

7355

RELIEF — RESIDENT ON LAND IN STATE OF OHIO, OWNED BY UNITED STATES — ACQUIRED THROUGH LANHAM ACT — TITLE 42, SECTIONS 1541 TO 1552, USC — NOT INELIGIBLE TO RELIEF PURSUANT TO SECTION 3391 ET SEQ., G. C.

SYLLABUS:

A resident on land in the State of Ohio, which is owned by the United States and has been acquired under authority of the Lanham Act (Title 42, Sections 1521 to 1552, inclusive, USC), is not by reason of such residence ineligible to receive relief pursuant to Section 3391, et seq., General Code.

Columbus, Ohio January 4, 1945

Hon. Herbert R. Mooney, Director of Public Welfare
Columbus, Ohio

Dear Sir:

You have requested my opinion as follows:

“There are in Ohio several housing projects which have been constructed on land owned by the United States of America, and I believe were constructed under the provisions of the Lanham Act. Many families have been re-located in these housing projects because of the war effort. The question has arisen whether persons residing in these housing projects owned by the Federal government are eligible for poor relief under the state laws. This question has been brought to our attention and I would like to have an opinion from you on this subject.”

The furnishing of poor relief in Ohio is regulated by Section 3391, et seq., General Code. Section 3391-1, General Code, provides that each city shall be a local relief area and that the territory in each county outside the corporate limits of cities therein shall also be a local relief area. Section 3391-2, General Code, provides in part:

“Local relief authorities shall administer poor relief in accordance with the following powers and duties:

1. In each local relief area, subject to the provisions of

law, poor relief shall be furnished by the local relief authority to all persons therein in need of such poor relief. * * *”

It is therefore necessary to determine whether persons living in a housing project constructed and owned by the United States under authority of the Lanham Act are in a local relief area in Ohio. In other words, are lands which are owned by the United States and which have been acquired under authority of the Lanham Act so removed from the jurisdiction of the State of Ohio as no longer to be a part of the state.

In my Opinion No. 7201 rendered under date of November 4, 1944, to the Prosecuting Attorney of Greene County, Ohio, I had occasion to consider a question involving legal principles similar to those raised by your question. The question involved in said opinion was whether persons residing in certain areas in Greene County on lands owned by the federal government were eligible to vote at elections in Ohio.

In this opinion I called attention to Article I, Section 8, Clause 17 of the Constitution of the United States, Sections 13770, 13771 and 13772, General Code of Ohio, and certain decisions by the Supreme Court of the United States. These decisions were:

Atkinson v. State Tax Commission, 303 U. S., 20

Murray v. Gerrick & Co., 291 U. S., 315

Arlington Hotel Co. v. Fant, 278 U. S., 439

Adams v. United States, 319 U. S., 312

I also cited and quoted from the cases of:

Johnson v. Morrill (Cal.), 126 Pac. (2d), 873

State, ex rel., v. Corcoran (Kan.), 128 Pac. (2d). 999

Certain federal statutes, including the Lanham Act, were also considered. Some of the lands involved in my said Opinion No. 7201 were acquired under authority of the Lanham Act. After citing and commenting on these various decisions and statutes, I said:

“Therefore, in light of the above statutory provisions and the judicial pronouncements with respect thereto, it follows that

the Congress of the United States has never exercised exclusive legislation or exclusive jurisdiction over the lands in question, and consequently I find myself constrained to the view that residence on such lands does not in and of itself constitute grounds for denial of voting.”

Reference is made to my said Opinion No. 7201 for a detailed discussion of the principles involved.

The Lanham Act, pursuant to which you state the lands in question were acquired, has been codified as Sections 1521 to 1552, inclusive, of Title 42, USC. Section 1547 of Title 42, USC, which is part of the Lanham Act, provides:

“Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to this Act shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term ‘State’ shall include the District of Columbia.”

In my Opinion No. 7201, I reached the conclusion that the State of Ohio was not deprived of civil and criminal jurisdiction over lands acquired under authority of the Lanham Act and that the civil rights of persons living on such lands, which rights are granted by the laws of Ohio, were in nowise affected by such acquisition by the United States.

It would therefore seem to follow that persons residing on lands owned by the United States which have been acquired under authority of the Lanham Act are subject to the civil and criminal jurisdiction of Ohio and are residents of Ohio and of the particular local relief area in which such lands are situated.

I would have no hesitation in reaching the conclusion that persons living on such lands, if otherwise qualified should not be denied relief under Section 3391, et seq., General Code, if it were not for the decision of the Court of Appeals of Cuyahoga County in *State, ex rel. Moore, v. Board of Education of Euclid City School District*, 41 O. L. Abs., 161. In that case, the court decided that children of parents residing on such lands were not entitled to attend the schools of the district within which such lands were situated without the payment of tuition.

In the concurring opinion of Morgan, P. J., which was concurred in by Skeel, J., it was said that Section 1547 of Title 42, USC, above quoted, "does not cede complete and exclusive jurisdiction over real estate acquired under the Act and over its inhabitants, to the State or any of its political subdivisions."

Further in his opinion Judge Morgan, after quoting from Article I, Section 8 of the Constitution of the United States, and Sections 13770 and 13771, General Code, made the following statement:

"It therefore seems to be beyond dispute that by force and effect of Article I, Section 8, Clause 17 of the Constitution of the United States and of sections 13770 and 13771 G. C., the United States acquired exclusive jurisdiction over the Euclid Homes and Lake Shore Village projects."

Judge Morgan also compared the section of the Lanham Act hereinabove quoted with a portion of the Act of June 29, 1936, providing for slum clearance and low cost housing, which has been codified as Section 421 of Title 40, USC. He called attention to the fact that Section 421 of Title 40, USC, contained the following language which is not found in Section 1547 of Title 42, USC:

"Insofar as any such jurisdiction has been taken away from any such state or subdivision or any such rights have been impaired, jurisdiction over any such property is hereby ceded back to such state or subdivision."

Judge Morgan then made the following statement:

"Of course, the omission of the above sentence from the Lanham Act ceding back the jurisdiction of the United States in acquired property to the State, was no accident. Clearer proof cannot be imagined that Congress thereby intended to retain in its entirety the exclusive jurisdiction of the United States over all lands acquired under the Act."

The difficulty with this reasoning is that the United States never acquired civil or criminal jurisdiction over lands acquired under authority of the Lanham Act, because the Lanham Act at all times contained the provision hereinabove quoted. Since the United States never obtained such jurisdiction over lands acquired under authority of the Lanham Act, it was unnecessary to provide therein that such jurisdiction

should be ceded back to the states, for there was in reality nothing to cede back.

But a different situation obtained as to lands which had been acquired in connection with low cost housing or slum clearance projects. Much of such land had been acquired before the Act of June 29, 1936, was enacted and the United States had exclusive jurisdiction over such land. It was therefore necessary in such cases to provide for a ceding back to the states of jurisdiction if the states were to have any authority over such lands.

The very language quoted by Judge Morgan presupposes that the jurisdiction had been acquired by the United States, for the words used are "Insofar as any such jurisdiction has been taken away from any such state or subdivision." This language could not possibly apply to lands over which the state had never lost jurisdiction.

I might add parenthetically that this does not mean that I regard the judgment of the court as erroneous, because there were other reasons advanced by Judge Morgan in his opinion which are sufficient to sustain the judgment.

I have not been unmindful that the conclusion I have reached may result in a burden being placed upon the taxpayers of that portion of the relief area which lies outside the limits of land acquired by the United States under authority of the Lanham Act. While the Lanham Act does contain a provision (Section 1546, Title 42, USC) that the federal agency shall pay annual sums in lieu of taxes to any state or political subdivision thereof with respect to any real property acquired and held by it under the act, including improvements thereon, in an amount approximately equal to the taxes which would have been paid to the state or subdivision if it were not exempt from taxation, I gather from the opinion in the Euclid School District case, *supra*, that the federal authorities and the Auditor of Cuyahoga County have been unable to agree upon the sum which should be paid. If the federal authorities take an arbitrary position and persist in maintaining it, the General Assembly of Ohio might well regard that as sufficient reason for excluding such federally owned territories from local relief areas, but, as the law now stands, I believe that persons residing within such areas are not thereby made ineligible to receive relief under Section 3391, *et seq.*, General

Code, and being of this opinion, my duty impels me to say so.

You are therefore advised that a resident on land in the state of Ohio, which is owned by the United States and has been acquired under authority of the Lanham Act, is not by reason of such residence ineligible to receive relief pursuant to Section 3391, et seq., General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General