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JURISDICTION — AUCTIONEERS — LANDS WITHIN OHIO —
ACQUIRED BY THE UNITED STATES—JURISDICTION NOT
ACCEPTED BY THE UNITED STATES—OHIO RETAINS
JURISDICTION.

SYLLABUS:

Where federal jurisdiction has not been obtained over lands acquired by the United States within the State of Ohio, because of lack of acceptance of such jurisdiction, the State of Ohio retains exclusive jurisdiction and may enforce the statutes regulating auctioneers.

Columbus, Ohio, July 24, 1956

Hon. Wray Bevens, Prosecuting Attorney
Pike County, Waverly, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“Section 4707.01 of the Revised Code of Ohio provides in substance that whoever exercises the occupation of auctioneer is required to obtain a license.

“Section 4707.02 RC. further provides the exceptions thereto.

“I shall appreciate it sincerely if you will inform me as to whether or not professional auctioneers, non-residents of the

State of Ohio, who have been given a contract by the Atomic Energy Commission, U. S. Government, to sell at public auction industrial surplus equipment and supplies would be exempt under Section 4707.02."

The sections of the Revised Code to which you refer read as follows:
Section 4707.01, 5866 G.C.:

"Whoever exercises the occupation of auctioneer or sells or attempts to sell, by public vendue, auction, or outcry, any property or effects, without a license, shall forfeit and pay not less than one hundred nor more than five hundred dollars, to be recovered in the name of the state."

Section 4707.02, 5767 G.C.:

"Section 4707.01 of the Revised Code shall not extend to an officer or person executing a process or order of a court, or selling property directed by law, or by a process or order, to be sold by public vendue, auction, or outcry."

Authority for the state's power to regulate auctioneering is well established. "The power of the state to regulate and to license public auction sales and auctioneers is derived from the police power, and the legislature is empowered to pass general laws for this purpose." 6 Ohio Jurisprudence, 2nd, 136; *Wessell v. Timberlake*, 95 Ohio St., 21.

According to the citations and the plain unequivocal language of the sections quoted above, a professional auctioneer selling at public auction would ordinarily be required to be licensed in order to sell property in Ohio.

An examination of the Atomic Energy Act of 1954, Title 42, par. 2011, et seq., that amended and drastically changed the Atomic Energy Commission Act of 1946, discloses that no special provision is made for the assumption of complete jurisdiction of property acquired by the Commission. Provision is made for the purchase and protection of property of the Commission, Par. 2201, e.g.k., but nowhere do I find any indication of an intention to supersede the government of the State of Ohio or any direction by law to sell personal property at public auction.

On the other hand, the Atomic Energy Community Act, Title 42, par. 2301, et seq., seeks to "a. facilitate the establishment of local self-government"; and definitely encourages its establishment or continuation along with the selling of homes to certain persons connected with the

projects. The last amendments available were dated August 4, 1955, and were in the 1956 supplement to the Federal Code Annotated.

Additional examination and inquiry reveal no court orders that would exempt such an auctioneer from the operation of the statute.

I am assuming, therefore, that the sale you describe is not being made in accordance with an order of a court of competent jurisdiction or by direction of law so as to bring it within that portion of Section 4707.02, Revised Code, that excepts such sales. The question that remains is whether or not the United States has exclusive jurisdiction so as to preclude jurisdiction by the State of Ohio.

The original Ohio laws that consented to the acquisition of lands in Ohio and consented to exclusive jurisdiction over such lands by the United States government were enacted in 1902, and as Sections 159.03, 159.04 and 159.05, Revised Code, now read as follows:

Section 159.03, 13770 G.C.:

“The consent of the state is hereby given in accordance with clause 17, Section 8, Article I, United States Constitution, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom houses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.”

Section 159.04, 13771 G.C.:

“Exclusive jurisdiction in and over any land acquired by the United States under section 159.03 of the Revised Code 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. The jurisdiction so ceded shall continue no longer than the said United States owns such lands.”

Section 159.05, 13772 G.C.:

“The jurisdiction ceded under section 159.04 of the Revised Code shall not vest until the United States has acquired title to the lands by purchase, condemnation, or otherwise. As long as the lands remain the property of the United States they are 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. Sections 159.03 to 159.06, inclusive, of the Revised Code do not prevent any officers, employees, or inmates of any national asylum for disabled volunteer soldiers located on any such land over which jurisdiction is ceded, who are qualified voters of this state from exercising

the right of suffrage at all township, county, and state elections in any township in which such national asylum is located.”

The Constitution of the United States, 17th Clause of Section 8, Article I, pertains to the acquisition and jurisdiction in lands acquired in the various states and provides in part 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, 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, dockyards, and other needful buildings; and * * *” (Emphasis added.)

The constitutional provision quoted above makes it plain that acquisition of territory within the State and consent of the State to exclusive jurisdiction by the United States are not in themselves sufficient to transfer criminal jurisdiction to the United States. The case of *Adams v. United States*, 319 U.S., 312, 87 L. ed., 1421, involved a similar situation where land had been acquired with the consent of the State and a statute of the State authorized the government to take jurisdiction without any act of acceptance of jurisdiction by the United States. A quotation from page 313 is as follows:

“The Act of October 9, 1940, 40 U.S.C. Sec. 255, passed prior to the acquisition of the land on which Camp Claiborne is located, provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing a notice with the Governor of the state in which the land is located or by taking other similar appropriate action. The Act provides further: ‘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.’ The government had not given notice of acceptance of jurisdiction at the time of the alleged offense.”

A further quotation from the same case, beginning on page 314 and continuing at page 315, follows:

“Both the Judge Advocate General of the Army and the Solicitor of the Department of Agriculture have construed the 1940 Act as requiring that notice of acceptance be filed if the

government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding, and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the Act. These agencies cooperated in developing the Act, and their views are entitled to great weight in its interpretation. Cf. *Bowen v. Johnston*, 306 U.S. 19, 29-30. Besides, we can think of no other rational meaning for the phrase 'jurisdiction, exclusive or partial' than that which the administrative construction gives it.

"Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken."

The office of the Governor of Ohio has informed me that there is no record of any acceptance of jurisdiction over the territory involved.

I have ruled on two requests for my opinion involving related situations, and in Opinion No. 152, Opinions of the Attorney General for 1951, page 23, I considered a similar question involving the power of the state to require licensing of a strip mining operation conducted solely on national forest lands owned by the United States. The opinion held that specific federal statutes, Sec. 480, Title 16, U.S.C., prevented the acquisition of exclusive jurisdiction, but that Sections 516, 518, 520 and 521, Title 16, U.S.C., pertaining to national forest lands, authorizes the Secretary of Agriculture of the United States to preserve the navigability of navigable streams including all factors on such lands which affect such navigability, and that such factors include soil erosion, reforestation, surface grading and related soil reclamation measures, and that such power was superior to any state power in that respect so that such strip mining operations could not be required to be licensed by Ohio. The opinion is therefore readily distinguished from the problem at hand because of the special statutes authorizing such control by the secretary of agriculture.

Another related situation was involved in Opinion No. 1877, Opinions of the Attorney General for 1952, page 720, wherein a question of jurisdiction of traffic on a state highway constructed across military lands, with permission granted by the secretary of war, was considered. The federal government acquired the land in accordance with the 17th Clause of Section 8, Article I, United States Constitution, and by virtue of Section

13770, et seq., General Code, permission was granted and exclusive jurisdiction ceded by the state. In this situation, however, the secretary of war accepted exclusive jurisdiction by letter to the Governor of Ohio December 5, 1945, and the facts are therefore distinguished from those in the question now under study.

Article I, Section 8, Clause 17, of the Constitution of the United States is quoted, in pertinent part, earlier in this opinion and I pointed out that acceptance of exclusive jurisdiction was a condition precedent to its acquisition by the United States. This point must be considered along with Article IV, Section 3, Clause 2, which provides:

“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claim of the United States, or of any particular State.”

Under this clause the United States does have power to make rules and regulations and under Article I, Section 8, Clause 17, exclusive jurisdiction may be acquired, but it must be done in the manner prescribed, i.e., by acceptance as specified in 40 U.S.C.A. 255, 9A F.C.A., Title 40, 255, cited in *Adams v. United States* earlier in this opinion.

Pacific Coast Dairy v. California, 318 U.S. 285, 87 L. ed., 761, also involved a conflict of jurisdiction between California and the United States but, since it was admitted by all parties that the United States had acquired exclusive jurisdiction and the case turned on this point, it is readily distinguishable.

Your inquiry specifies that a professional auctioneer has contracted with the Atomic Energy Commission of the United States Government to sell the material and, as the statute involved only regulates the auctioneer, there is no question as to interference with the function of the United States Government involved.

Accordingly, in specific answer to your inquiry, it is my opinion that where federal jurisdiction has not been obtained over lands acquired by the United States within the State of Ohio, because of lack of acceptance of such jurisdiction, the State of Ohio retains exclusive jurisdiction and may enforce the statutes regulating auctioneers.

Respectfully,

C. WILLIAM O'NEILL

Attorney General