

4466.

CIGARETTE SALES AND LICENSE TAXES—NOT APPLICABLE TO
SALE OF CIGARETTES ON FEDERAL AVIATION FIELDS.

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.

COLUMBUS, OHIO, June 30, 1932.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your inquiry concerning the applicability of the Ohio cigarette sales and license taxes to the sale of cigarettes upon the grounds of the two federal aviation fields, namely, Wright and Patterson Fields, in Montgomery County. From the War Department, I have received the information that the United States is the owner in fee simple of the lands comprising these two fields, that they were acquired by various conveyances made between the dates of June 16, 1917, and June 24, 1930, and that they were, for the most part, donated to the United States.

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

*“The Congress shall have the Power * * * To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may be, 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 State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.”*
(Italics the writer's.)

It has been declared that when, pursuant to said constitutional provision, the United States acquires title to land by purchase with the consent of the state legislature, federal jurisdiction is exclusive of all state authority. *Fort Leavenworth Railroad Company vs. Lowe*, 114 U. S. 525, 532. Consequently, the Supreme Court recently held that the laws of Arkansas could not operate so as to impose a personal property tax upon a quantity of woolen blankets which the defendant had purchased from the United States a few days before the day fixed by the state law for listing personal property for taxation and which was on that day in the army storehouses within Camp Pike awaiting shipment therefrom, it appearing that land comprising said Camp had been purchased by the United States with the consent of the Arkansas Legislature. *Surplus Trading Company vs. Cook*, 281 U. S. 647.

The lands comprising the aviation fields in Montgomery County were, as has been stated, acquired for the most part by *donation*. They could not, therefore, by virtue of said constitutional clause, have come under the sovereign jurisdiction of the United States, because that clause relates only to lands which have been *purchased*, and the word “purchased”, as there used, does not have the technical, common law meaning which comprehends any acquisition of land other than by descent or inheritance, but has only the usual, common signification of the word.

Crook, etc. Company vs. Old Point Comfort Hotel, 54 F. 604, 608.

However, the United States is not limited in its acquisition from a state of sovereign jurisdiction over land whose legal title the United States holds, merely to the manner mentioned in said clause No. 17 (i. e.—by purchase with the consent of the legislature). It may, equally as well, acquire jurisdiction by the state's expressly granting jurisdiction to it. See *Surplus Trading Company vs. Cook*, 281 U. S. 647, 651. Therefore, it becomes important to examine the provisions of Sections 13770 to 13772, General Code, which read:

Section 13770.

“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.

“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.

“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; * * *.”

The above quoted statutes 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. Having been enacted in 1902, previous to the acquisition of the lands comprising said aviation fields, said statutes are clearly applicable thereto, and jurisdiction over said fields is, by reason thereof, ceded to the United States, subject, of course, to such limitations as are expressed in said statutes.

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.

In *Surplus Trading Company vs. Cook*, *supra*, as has already been pointed out,

it was held that the personal property tax laws of Arkansas did not operate over the territory of Camp Pike the lands of which had been purchased by the United States with the legislature's consent. The same conclusion would necessarily have been reached had the imposition been a sales or a license tax. In this case, too, the Supreme Court declared that the fact that the Arkansas Legislature inserted, in the act of cession, a provision expressly relinquishing the right to tax the land over which jurisdiction was ceded, did not disclose a purpose to reserve the power to tax save as to such land.

For the foregoing reasons, I am of the opinion that 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.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4467.

BOARD OF EDUCATION—EMPLOYMENT OF COUNTY SUPERINTEND-
END OF SCHOOLS—APPOINTMENT OF SUPERVISOR.

SYLLABUS:

1. *Boards of education, other than city and exempted village boards are without authority to employ superintendents with power to exercise independent supervision over the schools of their respective districts, since the General Assembly has provided for county supervision of schools by a county superintendent and such assistant county superintendents as may be elected by the county board of education.*

2. *Section 7690 grants authority to boards of education of rural school districts to employ a supervisor whom they may designate by the title of "Superintendent of Schools," although he may not exercise the authority conferred upon superintendents of city and exempted village school districts by Section 7706, and he remains subject to the statutory control of the county superintendent of schools and his assistant. This right is limited only by the exercise of proper discretion.*

3. *When the board of education of a rural school district employs a supervisor, whom they style "superintendent of schools," for a term of three years, his contract of employment need not bear the certificate of the fiscal officer provided in Section 5625-33.*

4. *The term "current salary" as used in the exception in paragraph D, Section 5625-33, applies to the entire salary of a regular employe, even though his contract of employment runs for more than one year.*

COLUMBUS, OHIO, June 30, 1932.

HON. GEORGE S. MIDDLETON, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"We have the following problem to present to you for your consideration and judgment: