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Conflict of Laws-State Cession of Territory-Effect of Exclusive Jurisdiction by Federal Government on State Law

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RECENT DECISIONS

CONFLICT OF LAWS—STATE CESSION OF TERRITORY—EFFECT OF EXCLUSIVE JURISDICTION BY FEDERAL GOVERNMENT ON STATE LAWS—County welfare board refused claimant, a civilian resident on a federal military reservation, assistance under a state aid program for needy disabled on the ground she did not satisfy the requirement of residence within the county.¹ The state had ceded the reservation land to the federal government giving it “exclusive jurisdiction for all purposes whatsoever,” reserving to the state only the right to serve civil and criminal process.² On appeal, the State Board of Public Welfare found claimant qualified and ordered payment. In a declaratory judgment sought by the welfare board, the state district court held the claimant met the requirement for residence under the statute regulating welfare cases. On appeal, *held*, affirmed. Exclusive federal jurisdiction of federal lands operates to prohibit application of only those state laws which are inconsistent with federal sovereignty. *Board of County Comm'rs v. Donoho*, 356 P.2d 267 (Colo. 1960).

Article I, section 8, clause 17 of the United States Constitution grants power to Congress “to exercise *exclusive legislation in all cases whatsoever*, over such district . . . and to exercise *like authority* over all places purchased by the consent of the legislature of the state in which the same shall be . . .”³ The framers of the Constitution, remembering the mutinous soldiers harassing the Continental Congress in Philadelphia in 1783,⁴ intended the federal government to have exclusive jurisdiction over federal land. Thus it was held in an early case that a federal area within a state was “to the state as much a foreign territory, as if it had been occupied by a foreign sovereign.”⁵ Those who opposed the adoption of the seventeenth clause were fearful that such jurisdiction by the federal government would result in the loss of civil rights for the inhabitants of federal lands, that these persons might become a privileged class of citizens excused from the burdens imposed on the rest of society, or that the areas might become a sanctuary

¹ COLO. REV. STAT. ANN. § 119-6-6(2) (Supp. 1957) (assistance shall be given to any person who has *resided* within the state for one year).

² COLO. REV. STAT. ANN. § 142-1-22 (1953) (jurisdiction of Fort Logan ceded); § 142-1-24 (1953) (jurisdiction of land for enlargement of Fort Logan ceded). Both statutes ceded “exclusive jurisdiction for all purposes whatsoever” but reserved service of criminal and civil process.

³ U.S. CONST. art. I, § 8. (Emphasis added.)

⁴ U.S. INTERDEPARTMENTAL COMM. FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES pt. II, at 16 (1957) [hereinafter cited as U.S. INTERDEPARTMENTAL COMM. STUDY], quoting from 5 ELLIOT, MADISON PAPERS CONTAINING DEBATES ON THE CONFEDERATION AND CONSTITUTION 93 (1845): “In the mean time, the soldiers remained in their position, without offering violence, individuals only, occasionally uttering offensive words, and wantonly pointing their muskets to the windows of the hall of Congress. No danger from premeditated violence was apprehended, but it was observed that spirituous drink, from the tippling-houses adjoining, began to be liberally served out to the soldiers, and might lead to hasty excesses.”

⁵ *United States v. Cornell*, 25 Fed. Cas. 650, 653 (No. 14868) (C.C.D.R.I. 1820) (Story, J.).

for criminals.⁶ Where courts still cling to the original idea of exclusive jurisdiction, the anomalous results tend to confirm the fears of the opponents of the seventeenth clause. Within the past twelve years, inhabitants of federal areas have been denied the right to vote,⁷ access to public schools,⁸ and use of state courts.⁹ On the other hand, until the passage of the Buck Act in 1940,¹⁰ they were immune to state use, sales, income, and motor fuel taxes. Today, this immunity still exists in the area of property taxation, a main source of state and local revenue, because "the residents of federal areas are not liable even indirectly as an element of rent; *their* landlord is immune to local real property taxes."¹¹ Further, to fulfill all the predictions of consequences flowing from the adoption of the seventeenth clause, in rare cases serious crimes committed on federal lands have gone unpunished because neither a state court¹² nor a federal court¹³ had jurisdiction.

In some recent decisions¹⁴ courts have abandoned a literal application of exclusive jurisdiction. Accordingly, the state will assume jurisdiction, as in the principal case, if this action is not inconsistent with federal sovereignty. These courts have considered various factors which they feel justify their deviation. For example, the vast land holdings of the federal government,¹⁵ the geographical diversity, and the peculiar characteristics and requirements of the different areas make it more feasible to employ the assistance of the states in many functions. Therefore, federal legislation has relinquished to the states jurisdiction in such areas as taxation,¹⁶ work-

⁶ For discussion of history surrounding the adoption of the 17th clause, see U.S. INTERDEPARTMENTAL COMM. STUDY pt. II, at 15 (1957); Patterson, *The Relation of the Federal Government to the Territories and the States in Landholding*, 28 TEXAS L. REV. 43 (1949).

⁷ *Arledge v. Mabry*, 52 N.M. 303, 197 P.2d 884 (1948); *Sinks v. Reese*, 19 Ohio St. 306 (1869); *Opinion of the Justices*, 42 Mass. (1 Met.) 580 (1841).

⁸ *Schwartz v. O'Hara Township School Dist.*, 375 Pa. 440, 100 A.2d 621 (1953).

⁹ *Chaney v. Chaney*, 53 N.M. 66, 201 P.2d 782 (1949); *Lowe v. Lowe*, 150 Md. 592, 133 Atl. 729 (1926).

¹⁰ 4 U.S.C. §§ 104-06 (1958).

¹¹ *Schwartz v. O'Hara Township School Dist.*, *supra* note 8, at 446-47, 100 A.2d at 624.

¹² *State v. Tully*, 31 Mont. 365, 78 Pac. 760 (1904).

¹³ *United States v. Tully*, 140 Fed. 899 (C.C.D. Mont. 1905). This is not to suggest that all federal areas are sanctuaries for criminals, but merely to point out that difficulties have occurred which substantiate the fears of the opponents to exclusive jurisdiction. The problem of criminal jurisdiction and crimes on federal land has probably received more attention than any other area through the Assimilative Crimes Act and its several re-enactments. The latest re-enactment is 62 Stat. 686 (1948), 18 U.S.C. § 13 (1958).

¹⁴ *Adams v. Londeree*, 139 W.Va. 748, 83 S.E.2d 127 (1954) (right to hold office); *Arapajolu v. McMamin*, 113 Cal. App.2d 824, 249 P.2d 318 (1952) (right to vote).

¹⁵ In 1956 the land area of the United States was 1,903,824,640 acres. The federal government owned 405,088,566 acres or more than 21%. It owned 87% of Nevada, over 50% of several other states, and some land in every state. U.S. INTERDEPARTMENTAL COMM. STUDY pt. I, at 3 (1956). To see how the federal government "lost" but later found 50 million acres, see LEGISLATIVE REFERENCE SERVICE, *FEDERAL LAND OWNERSHIP AND THE PUBLIC LAND LAWS* viii (1954).

¹⁶ Buck Act, 4 U.S.C. §§ 104-06 (1958).

man's compensation,¹⁷ wrongful death,¹⁸ unemployment benefits¹⁹ and policing highways.²⁰ Where cases have arisen denying rights or privileges to citizens, Congress has surrendered jurisdiction to the states to prevent further inequities.²¹ Also, legislation has been enacted which will limit federal jurisdiction on land it may acquire in the future.²² In addition to this legislation, the Supreme Court decisions indicate a trend away from a concept of exclusive jurisdiction. In 1930 the Court considered a state tax on personal property located on federal land not even to raise an open question.²³ In a more recent decision, however, the Court in passing on a state tax on buildings located on leased federal land, held the seventeenth clause was not "of such overriding and comprehensive scope that consent by Congress to state taxation . . . in an area subject to the power of 'exclusive legislation' is to be found only in explicit and unambiguous legislative enactment."²⁴ Another consideration which indicates regression from exclusive jurisdiction is the lack of action by Congress in providing necessary legislation for the inhabitants, implying an intent that the states do so. Interesting legal problems are presented involving such ordinary things as births, marriages, or divorces where state statutes have residence requirements and no provisions are made for inhabitants of federal land.²⁵ For example, X lives on a federal reservation located in a state which has denied to federal residents the use of state courts for divorce proceedings.²⁶ Since there is no divorce jurisdiction in federal courts,²⁷ save in the District of Columbia,²⁸ X must abandon suit or move to some state and establish domicile.

Because of the present confusion of the law governing residents of federal land, there is a need for more legislation to define clearly the lines of federal and state jurisdiction. The attention of state and federal legisla-

¹⁷ 49 Stat. 1938-39 (1936), 40 U.S.C. § 290 (1958).

¹⁸ 45 Stat. 54 (1928), 16 U.S.C. § 457 (1958).

¹⁹ INT. REV. CODE OF 1954, § 3305 (d).

²⁰ 55 Stat. 183 (1941), 43 U.S.C. § 931 (a) (1958) (at the discretion of the attorney general); see U.S. INTERDEPARTMENTAL STUDY pt. II, at 93 (1957).

²¹ After *Arledge v. Mabry*, *supra* note 7 (denial of right to vote) and *Chaney v. Chaney*, *supra* note 9 (denial of use of state courts for divorce proceeding), a federal law was passed receding jurisdiction to New Mexico to care for the residents of the Los Alamos Atomic Energy Project. Los Alamos Retrocession Bill, ch. 14, 63 Stat. 11 (1949). See generally Note, *Jurisdiction Over Federal "Islands" Within the States*, 18 GEO. WASH. L. REV. 500 (1950).

²² REV. STAT. (1875) § 355, as amended, 40 U.S.C. § 255 (1958) (unless the United States has accepted jurisdiction it is to be conclusively presumed that no such jurisdiction has been accepted).

²³ *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930).

²⁴ *Offutt Housing Co. v. County of Sarpy*, 351 U.S. 253, 260 (1956).

²⁵ Note, *Federal Areas: The Confusion of a Jurisdictional-Geographic Dichotomy*, 101 U. PA. L. REV. 124, 128, 130-31 (1952).

²⁶ See authorities cited note 9 *supra*.

²⁷ *Barber v. Barber*, 62 U.S. 582, 584 (1858).

²⁸ D. C. CODE ANN. § 16-416 (Supp. 1960).

tures should be directed to the recent and extensive federal report and recommendations covering the subject of federal lands.²⁹ In addition, if federal land is to continue to be immune from taxation, changes in tax structures may be required where state property tax revenue benefits federal residents.³⁰ Enlightened legislative action will prevent cases similar to the principal case from arising and will prevent unequal treatment of residents of federal land in the future.

William R. Nicholas

²⁹ U.S. INTERDEPARTMENTAL COMM. STUDY pts. I & II (1956-1957).

³⁰ To reduce hardships on local school districts caused by this problem, in the fiscal year 1956 nearly \$200 millions were spent to provide aid to school districts through the Department of Health, Education and Welfare. In some cases, the jurisdictional problem has caused friction between the department and the states. U.S. INTERDEPARTMENTAL COMM. STUDY pt. I, at 55 (1956).