MISSOURI ATHLETIC COMMISSION
(Fort Leonard Wood)

(1) Commission has right of supervision and tax, absent legislative consent, as provided in Clause 17, Sec. 8, Art. 1, U. S. Constitution.

(2) Collection of 5% not an undue burden on the Federal Government.

May 29, 1941

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Col. John J. Griffin, Chairman
Missouri Athletic Commission
St. Louis, Missouri

Dear Sir:

We are in receipt of your letter of May 13, 1941, wherein you request an opinion on the following statement of facts:

> "The Army Post at Fort Leonard Woods are making arrangements to promote wrestling and prize fighting at the Post charging admission and using professional wrestlers and fighters.
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> "We have a ruling here in Missouri, under our Commission, that wrestlers and fighters must be licensed by the Commission. Their managers, their seconds, the doctors, and the referees must be likewise licensed.
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> "My understanding is that at Fort Leonard Woods they are going to use licensed performers and officials.
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> "I would like to ask you for an opinion as to what jurisdiction, if any, the State Athletic Commission will have over these events. Was any

provision made in the transfer of that property to the Federal Government by the State to reserve the State's rights for certain forms and types of taxation?

"Will the Commission collect the State Tax of 5% on the admissions?

"Will the Commission have jurisdiction over the licensing of performers, managers, seconds, referees, and doctors who might not be licensed?

"I might state that you know there will be fifty thousand soldiers stationed at this Post. The events are to be held for the soldiers and their friends. There will be civilians paying admissions.

"The Post is contacting licensed promoters to make contracts with them to furnish the talent."

As we understand from the above statement of facts the area comprising what is known as "Fort Leonard Wood", has been acquired by the Federal Government and extensive improvements have been made upon this area for the housing and maintenance of soldiers.

We are unable to find that the State Legislature has given its consent as is provided in Clause 17, Section 8, Article 1, of the Constitution of the United States, and we hereby quote Clause 17, which reads 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 State, and the acceptance of Congress, become the seat of government of the United States, and to execute 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; * * * * ."

Clause 18 of the same Section and Article, provides that Congress shall have power:

> "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

In the light of the two clauses heretofore set forth, we take it that your opinion presents the general questions:

First - Whether the State of Missouri has jurisdiction, through its State Athletic Commission, to license performers, managers, seconds, referees and doctors;

Second - Whether the Commission may collect the State Tax of 5% on all admissions charged.

For the purpose of this opinion, we are adding a third question:

Whether or not a tax, if valid, would create a burden upon the operation of the Federal Government of Fort Leonard Wood.

There is no question but what Congress, under Section 8, Article 1, had the right to create the funds and acquire the lands comprised in the area known as "Fort Leonard Wood." Congress passed the following constitutional act in pursuance to Clauses 17 and 18, - namely Section 171, P. 121, U. S. Code Ann.:

> "The Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, * * ."

We might state at the outset that we have made a diligent search of the Statutes of Missouri to ascertain whether our legislature has enacted any laws which cede to the United States jurisdiction over military forts, magazines, dock yards, arsenals and other needful buildings, and we find that in 1892 the legislature at special session enacted the following sections:

> "That exclusive jurisdiction be and the same is hereby ceded to the United States over and within all the territory owned by the United States and included within the limits of the military post and reservation of Jefferson Barracks in St. Louis county in this state; saving, however, to the said state the right to serve civil or criminal process within said reservation in suits or prosecutions for or on account of rights ac-

> quired, obligations incurred, or crimes committed in said state outside of said cession and reservation; and saving further to said state the right to tax and regulate railroad, bridge and other corporations, their franchises and property on said reservation. In the event, or whenever Jefferson Barracks shall cease to be used by the federal government as a military post, the jurisdiction ceded herein shall revert to the state of Missouri.
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> "The fact that the appropriation made by the Fifty-first Congress, if not used by June 30th of the present year, will revert to the treasury of the United States, creates an emergency within the meaning of the constitution of the State; therefore, this act shall take effect and be in force from and after its passage."

It will also be noted that there appears on our statute books, Section 12691, Revised Statutes of Missouri, 1939, which reads as follows:

> "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 postoffices, internal revenue and other government offices, hospitals, sanatoriums, fish hatcheries, game and bird preserves and land for reforestation, recreational and agricultural uses."

From a reading of each of the three aforesaid sections, we find that neither section is so worded as to include the lands taken by the United States Government in the State of Missouri, and designated as "Fort Leonard Wood." Therefore, at the outset, we are dealing with lands rightfully acquired under Clause 17, Section 8, of Article 1, of the Constitution of the United States, but lands which, though rightfully acquired and for the purposes set forth in Clause 17, supra, are lands which have not been ceded by a legislative act of the State of Missouri, within the meaning of said section, and must be considered in the light of the wording as stated by Judge Story in the case of United States v. Cornell, 2 Mason, P. 60, l. c. 63, wherein the following statement was made in the opinion:

> "The Constitution of the United States declares that Congress shall have power to exercise 'exclusive legislation' in all 'cases whatsoever' 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. When therefore a purchase of land for any of these purposes is made by the national government, and the State Legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution ipso facto falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted. This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation; and the consent of the State legislature is by the very terms of the constitution, by which all the states are bound, and to which all are parties, a virtual surrender and cession of its sovereignty over the place. * * * "

Judge Hughes in the case of James v. Dravo Contracting Company, 58 Sup. Ct. Rep. 208, l. c. 212, par. 6, in commenting on Clause 17, supra, had this to say:

> "* * * As we said in that case, it is not unusual for the United States to own within a state lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the state. The lands 'remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal.' Id., at page 650 of 281 U. S., 50 S. Ct. 455, 456, 74 L. Ed. 1091. Clause 17 governs those cases where the United States acquires lands with the consent of the Legislature of the state for the purposes there described. If lands are otherwise acquired, and jurisdiction is ceded by the state to the United States, the terms of the cession, to the extent that they may lawfully be prescribed, that is, consistently with the carrying out of the purpose of the acquisition, determine the extent of the federal jurisdiction. * * * "

In the case of People v. Vendome Service, 12 N. Y. S. (2d) (Magist.) Court, 183, 171 Misc. 191, the Court had this to say:

"However, this not having been done, the rule to be applied in such a case is laid down in the leading case on the subject, Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 531, 5 S. Ct. 995, 998, 29 L. Ed. 264, wherein Mr. Justice Field said: 'The consent of the States to the purchase of lands within them for the special purposes named, is, however, essential, under the constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals.' * * * "

In the case of Pike Rapids Power Co. v. Minneapolis, St. P. & S. S. M. R. Co., 99 Fed. Rep. 2d Ser., 902, l. c. 909 and 910, the court laid down this general proposition:

" * * * It is elementary that when Congress gives its consent to the exercise of any privilege within the constitutional jurisdiction of the federal government it may impose conditions such as those contained in the act of March 23, 1906. Arizona v. California, 292 U. S. 341, 345, 54 S. Ct. 735, 78 L. Ed. 1298; James v. Dravo Contracting Co., 302 U. S. 134, 148, 58 S. Ct. 208, 82 L. Ed. 155, 114 A. L. R. 318. It is equally fundamental that such consent of Congress to the exercise of the privilege does not carry with it any right not strictly federal. It grants no right to the person given the privilege to invade rights strictly within the jurisdiction of the state."

Therefore, from reading the United States Constitution and the authorities heretofore set forth we must conclude that under the United States Constitution, Congress had the right to purchase the lands comprising "Fort Leonard Wood", also had the right to construct all necessary buildings and to inhabit the same with troops and had the further right to seek and procure from the State Legislature a legislative act which would grant to the Government all other state rights of the State of Missouri, which were not inconsistent with the rights that could be said to have been given up by the State when it ratified the Constitution of the United States, or, as the authorities hold, the United States Government may not ask the State Legislature for a legislative act of session as is contemplated in Clause 17, supra. We are of the opinion that if an act of session were not asked or procured, then all state laws which are not inconsistent with the purpose for which the land was acquired, would be binding unless Congress saw fit to pass Congressional acts which would by operation cause the state legislative acts to be superseded and rendered inoperative as to the area taken by the United States Government so long as said area was used for the purpose set forth in Clause 17, supra.

In the case of State v. Rainier National Park, 74 Pac. (2d) 464, l. c. 465, the court had this to say:

> "It is also an accepted rule of law that, where a cession of jurisdiction is made by a state to the federal government, it is necessarily one of political power and leaves no authority in the state government thereafter to legislate over the ceded territory. Arlington Hotel Company v. Fant, 176 Ark. 613, 4 S. W. 2d 7, affirmed by the Supreme Court of the United States, 278 U. S. 439, 49 S. Ct. 227, 73 L. Ed. 447."

State ex rel Grays Harbor Const. Co. v. Dept. of Labor and Industries, 167 Washington 507, 10 Pac. (2d) 213.

Therefore, we are of the opinion, in view of the United States Constitution and the cases heretofore cited that Fort Leonard Wood is not an area which could be said to be all-inclusive within the jurisdiction of the Federal Government, but an area in which the State of Missouri could enforce any legislative acts not inconsistent with Clause 17.

Now, turning to the particular question sought by your inquiry, we are dealing with the rights of the State Athletic Commission to license performers, managers, seconds, referees and doctors: Should there come upon this area, comprising Fort Leonard Wood professional wrestlers and fighters, whether or not the legislative enactments of the State of Missouri would be binding upon these professions. We cannot find from the examination of the authorities that there has ever been a judicial determination in any court of the right of an Athletic Commission to exercise the control and supervision as contemplated in your request. In order to pass upon this matter we must look to those cases which in theory would be identical in reasoning and in practice. Therefore, we call your attention to the case of State v. Mimms, 92 Pac. (2d) (N. Mex.) 993, this was a case wherein J. G. Mimms was found guilty of possessing wines for the purpose of sale without first obtaining a state license, at Elephant Butte Dam and that he was under a four-year exclusive contract with the Federal Bureau of Reclamation authorizing him to sell beer and wine and for other purposes, and that he was exposing to sale the articles in building occupied by him upon the land owned by the United States Government. In this case the Court said at l. c. 997:

> "Our statute is different from the California statute, in this. Sec. 146-101 gives consent to the acquisition by the United States Government of land necessary for the purposes therein enumerated. Sec. 146-102 grants exclusive juris-

> diction in and over the land so acquired. Sec. 146-103 defines the nature of the exemption from taxation granted the United States, namely: ' * * * and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue 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.'
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> "True, the state cannot tax the land belonging to the United States, but the concession of the appellant to sell liquor on the land is not exonerated from taxation. When the Federal Government gave to appellant a concession to do business upon the Government's property, that business belonged to Mimms and not to the Government. The exemption from taxation goes only to the Government and not to its concessionaires.
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> "We hold it to be a principle of law that the State's jurisdiction to tax and regulate the liquor industry within its boundaries will not be presumed to have been legislated away unless such concession can be clearly found in the express statute of concession. This we do not find. * * "

It will be noted in this case that the court sets forth numerous cases and the language taken therefrom to sustain its opinion in the Mimms case, supra, and for the sake of brevity we are not citing the cases enumerated in this opinion, nor or the excerpts set forth in the opinion of Judge Zinn.

In the case of Yosemite Park & Curry Company v. Johnson, 76 Pac. (2d) 1191, the Supreme Court of California upheld a tax imposed upon retail sales to visitors and others in Yosemite National Park, and reasoned, as will be noted in the opinion, that a private corporation authorized to do business in the state could not defeat the tax because of the fact that they were lessees and concessionaires in Yosemite Valley, under a contract with the Secretary of the Interior. This decision is based upon the reasoning of the same court in the case of Standard Oil Company of California v. Johnson, 76 Pac. (2d) 1184.

In view of the reasoning and authorities we are of the opinion that the Missouri Athletic Commission would have the unquestioned right to license professional performers, managers, seconds and referees, and would have the full power to carry out and put into effect all of the powers and duties placed upon the Commission by the legislative enactments now in force in the area comprising Fort Leonard Wood and further have the right to collect off of all professional performances a state tax of five per cent on all admissions charged, unless such tax would be an undue burden upon the Federal Government. In this connection, we call attention to the case of James v. Dravo Contracting Company, supra, where the court said at l. c. 216:

> "The tax is not laid upon the government, its property, or officers. Dobbins v. Erie County Commissioners, 16 Pet. 435, 449, 450, 10 L. Ed. 1022.

"The tax is not laid upon an instrumentality of the government. (cases cited) * * * Respondent is an independent contractor. The tax is nondiscriminatory.

"The tax is not laid upon the contract of the government. (cases cited) * * *
* * * * * * * * * * * * * * *
The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system. In Weston v. Charleston, supra, and Pollock v. Farmers' Loan & Trust Co., supra, taxes on interest from government securities were held to be laid on the government's contract, upon the power to borrow money, and hence were invalid. But we held in Willcuts v. Bunn, supra, that the immunity from taxation does not extend to the profits derived by their owners upon the sale of government bonds. We said (Id., at page 225 of 282 U. S., 51 S. Ct. 125, 127, 75 L. Ed. 304, 71 A. L. R. 1260): 'The power to tax is no less essential than the power to borrow money, and, in preserving the latter, it is not necessary to cripple the former by extending the constitutional exemption of taxation to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of the functions of government.' * * * *."

In the instant case we do not understand the situation to be that the United States Government is entering into contracts with performers to appear at Fort Leonard Wood, or that such performers are procuring their full compensation from the Government, but we understand the condition to be that such performers come within the camp area and put on the entertainment and derive their compensation from paid admissions, which admissions are paid by the men in service and the public, who may be permitted to go, by the officers in charge of said area.

It may be argued, as was argued in the Western Union Telegraph Company v. Texas case, 105 U. S. 460, 25 L. Ed. 1067, that admissions paid by the United States soldiers should be exempt from State Tax, for the reason that they derive their monthly compensation from the Government. However, if this contention be true, then why would the situation not present itself that each man in uniform be entitled to have his purchases exempt from State taxes, at any place in the State of Missouri, wherein he purchased an article. This contention was not sustained in the James case, supra, and the court said, at l. c. 218):

> "The question of the taxability of a contractor upon the fruits of his services is closely analogous to that of the taxability of the property of the contractor which is used in performing the services. His earnings flow from his work; his property is employed in securing them. In both cases the taxes increase the cost of the work and diminish his profits. * * * "

We quote further from the opinion in the James case, supra, as follows:

> "'It may, therefore, be considered as settled that no constitutional implications prohibit a State tax upon the

property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the States in the collection of their necessary revenue without any corresponding advantage to the United States. A very large proportion of the property within the States is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. United States mails, troops, and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the National service. So are steamboats, horses, stage-coaches, foundries, ship-yards, and multitudes of manufacturing establishments. They are the property of natural persons, or of corporations, who are instruments or agents of the General government, and they are the hands by which the objects of the government are attained. Were they exempt from liability to contribute to the revenue of the States it is manifest the State governments would be paralyzed. * *

"'It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. * *"

On the other hand, if Congress should see fit to pass an act of law providing that entertainment for the benefit of men in military camps was an incident to National Defense, and also set up machinery wherein the Government directly contracted with the entertainers, no doubt a different question would be presented than the one before us.

Therefore, in the light of the reasoning and Clauses 17 and 18, supra, we are of the opinion that the tax of 5% is not an undue burden upon the Federal Government.

CONCLUSION.

In conclusion, we are of the opinion that the State of Missouri, not having given up any of its rights through the State Legislature, as it may do under Clause 17, of Article 8, Section 1, of the United States Constitution, retains each and every right to supervise, license and tax for athletic performances, through its Athletic Commission, public performances at Fort Leonard Wood. Especially in view of the fact that the Athletic Commission is dealing with professional performers who have no connection with the United States Government, other than explained in this opinion.

Secondly, the collection of five per cent on paid admissions is not an undue burden upon the Federal Government.

Respectfully submitted,

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APPROVED:

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