

94.

FEDERAL RESERVATION—WILBUR WRIGHT FIELD—PERSONS
RESIDING ON RESERVATION NOT CITIZENS OF OHIO—
SCHOOL DISTRICT NOT LIABLE FOR TUITION OF STUDENTS
ATTENDING HIGH SCHOOL WHO LIVE ON GOVERNMENT
RESERVATION.

SYLLABUS:

1. *The jurisdiction of the Federal government over territory acquired by the United States for the erection of forts, magazines, arsenals, dock-yards and other needful buildings, since the enactment of sections 13770, 13771 and 13772, of the General Code of Ohio, consenting to such acquisition, is exclusive, and persons residing on said territory are non-residents of the State of Ohio, unless the said jurisdiction has been receded to the State of Ohio by act of Congress.*

2. *Persons residing on the government reservation known as Wilbur Wright Field, in Montgomery County, are not residents of the State of Ohio.*

3. *The Madriver school district in Montgomery County, can not be held for the tuition of high school pupils residing on the government reservation known as Wilbur Wright Field, who are attending high school.*

COLUMBUS, OHIO, February 1, 1933.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—There has been submitted over the signature of one of your assistants, a request for my opinion which reads as follows:

“There has repeatedly been doubt in the minds of local authorities as to the application of the law to the following state of facts:

Madriver Township in Montgomery County has no high school but the board of education for the township sends its high school pupils to Fairmont high school in Van Buren Township and pays their tuition. Within the limits of Madriver Township is a government reservation, known as Wilbur Wright Field. All the land of this reservation is, of course, exempt from taxation, therefore no school revenue is derived from it. On this reservation resides a family, the head of which is employed by the government, and who receives a reasonable salary. The head of this family has a son who is attending school at Fairmont high school, along with the other pupils of Madriver Township, and a question has arisen as to whether or not the Van Buren Township board of education can require the Madriver Township board of education to pay the tuition of this boy, whose parents reside on the government reservation. And further, if your answer is in the affirmative, can the Madriver Township board of education proceed against the father of the boy for reimbursement?

We shall appreciate it very much if you can arrange to get us your interpretation of this troublesome question. The amount involved is not much, but every few months the question arises locally by reason of the Madriver board feeling it very unjust to be required

to educate children who live on government reservations with no revenue being collected from said reservation by way of taxes.”

The lands comprising the government reservation in Montgomery County known as Wilbur Wright Field lay, formerly, within the boundaries of Madriver Township rural school district in Montgomery County, and are still a part of that district, unless the fact that they are owned by the Federal Government takes them out of the district. These lands were acquired by the United States government by deeds from the owners thereof, subsequent to the enactment of the legislature, in 1902, of an 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.”

This aforesaid act later became sections 13770, 13771 and 13772, of the General Code of Ohio. Sections 13770 and 13771 read as follows:

Sec. 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.”

Sec. 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.”

By the terms of section 13772, General Code, all lands acquired by the United States since the passage of the act referred to above, are exempt from taxation, assessment or other charges levied or imposed by the authority of this state, so long as they remain the property of the United States. Personal property owned by residents of such lands is also exempt from taxation by the State of Ohio or any of its subdivisions. A former Attorney General, in an opinion reported in the Opinions of the Attorney General for 1925, at page 783, held:

“A person residing on a reservation deeded to the United States government, without any reservation from the state, is not required to return his property for taxation in Ohio.”

See also *Surplus Trading Company vs. Cook*, 281 U. S. 647 to 651.

Although the Madriver Township rural school district receives no revenue from taxation from the lands comprising Wilbur Wright Field, or from residents of that territory, that fact is not determinative of the question of

whether or not the residents on this reservation are entitled to the school privileges accorded residents of the state and of the school district in which the reservation was formerly located. The right to the advantages of the schools of Ohio is predicated on the residence of the pupils instead of the taxable situs of the property upon which they reside or which they or their parents may own.

Section 7681, General Code, provides that "the schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district."

Section 7747, General Code, provides:

"The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence."

Section 7748, General Code, provides in part:

"A board of education providing a third grade high school shall be required to pay the tuition of graduates of such school, and of other children who have completed successfully two years of work in a recognized high school, residing in the district at a first grade high school for two years, or at a second grade high school for one year and at a first grade high school for one additional year."

Whether or not Madriver rural school district is legally chargeable with tuition for the boy in question who is attending school in Fairmont district, depends on whether or not this boy is a resident of the Madriver district. In as much as no high school is maintained in Madriver district that district is required by law to pay the tuition of all resident high school pupils who attend school in other districts, by force of sections 7747 and 7748, General Code, *supra*.

Your question therefore resolves itself into a determination of whether or not this boy resides in Madriver school district. Similar questions have been definitely settled by repeated decisions of the courts, both state and Federal. The question first arose in Ohio, in the case of *Sinks vs. Reese*, 19 O. S. 306.

It appeared in that case that the legislature of Ohio, in April 1867, passed an act entitled:

"An act ceding to the United States of America jurisdiction over certain lands and their appurtenances to the National Asylum for disabled volunteer soldiers and exempting the same from taxation." (64 Ohio Laws, 149.)

This act was amended in May 1868 and became embodied in the General Code as sections 13843 and 13844 thereof.

The act purported to cede to the United States, jurisdiction of the lands and their appurtenances which may be acquired within the state of Ohio by the managers of the National Asylum for disabled volunteer soldiers, and provided among other things:

OPINIONS

"That * * * the officers, employes and inmates of said asylum who are qualified voters of this state, by complying with the requirements of the laws that now are in operation or that hereafter may be enacted regulating state, county and township elections in this state, shall have the right of suffrage at all township, county and state elections in the township in which the said national asylum shall be located."

The specific lands, the jurisdiction of which was ceded to the Federal government by this act, were acquired by a board of managers created and duly authorized in the premises by act of Congress, approved March 21, 1866, to establish thereon an asylum for disabled volunteer soldiers, commonly known as the Dayton Soldiers Home.

The question arose whether or not, in view of the specific reservation contained in the act of the Ohio legislature ceding the jurisdiction of these lands to the Federal government, as to the right of officers, employes and inmates of said Soldiers' Home, who were formerly qualified voters of the state of Ohio, to vote in Ohio elections, they really possessed that right. The court held that residents of Ohio who became inmates of the Soldiers' Home ceased thereby to be residents of Ohio and could not therefore vote in Ohio elections.

The decision of the court is predicated on its interpretation of Clause 17 of Section 8 of Article I of the Constitution of the United States, which reads as follows:

"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."

The court held, as stated in the second branch of the syllabus:

"When territory for such purpose is so purchased by 'the consent of the Legislature of the state in which the same shall be,' the Government of the United States is invested, under the provisions of the same section (meaning Section 8, Clause 17, Article I, of the U. S. Constitution) with exclusive jurisdiction over the same and its appurtenances, in all cases whatsoever."

In the course of the opinion the court said:

"By becoming a resident inmate of the asylum, a person though up to that time he may have been a citizen and resident of Ohio, ceases to be such; he is relieved from any obligation to contribute to her revenue and is subject to none of the burdens which she imposes upon her citizens. He becomes subject to exclusive jurisdiction of another power, as foreign to the state of Ohio as is the state of Indiana or Kentucky, or the District of Columbia. * * * The grounds and buildings of this asylum have been detached and set off from the state of Ohio, and ceded to another gov-

ernment, and placed under its exclusive jurisdiction for an indefinite period."

A like interpretation of the terms of Article I, Section 8, Clause 17, has been made by numerous other courts. In *Foley vs. Schryver*, 81 Va., 568, it was held of lands within the state of Virginia, purchased for disabled volunteer soldiers that by virtue of the constitutional provisions mentioned above, the purchase invested the United States with complete jurisdiction of the lands to the exclusion of the state, so that they were no longer a part of the state of Virginia. To the same effect is the case of *Bank of Phoebus vs. Byrum*, 110 Va., 708. See also *State vs. Mack*, 23 Nev., 359; *Commonwealth vs. Cleary*, 8 Mass., 72; *Mitchell vs. Tibbetts*, 17 Pickering, 298; *Ft. Leavenworth R. R. Co. vs. Lowe*, 114 U. S. 525; *Surplus Trading Company vs. Cook*, 281 U. S. 647; Kent's Commentaries, Vol. 1, pages 429, 431; Story on Federal Constitution, Fifth Ed., Vol. 2, Sections 1224 and 1227.

In the light of the decisions referred to above, it seems clear that persons residing within the government reservation known as Wilbur Wright Field are not residents of the Madriver school district unless the jurisdiction over this territory acquired by the Federal government has been receded by Congress to the State of Ohio. It has been held that the jurisdiction acquired by the United States government by virtue of Article I, Section 8, Clause 17, of the Constitution of the United States, upon its acquiring property within a state with the consent of the legislature of that state, may be receded by Congress to the state. This was done in the case of the Dayton Soldiers' Home by Act of Congress, approved January 21, 1871. (16 Stat. 399.)

Following the passage by Congress of the act of 1871, referred to above, by the terms of which the jurisdiction of the Federal government over the lands comprising the Dayton Soldiers' Home was receded to the State of Ohio, the question again arose as to the right of the inmates of that asylum to vote in Ohio elections. This question reached the Supreme Court of Ohio, which held in the case of *Renner vs. Bennett*, 21 O. S. 431, that the effect of the Act of Congress receding to the state of Ohio the jurisdiction over the lands in question which the Federal government had acquired by the purchase of those lands with the consent of the Ohio legislature, was to restore to the inmates of that institution their former status as residents of Ohio. In that case the Court held as stated in the syllabus:

"Where the United States, without the consent of the state, purchases and uses lands for any of the purposes specified in Section 8, Article I, of the Federal constitution, it acquires no jurisdiction over the land.

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 recede to the state the jurisdiction thus acquired, without abandoning the property, or its legitimate use.

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 receding it to the state, is effective for that purpose, without any acceptance or assent by the state.

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 I

of the constitution makes no grant of such 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."

I do not find that Congress has receded to the State of Ohio jurisdiction over the lands comprising the reservation known as Wilbur Wright Field, and to the best of my knowledge this has not been done. That being the case, the Federal government has exclusive jurisdiction over the reservation in question and the residents on that reservation are therefore not residents of Ohio or the Madriver school district, and the Madriver school district is not required to pay tuition of high school pupils who reside on said reservation and attend high school in some school district of the state of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

95.

OFFICER—MUST QUALIFY WITHIN A REASONABLE TIME AFTER
TAKING OFFICE—OATH OF OFFICE.

SYLLABUS:

1. *Where the statute fails to specify the time within which acts necessary to qualification for public office shall be performed and where all of such acts are completed within a reasonable time after assuming official duties, such office shall not be considered vacant within the meaning of section 7 of the General Code.*

2. *All acts of such officer are valid whether performed before or after such completion of the steps necessary for qualification.*

COLUMBUS, OHIO, February 1, 1933.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"Clarence R. Keener, having been elected commissioner of Ashland County, applied for and secured bond as required for such office from W. D. Newell. It is stated by both Mr. Keener and Mr. Newell that on the day this bond was delivered to Mr. Keener, to-wit: Dec. 21, 1932, Mr. Newell, as a notary public, administered to Mr. Keener the oath for such office. The bond was filed in the office of the Treasurer on Jan. 3, 1933. The oath of office was not endorsed thereon. The oath of office was filed with such bond on Jan. 11, 1933.

The Chairman of the Board of County Commissioners has requested a written opinion, copy of which is hereto attached, relative to the legality of business transacted by the new Board before Jan. 11, 1933 and also to whether or not Mr. Keener has now qualified himself as Commissioner by the filing of such oath.