

just as section 2 of House Bill No. 248 reads. Surely it cannot be maintained that House Bill No. 699 repeals House Bill No. 93.

There is another strong argument for holding that it was not the intention of the legislature to repeal House Bill No. 248. A reference to the booklet "State of Ohio, Executive Budget, Biennium 1933-1934", at page 210 shows that the Director of Finance recommended to the 90th General Assembly that \$500,000 be appropriated by the General Assembly for workmen's compensation insurance for state employees for the biennium 1933-1934, and a reference to page 268 of the booklet "Appropriations, 1931-1932", shows that the General Assembly appropriated \$500,000 for workmen's compensation for state employees for the biennium 1931-1932. If it were to be held that House Bill No. 699 repealed House Bill No. 248, then only \$425,000 would be appropriated by the legislature for the 1933-1934 biennium, while if it is held that House Bill No. 248 is not repealed by House Bill No. 699, then the legislature will have appropriated \$500,000 for workmen's compensation insurance for state employees for the biennium 1933-1934, which is the same amount appropriated during the biennium 1931-1932, and the same amount recommended by the Director of Finance for the 1933-1934 biennium. Surely this background would seem to indicate strongly the intention of the legislature was not that House Bill No. 248 be repealed by House Bill No. 699.

In view of the foregoing, I am of the opinion, in specific answer to your question, based upon the data submitted in your communication, that there is still due the Industrial Commission from the Highway Maintenance and Repair Fund for the year 1933, the sum of \$75,000.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2858.

MOUND CITY STATE PARK—SUPERINTENDENT ENTITLED TO SAME SCHOOL PRIVILEGES AS RESIDENTS OF SCHOOL DISTRICT EMBRACING PARK.

SYLLABUS:

The Superintendent of the Mound City State Park located within the boundatrics of the Camp Sherman Military Reservation near Chillicothe, Ohio, is entitled to the same school privileges as are accorded by law to the residents, of the school district which embraces the territory within said park.

COLUMBUS, OHIO, June 25, 1934.

MR. HENRY C. SHETRONE, *Director, The Ohio State Archaeological and Historical Society, Columbus, Ohio.*

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

"At the request of the Board of Trustees of the Ohio State Archaeological and Historical Society, I take the liberty of inviting

your attention to the following situation and of requesting a ruling in the matter:

At the north edge of Chillicothe is situated Mound City State Park. The area originally was a part of Camp Sherman, the property of the United States Department of the Interior, but several years ago was leased by the Federal Department to the State of Ohio for the creation of a state park, since which time it has been developed and maintained entirely by state funds.

The Superintendent of Mound City State Park is Roy Sampson, who lives within the park in a residence erected for that purpose. His salary, of course, is paid altogether from state funds. Mr. Sampson has several children of school age, one of whom will enter high school next autumn. He never has been able to enjoy free tuition for any of his children, the Ross County authorities taking the position that he is not entitled to same for the reason, as they claim, that he resides on government property. Our Board of Trustees feels that they are mistaken in their attitude since the property in question is under lease to the state, and that its maintenance and the salary of the superintendent are paid from state funds. They believe that his status differs from that of residents on the government reservation at Chillicothe and that he really is entitled to enter his son in the Chillicothe High School without charge for tuition. * *

The Board respectfully requests that you rule in the matter as to whether or not Mr. Sampson's young son is entitled to enter the Chillicothe High School next autumn without being constrained to pay tuition."

Section 7681, General Code, provides that the schools in each district shall be free to all youth of school age who are children, wards or apprentices of actual residents of the district. Section 7682, General Code, provides that boards of education may admit other persons to their schools upon such terms or upon the payment of such tuition within the limitations of other sections of law, as it provides.

By the terms of Sections 7747 and 7748, General Code, it is provided that the tuition of all pupils who are eligible for high school and who reside in districts which do not maintain a high school shall be paid by the board of education of the school district in which they have a legal school residence.

To answer your question, therefore, it is necessary to determine whether or not the residential status of the Superintendent of Mound City State Park is such that his children are entitled to the same school privileges accorded by law to the youth of school age who are residents of the school district in which the territory of Mound City State Park lies, if it is not a part of a government military reservation under the exclusive jurisdiction of Congress.

Mound City State Park, where the superintendent to whom you refer resides, lies within the boundaries of Camp Sherman Military Reservation. The lands within this reservation were acquired by the Federal Government for military purposes, with the consent of the legislature of Ohio. See Sections 13770 and 13771 of the General Code of Ohio. By reason thereof the Federal Government acquired exclusive jurisdiction over the territory in question, unless by appropriate action that jurisdiction has been ceded back to the state of Ohio.

The Constitution of the United States, in Article I, Section 8, Clause 17 thereof, provides:

“The Congress shall have Power * *

To exercise exclusive Legislation * * 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. * *”

It is well settled by the courts of this state as well as those of other states and by the Federal courts, that residents of such reservations over which Congress has exclusive jurisdiction, are non-residents of Ohio.

In the case of *Sinks vs. Reese*, 19 O. S., 306, which related to lands purchased by the Federal Government, with the consent of the legislature of Ohio, for a National Home for disabled soldiers at Dayton, Ohio, a question arose as to the right of the residents in this home to vote in local elections in the political subdivisions in which the territory comprising the home had formerly been included. The court held that by the purchasing of the site for the home by the Federal Government, with the consent of the state legislature, the United States acquired exclusive jurisdiction over the site, and that the residents of the home being within that exclusive jurisdiction were not residents of the state and therefore not entitled to vote therein. The second branch of the syllabus of the opinion in this case reads as follows:

“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 Article 1, Section 8, Clause 17 of the United States Constitution) with exclusive jurisdiction over the same and its appurtenances, in all cases whatsoever.”

In the course of the court’s opinion it is said with reference to a resident on these lands:

“He becomes subject to the exclusive jurisdiction of another power, as foreign to 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 government, and placed under its exclusive jurisdiction for an indefinite period.”

In an opinion rendered by me on February 1, 1933, which opinion will be found in the published Opinions of the Attorney General for 1933, page 91, there was considered a question involving the right of persons residing on the government reservation known as Wilbur Wright Field in Montgomery County, to the school privileges accorded the residents of the school district in which the territory comprising this reservation would lie if it had not been acquired by the Federal Government for a military reservation. The syllabus of this opinion is as follows:

“1. The jurisdiction of the Federal government over territory acquired by the United States for the erection of forts, magazines, ar-

senals, 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."

Following the decision of the Supreme Court, in the case of *Sinks vs. Reese*, *supra*, Congress, by special act receded to the state of Ohio the jurisdiction it had acquired over the lands upon which the Dayton Soldiers Home was located. (16 Stat. 399.) Soon after this action was taken by Congress the question of its effect came before the Supreme Court of Ohio in the case of *Renner vs. Bennett*, 21 O. S., 431. It was there held:

"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.

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.

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.

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."

On March 27, 1923, the Federal Government, through the Assistant-Secretary of War, granted to the Ohio Archaeological and Historical Society a license to occupy that portion of the Camp Sherman Military Reservation now known as Mound City State Park and to care for, preserve, protect and maintain the "Mound City Group" of prehistoric mounds located thereon; said mounds were declared to be a national monument, by presidential proclamation under authority of an act of Congress approved June 8, 1906. (34 Stat., 225). This license reads as follows:

"REVOCABLE LICENSE

The Ohio State Archaeological and Historical Society is hereby granted a license, revocable at will by the Secretary of War, to care

for, preserve, protect, and maintain the 'Mound City Group' of prehistoric mounds located on the Camp Sherman Military Reservation at Chillicothe, Ohio, and declared a national monument by Presidential Proclamation No. 1653, dated March 2, 1933, under authority of Act of Congress approved June 8, 1906 (34 Stat. 225), and for that purpose to occupy the tract of land upon which they are situated, which tract was reserved by said proclamation as the site of the said monument, the site so reserved and hereby authorized to be occupied and cared for being described as follows:

All of Sections N and O, bounded on the north by East Liverpool Street, on the east by the Scioto River, on the west by Columbus Avenue, and on the south by Portsmouth Street, containing fifty-seven (57) acres, more or less.

This license is granted upon the following provisions and conditions:

1. That the said site shall be open to all people desiring to visit these mounds and shall be properly cared for and policed by the licensee without any expense whatever to the United States.

2. That no buildings or structures of any kind whatever shall be erected upon the property without the consent of the Secretary of War.

3. That no excavations of the said mounds shall be allowed, except upon permission granted by the Secretary of War.

WITNESS my hand this 27th day of March, 1923.

(Signed) DWIGHT F. DAVIS,

The Assistant Secretary of War."

The foregoing instrument, although denominated a "license", and provides that it is revocable at the will of the Secretary of War, is really more than a license so long as it is in effect and until it is revoked. It is, in fact, a conditional grant made to an agency of the State of Ohio to occupy the premises described therein, and to care for, preserve, protect and maintain the prehistoric mounds located on the premises described. It is also made a condition of the grant that the premises be "policed" by the licensee or grantee, without any expense to the United States. By the terms of this grant, the United States has, in my opinion, effectively surrendered its jurisdiction over the territory to the so-called licensee, which is in fact an agency of the state of Ohio. Although this has not been done directly by a special act of Congress we must assume that the Assistant-Secretary of War acted under authority of law and thus his action in granting this license is done by authority of Congress.

The Ohio State Archaeological and Historical Society was originally organized as a private institution and still is such an institution in many respects, but so far as the Mound City State Park is concerned, which park comprises the territory described in the above license as having been declared a national monument, it is purely a state agency inasmuch as all the funds expended by the society for the preservation, protection, upkeep and policing of the state park are state funds appropriated by the legislature of Ohio for that purpose.

For a number of years, the General Assembly of Ohio has appropriated funds to the Archaeological Society for the maintenance of the Mound City State Park. In the General Appropriation Act of the 90th General Assembly there is appropriated to the Ohio State Archaeological and Historical Society

for "Mound City State Park" the sum of \$4,250.00 for "personal service" and "maintenance." Under this head there is appropriated for "personal service, salaries, superintendent" for each of the years of the biennium of 1933-1934 the sum of \$1,000.00.

The Superintendent of the Mound City State Park, although nominally an employe of the Ohio State Archaeological and Historical Society, is practically an employe of Ohio inasmuch as his salary is paid by the state through the medium of the Archaeological Society and his work consists of caring for a state park. He necessarily should reside in the park in order to successfully care for it and protect it, and he does not by reason thereof, in my opinion, forfeit his citizenship in the state or his right to school privileges accorded to residents of the state.

I am therefore of the opinion that he and his children are entitled to the same school privileges that are granted by law to the residents of the school district which embraces the territory within Mound City State Park after the jurisdiction over that territory was surrendered by the United States Government by the granting of a license to the Ohio State Archaeological Society to maintain, protect and police that territory and until that jurisdiction is again resumed by the revocation of this license.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2859.

APPROVAL—BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO—\$165,000.00.

COLUMBUS, OHIO, June 25, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2860.

APPROVAL CONDITIONALLY—ARTICLES OF INCORPORATION OF THE GREAT LAKES MUTUAL INSURANCE ASSOCIATION.

COLUMBUS, OHIO, June 26, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of the articles of incorporation of The Great Lakes Mutual Insurance Association which you have submitted to me for my approval.

This association is to be organized under authority of Sections 9593 et seq. of the General Code. Section 9595 provides, among other things, that such an