

SCHOOLS :

Children residing on federal lands comprising Fordland Air Force Station may attend school in school district within which such lands lie and attendance may be counted in apportioning state aid.

SCHOOL DISTRICTS:

CONSTITUTIONAL LAW:

May 10, 1956



Mr. Hubert Wheeler  
Commissioner of Education  
Department of Education  
Jefferson Building  
Jefferson City, Missouri

Dear Sir:

This is in response to your request for opinion dated March 20, 1956, which reads as follows:

"During the last few years with the acquisition of property in this state by the Federal Government for Military purposes and on which is located housing areas the question arises whether the State of Missouri has the right, and if the right, the obligation to provide free public education to the children who live upon federal property where exclusive jurisdiction has been ceded to the United States Government. This question has been presented to your department on two other occasions; the one in reference to the Fort Leonard Wood Military Reservation in 1953; the other in reference to the Sedalia Air Force Base in 1955. The question at issue this time is whether the state, under its present laws, could legally provide educational facilities for children residing on the Fordland Air Force Station, located within the boundary of a common school district in Webster County.

"Information reported by Major Lawrence E. St. John, Commanding Officer of the Fordland Air Force Station and sent to this department on February 28, 1956, shows that the Federal

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Government purchased last October 6, 1955, approximately 40 acres of land all located within a common school district of Webster County. Also adjacent additional territory was obtained on a lease basis. The housing area is located on the area owned by the Federal Government. There are nine houses on the Air Force Base from which there will be about nine children of school age. It is necessary at this time for some agency to arrange for educational facilities for these children.

"The Fordland Air Force Station is a restricted area used for military purposes the same as Fort Leonard Wood and the Sedalia Air Force Base. It does not seem possible to apply the laws of this state governing public schools to territory restricted by the Federal Government for military purposes. Such state laws relate to the freedom of petitioning for meetings, holding elections, securing school sites and building property, and establishing rules and regulations for operating a free public school.

"The laws of this state authorize the acquisition of land by the United States Government for such purposes as arsenals, forts, and other military purposes. Section 12.030 gives consent to the United States to acquire land by purchase or condemnation for military purposes. Section 12.040 gives exclusive jurisdiction to the United States over land used for military purposes, reserving only the right of taxation and the right to serve processes. Both Sections 12.030 and 12.040 were repealed and reenacted by H. B. 371, Sections 1 and 2, laws of 1955. The reenacted laws are identical with the sections having the same number in RSMo 1949. These two laws are general in reference to consent in acquiring land and granting exclusive jurisdiction. When any land area is taken over for military purposes and the state cedes exclusive jurisdiction to the United States, there is no authority or power remaining for the state to provide educational facilities. Military

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reservations such as Fort Leonard Wood, the Sedalia Air Base and the Fordland Air Force Station seem to require exclusive jurisdiction on the part of the Federal Authority in order to attain the Federal purpose.

"In your opinions of January 26, 1953 in relation to Fort Leonard Wood Military Reservation and May 23, 1955 in relation to the Sedalia Air Force Base, it was ruled that the State Board of Education cannot legally apportion state school moneys to any school district in order to provide educational facilities for pupils residing on such restricted military reservations. A copy of each of these opinions are attached for your reference.

"In the light of the foregoing facts, and the opinions rendered in relation to other military reservations, I shall appreciate your advice and official opinion in answer to the following questions:

(1) Are there any state laws which would allow the Fordland Air Force Station to be considered as part of the common school district which surrounds it, thereby making it legal for the State Board of Education to apportion school money by counting attendance of the pupils living on the Air Force Station for the apportionment of school moneys to the district?

(2) Or is the Fordland Air Force Station to be considered as independent from the common school district so that the laws governing school districts of this state do not apply to lands owned by the United States Government to which exclusive jurisdiction has been ceded?"

In your request you have referred to two prior opinions of this office holding, with regard to the Sedalia Air Force Base and the Fort Leonard Wood Military Reservation, respectively, that the State Board of Education could not legally apportion state school moneys to a school district in order to provide educational facilities for pupils residing in those areas and that such military

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reservations could not be organized as school districts within the state or become annexed to an adjoining school district. Those opinions were based primarily upon the fact that exclusive jurisdiction had been ceded to the federal government, with the result that for purposes of providing free education such areas were not in the state of Missouri and subject to its laws.

It is pointed out in *Arledge v. Mabry*, 52 N.M. 303, 197 P2d 884, that there are three principal methods by which the United States may acquire land within a state: First, the constitutional method as provided by Clause 17, Section 8, Article I of the Federal Constitution; second, by purchase without obtaining the consent of the state; third, where the land acquired by the government was the property of the state, such acquisition being by a cession by the state to the federal government in the nature of a gift. With respect to jurisdiction, different consequences follow acquisition under the three means permitted.

The Sedalia and Fort Leonard Wood reservations were acquired by the United States in the constitutional method, i.e., by consent of the Legislature. More explicitly stated, the United States Constitution, Article I, Section 8, Clause 17, gives Congress power, among other things:

"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, dock yards, and other needful buildings."

From time to time the Legislature has given its consent to such acquisitions by the federal government by the re-enactment of the following law (Secs. 12.030 and 12.040, RSMo, Cum. Supp. 1955):

Sec. 12.030.

"The consent of the state of Missouri 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

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States by purchase, condemnation, or otherwise, of any land in this state which has been acquired, prior to the effective date of sections 12.030 and 12.040, as sites for customhouses, courthouses, post offices, arsenals, forts, and other needful buildings required for military purposes."

Sec. 12.040.

"Exclusive jurisdiction in and over any land so acquired, prior to the effective date of sections 12.030 and 12.040, by the United States shall be, and the same is hereby, ceded to the United States for all purposes, saving and reserving, however, to the state of Missouri the right of taxation to the same extent and in the same manner as if this cession had not been made; and further saving and reserving to the state of Missouri the right to serve thereon any civil or criminal process issued under the authority of the state, in any action on account of rights acquired, obligations incurred, or crimes committed in said state, outside the boundaries of such land but the jurisdiction so ceded to the United States shall continue no longer than the said United States shall own such lands and use the same for the purposes for which they were acquired."

We call your attention particularly to the fact that the cession of exclusive jurisdiction by the State of Missouri to the federal government is only with respect to lands acquired by the federal government prior to the effective date of the act. As to such lands, e.g., the Sedalia Air Force Base and the Fort Leonard Wood Military Reservation, exclusive jurisdiction having been ceded to the federal government and with certain minor exceptions removed from the jurisdiction of the State of Missouri, it has consistently and properly been held that for school district purposes such areas are not within the state of Missouri.

However, the last re-enactment of the above Sections 12.030 and 12.040 was in the 68th General Assembly, effective August 29, 1955, and you have informed us that the Fordland Air Force Station in Webster County was acquired by the federal government by purchase on October 6, 1955. Hence, the State of Missouri has not ceded exclusive jurisdiction over this land to the United States.

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An excellent discussion of this whole problem is found in *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 536, 5 S. Ct. Rep. 995. Having discussed the question of jurisdiction where lands have been acquired by the United States in the constitutional manner, and incidentally citing with approval an opinion of the Justices of the Supreme Judicial Court of Massachusetts which held that when land is so acquired by the federal government persons residing thereon are not entitled to the benefits of the common schools of the state (U.S. 1.c. 536), the court went on to say at U.S. 1.c. 538:

"But with reference to lands owned by the United States, acquired by purchase without the consent of the State, or by cessions from other governments, the case is different. Story, in his Commentaries on the Constitution, says: 'If there has been no cession by the State of the place, although it has been constantly occupied and used under purchase, or otherwise, by the United States for a fort or arsenal, or other constitutional purpose, the State jurisdiction still remains complete and perfect;' and in support of this statement he refers to People v. Godfrey, 17 Johns. 225. \* \* \*

"Where, therefore, lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits."

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Consequently, the land comprising the Fordland Air Force Station remains within the state of Missouri and, as a general proposition, subject to its jurisdiction. One exception to that general statement is, of course, that the land cannot now be taxed by the state (Const. of Mo. 1945, Art. III, Sec. 43; Art. I, Sec. 8, Clause 17, Const. of U.S.). Another is that, as pointed out in the above quotation, the state cannot exercise its jurisdiction so as to interfere with, destroy or impair the effective use of the lands for the purpose for which they were acquired by the federal government.

Therefore, since, with these exceptions, the land comprising the Fordland Air Force Station remains within the jurisdiction of the State of Missouri, subject to its laws, it is in law still within the state of Missouri, still part of the common school district of Webster County within the boundaries of which it is located, and the children of school age residing thereon may be counted for attendance purposes in apportioning state school moneys to such school district.

#### CONCLUSION

It is the opinion of this office that since the State of Missouri has not ceded exclusive jurisdiction over the lands comprising the Fordland Air Force Station in Webster County, Missouri, to the United States, children residing thereon may attend school in the common school district within the boundaries of which such lands lie and their attendance may be counted in the apportionment of state school moneys for such district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

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