ohio has no jurisdiction over fish and game on lands owned by the United States, unless such jurisdiction has been reserved to the state by special statute.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.