

1877

MILITARY RESERVATION—EXCLUSIVE FEDERAL JURISDICTION OBTAINED OVER LANDS—PERMIT GRANTED—REVOCABLE WITHIN DISCRETION OF SECRETARY OF WAR—CONSTRUCTION BY STATE OF HIGHWAY OVER AND UPON LANDS—FEDERAL AUTHORITIES HAVE RESPONSIBILITY TO ENFORCE TRAFFIC REGULATIONS ON HIGHWAY—STATE AUTHORITIES WITHOUT JURISDICTION TO ENFORCE STATE TRAFFIC REGULATIONS—SECTIONS 13770, 13771, 13772, 13773 G. C.—UNITED STATES CONSTITUTION, ARTICLE I, SECTION 8, CLAUSE 17—UNITED STATES CODE, TITLE 40, SECTION 255—UNITED STATES CODE, TITLE 10, 23 STATUTE, SECTION 1348.

SYLLABUS:

Where exclusive federal jurisdiction has been obtained over lands within a military reservation as provided in the 17th clause of Section 8, Article I, U. S. Constitution, in Section 255, Title 40, U. S. Code, and in Sections 13770, 13771 and 13772, General Code of Ohio, and where a permit, revocable in the discretion of the Secretary of War, has been granted under the provisions of Section 1348, Title 10, U. S. Code, 23 Stat. 104, for the construction by the state of a highway over and upon such lands, the responsibility for the enforcement of traffic regulations on such highway lies with the federal authorities, and the state authorities are without jurisdiction to enforce state traffic regulations thereon.

Columbus, Ohio, September 25, 1952

Hon. George Mingle, Superintendent, State Highway Patrol
Columbus, Ohio

Dear Sir:

I have for consideration your request for opinion which reads in part as follows:

“Several days past I called to your attention the authority of the State Highway Patrol relative to patrolling State Route 4, State Highway 60, Section A (part) and B (part).

“Following your suggestion, I am sending you the complete agreement entered into between the State Highway Department and the Secretary of War.

“The point specific is whether or not the State Highway Patrol has authority to patrol on military reservation on the conditions set forth in the attached agreement. * * *”

The basic question here presented is the constitutional right of the state to exercise criminal jurisdiction on a highway constructed by the state within the limits of a military reservation of the United States. A general statement of the law pertinent to the present inquiry is found in 14 American Jurisprudence 924, 925, Section 225, as follows:

“It is provided by the United States Constitution that states have exclusive jurisdiction over crimes committed within their respective territorial limits except such lands as are purchased by the United States with the consent of the state, for the erection thereon of forts, arsenals, dockyards, or other needful buildings, which lands so purchased are within the exclusive jurisdiction of the United States. If a crime is committed within the boundaries of such land, the Federal courts have jurisdiction of a prosecution therefor to the exclusion of the state courts.”

The constitutional provision to which reference is made above is the 17th clause of Section 8, Article I, United States Constitution. This section provides in part:

“The Congress shall have 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 Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *”

Consent to the acquisition of lands in Ohio and to the exercise of jurisdiction thereover by the United States is set out in Sections 13770, 13771 and 13772, General Code, enacted in 1902. These sections read:

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, con-

demnation 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 townships, county and state elections in any township in which such national asylum shall be located."

Section 13773, General Code:

"That the act entitled 'An act ceding to the United States exclusive jurisdiction over certain lands acquired for public purposes within this state, and authorizing the acquisition thereof,' passed the 6th day of May, 1902, shall not be so construed as to have a retroactive operation, or to apply to any land or lands acquired by the United States for any of the purposes mentioned in section 1 of said act, prior to the date of passage thereof."

Such acquisition and consent are not themselves sufficient to effect a transfer of criminal jurisdiction to the United States. In this connection we may observe the decision in *Adams v. United States*, 319 U. S. 312, 87 L. Ed. 1421, the first headnote in which is as follows:

"Unless and until notice of acceptance of jurisdiction has been given, Federal courts are without jurisdiction to punish under criminal laws of the United States an act committed on lands acquired by the United States, where the applicable statute (Act of Oct. 9, 1940, 40 USC §255) provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing notice with the governor of the state, or by taking other similar appropriate action, and that unless and until the United States has so accepted jurisdiction it shall be conclusively presumed that no such jurisdiction has been accepted."

Pursuant to the provisions of the act of October 9, 1940, 40 U. S. Code Section 255, referred to in the *Adams* case, the Secretary of War, by a letter received by the Governor of Ohio on December 5, 1945, gave notice of the acceptance by the United States of "exclusive jurisdiction over all lands acquired by it for military purposes within the State of Ohio, title to which has heretofore vested in the United States." This

letter of acceptance is set out in full in Opinion No. 649, Opinions of the Attorney General for 1945, p. 806. It is common knowledge that the lands here in question were acquired by the United States for military purposes many years prior to the date of this acceptance, and we may therefore conclude that the United States acquired exclusive jurisdiction over them in 1945, assuming that such jurisdiction had not theretofore been acquired.

I am unable to find any federal legislation by which the jurisdiction thus acquired has either expressly or by necessary implication been retroceded to the state, and to the best of my knowledge this has not been thus accomplished.

From certain material you have forwarded with your inquiry I learn that the highway here involved was constructed within the limits of the military reservation under favor of certain permits issued by the Secretary of War under authority of Section 1348, Title 10, U. S. Code. Act of July 5, 1884, c. 214, section 6, 23 Stat. 104. This section reads:

“The Secretary of War shall have authority, in his discretion, to permit the extension of State, county and Territorial roads across military reservations; to permit the landing of ferries, the erection of bridges thereon; and permit cattle sheep or other stock animals to be driven across such reservation, whenever in his judgment the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon.”

It appears that under authority of this statute the Secretary of War issued one such permit under date of September 26, 1932, which permit related to the Patterson Field Military Reservation. A second such permit, relating to the Wright Field Military Reservation, was executed by the secretary on October 5, 1942. By a third permit, dated April 16, 1948, the original permit, relating to the Patterson Field Military Reservation, was enlarged.

Since I have already concluded that the United States has lawfully acquired exclusive jurisdiction over the military reservation with which we are presently concerned, and since it appears that Congress has not directly provided for the retrocession of such jurisdiction, it remains only to inquire whether a permit to construct and maintain a highway, issued under authority of the act of July 5, 1884, can be said to have the legal effect of a retrocession as to the lands upon which the highway has thus been extended.

It would appear to be the view of Congress that such retrocession cannot be effected by the executive branch of the federal government but must be accomplished by an act of Congress. For example, we may note that by the act of February 11, 1936, 49 Stat. 1108, the Congress provided for the retrocession of jurisdiction to California with respect to certain lands within the presidio of San Francisco and the Fort Baker military reservation, upon which lands the Golden Gate bridge and the approaches there-to have been constructed.

Another instance of such legislation is found in the act of February 6, 1926, 44 Stat. 4, in which retrocession of jurisdiction to Kentucky was provided with reference to that portion of the Dixie Highway which extends through the Fort Knox military reservation.

Another congressional act of retrocession, the act of January 21, 1871, is one of some significance in the present inquiry because it was the subject of consideration in *Renner v. Bennet* 21 Ohio St., 431, and provided the basis of the decision in that case. By this act the Congress relinquished to Ohio the federal jurisdiction over the lands theretofore acquired by the United States in Montgomery County and on which an asylum for disabled volunteer soldiers had been established. On the question of the efficacy of this act the court held, in the first four paragraphs of the syllabus:

“1. Where the United States, without the consent of the State, purchases and uses land for any of the purposes specified in sec. 8, art. 1, of the federal constitution, it acquires no jurisdiction over the land.

“2. Where such purchase is made with the consent of the State, or even with an express cession of jurisdiction by the State, congress has power to relinquish or re-cede to the State the jurisdiction thus acquired, without abandoning the property, or its legitimate use.

“3. A jurisdiction thus acquired from a State, although exclusive while it subsists, is to be regarded as a mere suspension of the State jurisdiction, and, therefore, an act of congress relinquishing such jurisdiction, and re-ceding it to the State, is effective for that purpose, without any acceptance or assent by the State.

“4. Jurisdiction over any particular place thus acquired, is not an original and inherent power conferred upon congress by the people, but a new power acquired in the exercise of the original; the 8th section of article 1 of the constitution makes no grant of such a jurisdiction, but merely prescribes the manner in which it may be granted by the State; and, therefore, congress

may relinquish it at pleasure, either with or without an abandonment of its title to the property, or its use."

In this language there is a strong implication to the effect that after the power of "exclusive legislation" has been acquired by Congress under the provisions of the 17th clause of Section 8, Article I, U. S. Constitution, it can be relinquished only by a congressional enactment which expressly or by necessary implication provides therefor, and I conclude that such is a proper statement of the law. In the act of July 5, 1884, Section 1348, Title 10 U. S. Code, I find no language indicative of an intent that a permit issued thereunder should have the effect of relinquishing exclusive federal jurisdiction and particularly is this true when, as in the instant case, the permit is subject to the condition that it may be revoked at any time by the Secretary of War, and where the occupation and use by the state is, by the terms of the permit, "subject to such rules and regulations as the Commanding Officer, or other competent military authority, may from time to time prescribe."

In the instant case I am informed that the Department of the Air Force claims exclusive federal jurisdiction as to the highway and that the military authorities, acting under the terms of the permit as indicated above, have undertaken the responsibility for the promulgation and enforcement of traffic regulations on such highway. Thus, whatever doubt might otherwise exist as to the effect of the act of July 5, 1884, is dispelled in the case at hand by the terms of the permits issued under this act and by the action of the federal authorities thereunder in the promulgation of traffic regulations. Accordingly, in specific answer to your inquiry it is my opinion that where exclusive federal jurisdiction has been obtained over lands within a military reservation as provided in the 17th clause of Section 8, Article I, U. S. Constitution, in Section 255, Title 40, U. S. Code, and in sections 13770, 13771 and 13772, General Code of Ohio, and where a permit, revocable in the discretion of the Secretary of War, has been granted under the provisions of Section 1348, Title 10, U. S. Code, 23 Stat. 104, for the construction by the state of a highway over and upon such lands, the responsibility for the enforcement of traffic regulations on such highway lies with the federal authorities, and the state authorities are without jurisdiction to enforce state traffic regulations thereon.

Respectfully,

C. WILLIAM O'NEILL

Attorney General