

NATIONAL PARKS:  
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JURISDICTION OF NATIONAL PARKS:

Sections 12.020, 12.010, and 95.525, RSMo 1949, cedes exclusive jurisdiction to the Federal Government of the George Washington Carver National Monument and the Jefferson National Expansion Memorial, only to the extent the federal government accepts said jurisdiction; and State of Missouri still retains jurisdiction over said two pieces of property.



March 6, 1957

Honorable James T. Blair, Jr.  
Governor of Missouri  
Jefferson City, Missouri

Dear Governor Blair:

Your immediate predecessor to the office of Governor requested an official opinion from this office, which reads as follows:

"The Department of Justice, through its local representative here, has requested that an opinion be obtained regarding the jurisdiction of the George Washington Carver National Monument and the Jefferson National Expansion Memorial, whether or not the jurisdiction of the State of Missouri has been exclusively ceded to the Federal government."

The George Washington Carver National Monument (hereinafter referred to as the Carver Monument) is located in southwest Missouri near Diamond. In 1943, Congress authorized and directed the Secretary of Interior to acquire the birthplace of George Washington Carver and lands surrounding. Sections 450 a.a. to 450 a.a.-2, Title 16, U.S.C.A. The area comprises 210 acres, and was condemned and purchased by the Federal government for \$80,000.00 in 1951. The statute says it shall be a national monument of the National Park Service and the Secretary of Interior shall have the supervision, management, and control of such monument.

The Jefferson National Expansion Memorial (hereinafter referred to as the Jefferson Memorial) is located at St. Louis on the river front. In 1935, Congress passed the "Historic Sites Act" which authorized the Secretary of Interior to purchase and create historic sites. Section 461-467, Title 16, U.S.C.A. By Section 450 j.j. to 450 j.j.-2, Title 16, U.S.C.A., the Jefferson Memorial was created as a historic site. In the same year, Executive Order No. 7253 directed the allocation from the Emergency Relief Appropriation Act \$6,750,000 for the purpose of purchasing the site, and the expenditure was made contingent upon the City

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of St. Louis, making available an additional sum, which it did in 1935. Sections 95.510, 95.515, and 95.520, RSMo. 1949, authorized St. Louis City to raise this additional sum.

It is pointed out in *Arledge v. Mabry*, 52 N. M. 303, 197 P. 2d. 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; and, 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. Where land is acquired by the Constitutional method, the Federal government exercises exclusive jurisdiction over it with the exception that most states reserve the right of taxation and the right to serve civil and criminal process within said land. Where land is acquired by the other two methods, the Federal government may or may not have exclusive jurisdiction. This depends upon cession by the state and acceptance by the Federal government. It is wholly a matter of agreement between the two sovereign governments. These jurisdictional consequences we have just discussed are clearly set out in *Fort Leavenworth R. R. Co. v. Lowe*, 5 S. Ct. 995, 114 U.S. 525.

Thus, the problem here becomes one of whether, since the Federal government owns the Carver Monument and the Jefferson Memorial, does it have exclusive jurisdiction over them? 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; and"

From time to time, the Legislature has given its consent to such acquisitions by the Federal government by the enactment of the following laws (Sections 12.010 and 95.525, RSMo. 1949):

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"12.010. Consent given United States to acquire land by purchase for certain purposes.--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 States by purchase or grant of any land in this state which has been or may hereafter be acquired, for the purpose of establishing and maintaining post offices, internal revenue and other government offices, hospitals, sanatoriums, fish hatcheries, and land for reforestation, recreational and agricultural uses. Land to be used exclusively for the erection of hospitals by the United States may also be acquired by condemnation."

"95.525. United States granted authority to establish parks in state.--The consent of the state of Missouri is hereby fully given to the acquisition by the United States, or any qualified authority thereof, by purchase, grant or condemnation, of any lands or improvements thereon, in any of the cities to which sections 95.510 to 95.525 are applicable, for the purpose of establishing, improving in any manner, and maintaining any national park or plaza of the character described."

(Emphasis ours.)

It would appear that the Carver Monument and its surroundings would be "land for recreational uses" mentioned in Section 12.010, supra, and the Jefferson Memorial site would be the land mentioned in Section 95.525, supra, and Missouri has given its consent to the acquisition by the Federal government of exclusive jurisdiction of these lands. But this consent is ineffective under the constitutional method because the acquisition of lands for park purposes does not come within the seventeenth clause, Section 8, Article I of the Constitution of the United States. This is made clear in *Collins v. Yosemite Park Co.*, 58 S. Ct. 1009, 304 U.S. 518, at page 529, where it says:

"\* \* \* The United States has large bodies of public lands, These properties are used for forests, parks, ranges, wild life sanctuaries, flood control, and other purposes which are not covered by clause 17. \* \* \*"

(Emphasis supplied.)

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Thus, the United States holds these lands as any other proprietor, unless Missouri has ceded jurisdiction in some other way. In U.S. v. Penn., 48 F. 669, at page 670, Judge Hughes says:

"The purchase of lands for the United States, for public purposes, does not of itself oust the jurisdiction of such state over the lands purchased. \* \* \* The constitution prescribes the only mode by which they can acquire land as a sovereign power; and therefore they hold only as an individual when they obtain it in any other manner. \* \* \* If there is no cession by a state, the state jurisdiction still remains. \* \* \*."

Section 12.020, RSMo. 1949, provides as follows:

"The jurisdiction of the state of Missouri in and over all such land purchased or acquired as provided in Section 12.010 is hereby granted and ceded to the United States so long as the United States shall own said land; provided, that there is hereby reserved to the state of Missouri, unimpaired, full authority to serve and execute all process, civil and criminal, issued under the authority of the state within such lands or the buildings thereon."

It would appear that this section is a cession or a grant by the state to the Federal government of exclusive jurisdiction over Carver Monument and Jefferson Memorial. We hold, however, that this cession is effective only to the extent the Federal government accepts. The latter has not expressly accepted such exclusive jurisdiction, so only has that jurisdiction which will enable it to carry out the purposes for which it acquired the two pieces of land. See Arlington Hotel v. Fant, 49 S. Ct. 227, 278 U.S. 439; Howard v. Commissioners of Sinking Fund of City of Louisville, Ky., 73 S. Ct. 465, 344 U.S. 624. In Mason Co. v. Tax Commission, 58 S. Ct. 233, 302 U.S. 186, at page 207, the court had the following to say:

"\* \* \* Even if it were assumed that the state statute should be construed to apply to the federal acquisitions here involved, we should still be met by the contention of the Government that it was not compelled to accept, and has not accepted, a transfer of exclusive jurisdiction. As such a transfer rests upon a grant by the State, through consent or cession, it follows, in accordance with familiar principles applicable to grants, that the grant may be

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accepted or declined. Acceptance may be presumed in the absence of evidence of a contrary intent, but we know of no constitutional principle which compels acceptance by the United States of an exclusive jurisdiction contrary to its own conception of its interests. The mere fact that the Government needs title to property within the boundaries of a State, which may be acquired irrespective of the consent of the State (Kohl v. United States, 91 U.S. 367, 371, 372), does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction. We have frequently said that our system of government is a practical adjustment by which the national authority may be maintained in its full scope without unnecessary loss of local efficiency. In acquiring property, the federal function in view may be performed without disturbing the local administration to matters which may still appropriately pertain to state authority. In our opinion in James v. Dravo Contracting Co., supra, we observed that the possible importance of reserving to the State jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the Government expand and large areas within the States are acquired. And we added that there appeared to be no reason why the United States should be compelled to accept exclusive jurisdiction or the State be compelled to grant it in giving its consent to purchases."

It follows that if the Federal government has not accepted exclusive jurisdiction over the Carver Monument and the Jefferson Memorial, the State of Missouri retains that jurisdiction not accepted. We might treat Section 12.020, supra (wherein Missouri cedes jurisdiction), as a continuing offer by the State of Missouri to the Federal government to accept exclusive jurisdiction, because said section shows it was the intent of the legislature to cede all jurisdiction over the lands mentioned.

To further buttress this proposition, we hold that a fair interpretation of the two federal acts authorizing the acquisition of the Carver Monument and the Jefferson Memorial does not convey the idea that it was the intent of the Federal government to acquire exclusive jurisdiction over said two pieces of property.

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See Johnson v. Morrill, Calif. Sup., 126 P. 2d 873. Also, we call your attention to Section 465 of the "Historic Sites Act" which authorized the acquisition of the Jefferson Memorial. It reads as follows:

"\* \* \* Nothing in sections 461-467 of this title shall be held to deprive any state, or political subdivision thereof of its civil and criminal jurisdiction in and over lands acquired by the United States under sections \* \* \*."

There is similar language in the Lanham Act and the Supreme Court of California in Johnson v. Morrill, supra, at page 877, held such language amounted to an express refusal by the Federal government to take exclusive jurisdiction over the land it acquired.

We also call your attention to Section 255, Title 40, U.S. C.A., being revised Statutes Section 355, as amended, which is not in the sections establishing the Carver Monument or the Sections creating the Jefferson Memorial, wherein it specifically provides in paragraph 8 thereof that "notwithstanding any other provision of law" it is not required that the United States obtain exclusive jurisdiction and that no such exclusive jurisdiction will be presumed unless the head or other authorized officer of any department, agency, etc. of the government shall consent to the cession of such exclusive jurisdiction, and indicates its consent by filing a notice thereof with the governor of the state in which the land is located. It appears that no such accepting of jurisdiction has taken place in connection with the Carver Monument or the Jefferson Memorial.

#### CONCLUSION

It is therefore the opinion of this office that Sections 12.020, 12.010, and 95.525, RSMo. 1949, which attempt to cede exclusive jurisdiction to the Federal government over the George Washington Carver National Monument and the Jefferson National Expansion Memorial, are effective only to the extent the Federal government accepts said exclusive jurisdiction; and since the Federal government has not accepted exclusive jurisdiction, the State of Missouri still retains jurisdiction over said two pieces of property.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, George E. Schaaf.

Yours very truly,

JOHN M. DALTON  
Attorney General