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LANDS IN OHIO ACQUIRED BY UNITED STATES—EXCLUSIVE JURISDICTION OVER SUCH LANDS—MAY, TO EXTENT JURISDICTION IS CEDED TO UNITED STATES BY SECTIONS 13771, 13772, G. C., BE ACCEPTED ON BEHALF OF UNITED STATES BY HEAD OR OTHER AUTHORIZED OFFICER OF ANY DEPARTMENT OR AGENCY OF UNITED STATES GOVERNMENT, BY FILING OF NOTICE OF SUCH ACCEPTANCE WITH GOVERNOR IN ACCORDANCE WITH U. S. C., TITLE 40, SECTION 255.

SYLLABUS:

Exclusive jurisdiction over lands in Ohio acquired by the United States may, to the extent that such jurisdiction thereover is ceded to the United States by sections 13771 and 13772 of the General Code, be accepted on behalf of the United States by the head or other authorized officer of any department or agency of the United States Government, by the filing of a notice of such acceptance with the governor in accordance with the provisions of Title 40, U. S. C., Section 255.

Columbus, Ohio, December 22, 1945

Honorable Frank J. Lausche, Governor of Ohio  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion contained in your letter of December 10, 1945, wherewith you inclosed a copy of a letter received by you from the Secretary of War. The contents of your letter are as follows:

"I am herewith attaching a copy of a letter received by me on December 5th from Robert P. Patterson, Secretary of War.

The letter is self-explanatory. I am unable to understand the rights which the state of Ohio might relinquish in the event the request made in the letter is approved. From the third paragraph it would seem that no rights would be relinquished, but to make sure I thought I better ask for your opinion about the matter.

I will have Mr. Raschig and General Pancoast to contact you so that they may explain to you about any lands we may have that fall in the category contemplated by the letter."

The letter of the Secretary of War to you reads as follows:

"The laws of the State of Ohio (an act of the General Assembly of the State of Ohio approved May 6, 1902 (Ohio Laws, 1902, p. 368), as amended by the act of May 10, 1902 (Ohio Laws, 1902, p. 536), and interpreted by the act of May 12, 1902 (Ohio Laws, 1902, p. 625); see also Page's Ohio General Code, Annotated, 1939) permit the assumption of exclusive Federal jurisdiction over lands within that state acquired by the United States for military and certain other purposes.

Under Section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U. S. C. 255), it is provided in effect that unless and until the United States has accepted jurisdiction over lands acquired or in which any interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

Accordingly, notice is hereby given that the United States accepts 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, and which exclusive jurisdiction has not heretofore been obtained.

Return of the duplicate copy of this letter, with your indorsement thereon designating time of receipt of this acceptance by your office, would be appreciated."

In Article I, Section 8, Clause 17 of the Constitution of the United States it is provided :

"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 the State of Ohio and jurisdiction thereover by the United States was given by the General Assembly of this state in 1902 and is set out in Sections 13770, 13771 and 13772 of the General Code, which sections 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 re-

main 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 of all township, county and state elections in any township in which such national asylum shall be located."

Notwithstanding the fact that the laws of a state wherein land acquired by the United States contain provisions under which consent to such acquisition is given and jurisdiction over such lands is ceded to the United States, it is now well settled that the above constitutional provision does not compel the United States to assume exclusive jurisdiction over such lands. See: *Atkinson v. State Tax Commission of Oregon*, 303 U. S. 20; 82 L. Ed. 621; *Stewart & Co. v. Sadrakula*, 309 U. S. 94, 84 L. Ed. 596; *Murray v. Gerrick & Co.*, 291 U. S. 315, 78 L. Ed. 821; *Arlington Hotel Co. v. Fant*, 278 U. S. 439, 73 L. Ed. 447. •

In the case of *Adams v. United States*, 319 U. S. 312, 87 L. Ed. 1421, it was held as disclosed by the first headnote:

"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 October 9, 1940, 40 USC sec. 255) provides that United State 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."

The Act of October 9, 1940, 40 U. S. C., Section 255, referred to in the above case, provides in part:

"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.”

Since consent to the acquisition of lands in this state by the United States is given by Section 13770 of the General Code, and jurisdiction over lands acquired by the United States is ceded to the United States by Sections 13771 and 13772 of the General Code, it would appear, in the light of the above provisions, and it is consequently my opinion, that when acceptance of such jurisdiction is effected in accordance with the provisions of the Federal statute, jurisdiction over such lands, to the extent that same has been accepted by a duly authorized authority acting on behalf of the United States and not however to a greater extent than that ceded by the statutes of Ohio, becomes vested in the United States Government.

Respectfully,

HUGH S. JENKINS

Attorney General