Opinion No. 51-5463

December 10, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. N. R. Reese District Attorney Fifth Judicial District Roswell, New Mexico

*{*172}* This is in reply to your letter of November 14, 1951, inquiring of this office as to whether the property of the private corporations who have invested funds in the construction of military housing upon Walker Air Force Base is subject to state and local ad valorem taxation.

It is my understanding that the houses are being constructed as a military housing project in accordance with the Wherry Housing Act, 12 U.S.C. 1748. Private capital has been invested to construct the houses under a 75-year lease, and upon completion of the houses they become the property of the United States as part of the real estate, subject, of course, to the lease.

It is further my understanding that Walker Air Force Base is a military reservation over which the United States has exclusive jurisdiction, subject to qualifications to be noted later in this opinion. Prior to 1944, the land in question was condemned and sold to the United States. Then, on August 8, 1944, the Secretary of War, in accordance with the act of October 9, 1940 (54 Stat. at Large, 23), wrote the Governor of the State of New Mexico accepting jurisdiction over all lands in New Mexico acquired by the United States for military purposes. This acceptance, of course, included the land in question.

It is my opinion that in the absence of a specific reservation of taxation power at the time jurisdiction was ceded to the United States, neither the State nor any of its sub-divisions can assess such taxes on these lands or on the property of these private corporations. There has been no such reservation of power in this case.

What is the extent of the jurisdiction of the United States over the Walker Air Force Base area? By § 8-202, N.M.S.A., 1941, the State of New Mexico consented; in accordance with Art. 1, Sec. 8, C1. 17 of the United States Constitution, to the acquisition by the United States by condemnation of any land required for any purpose of the Government. § 8-203 granted to the United States exclusive jurisdiction over any lands so acquired for as long as the United States shall "own such lands", except for the service of civil and criminal process. § 8-204 exempted such land "from all state, county, and municipal taxation, assessment, or other charges", so long as the lands remain the property of the United States. Thus exclusive jurisdiction over this land was ceded to the United States, except the right to serve civil and criminal process.

Art. 1, Sec. 8, C1. 17 of the United States Constitution provides that Congress shall have the power "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding 10 miles square) as may, by cession of particular states, and the

acceptance of Congress, become the seat of 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." This clause has been before the courts many times, and has been held to vest exclusive jurisdiction as to legislation and other purposes in the United States. In the case of Arledge v. Mabry, 53 N. Mex. 303, 197 P. 2d 884, our Supreme Court resolved any question as to the meaning and scope of the term "exclusive legislation" contained in C1. 17 by saying: "Furthermore, the term 'exclusive legislation' employed in said C1. 17 of the Federal Constitution is held to be *{*173}* synonymous with and to carry the same meaning as if the term 'exclusive jurisdiction' had been employed." (For further discussion of this particular point see Attorney General Opinion 5348 of March 29, 1951, addressed to your office.) It has been recognized by the courts, however, that the 'exclusive jurisdiction' thus acquired by the United States may be limited to the extent that the state, in seeking jurisdiction, may have retained specific rights in the ceded area. In the case we are considering, however, it must be noted again that the only right reserved was the right to serve process.

The broad effect of such a cession of jurisdiction has been discussed by the United States Courts in a number of cases. In Yellowstone Park Transportation Co. v. Gallatin County, 31 Fed. 2d 644, the county had sought to impose taxes upon the personal property of a Delaware Corporation, such property being located within the limits of Yellowstone National Park. The State of Montana had ceded jurisdiction to the United States over this park area, reserving only the right to serve civil and criminal process. The court, in commenting upon the effects of this cession, said:

"In other words, after the date of cession the ceded territory was as much without the jurisdiction of the state making the cession as was any other foreign country, except insofar as jurisdiction was expressly reserved. For this reason the taxing laws of the State of Montana are wholly inoperative in that portion of the Yellowstone National Park within the territorial limits of the state."

In Standard Oil Co. of California v. California, 219 U.S. 242, the state was seeking to collect a license tax from each distributor of motor vehicle fuel within the Presidio of San Francisco. Concerning these facts the U.S. Supreme Court said:

"By act of March 2, 1897, California ceded to the United States exclusive jurisdiction over this area - - -. The state reserved to herself no power whatever in respect of taxation.

"Appellant challenges the validity of the taxing act as construed by the Supreme Court (of California). The argument is that, since the state granted to the United States exclusive legislative jurisdiction over the presidio, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well-founded; and the judgment below must be reversed.

"- - - We have pointed out the consequence of cession by a state to the United States of Jurisdiction over land held by the latter for military purposes. Considering these opinions it seems plain that by the act of 1897 California surrendered every possible claim of right to exercise legislative authority within the Presidio - - put that area beyond the field of operation of her laws. Accordingly her legislature could not lay a tax upon the transactions begun and concluded therein."

In James v. Dravo Contracting Co., 302 U.S. 1341, the Court overruled certain previous pronouncements and held that Art. 1, Sec. 8, C1. 17 of the Constitution contains no express stipulation that the consent of the state must be without reservation, and that such a stipulation should not be implied. The court held that a state could make reservations in its cession agreement when land was purchased by the United States with the consent of the state, and that such reservations recognized by the courts so long as they did not conflict with the use the United States intended to put the land. Likewise in Collins v. Yosemite Park Company, 304 U.S. 518, the court held that jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification. The Court said, on page 528 of that opinion:

*{*174}* "Whatever the existing status of jurisdiction at the time of their enactment, the acts of cession and acceptance of 1919 and 1920 are to be taken as declarations of the agreements, reached by the respective sovereignties, state and nation, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park. As jurisdiction over the Gorge was created by one set of statutes and that over the rest of park by different legislation, this adjustment was desirable. The states of the Union and the national government may make mutually satisfactory arrangement as to jurisdiction of territory within their borders and thus in a most reflective way, cooperatively adjust problems flowing from our dual system of government. - - - It is a matter of arrangement. These arrangements the courts will recognize and respect."

A different situation arises, as has been suggested previously in this opinion, when a state unilaterally in seeking to further qualify the jurisdiction ceded, after jurisdiction over such lands has already been acquired by the United States. In State ex rel Board of Commissioners of Valley City v. Bruce, County Assessor, et al, 77 P. 2d 403, the State of Montana had ceded jurisdiction to the United States over certain lands with no reservation concerning the taxing of the property of private citizens or corporations. Immediately after this cession of jurisdiction to the United States, the Montana legislature enacted a law which sought to subject private persons and corporations, and their property, to state taxation, even though they be on the ceded land. The Court held that since the United States had acquired its jurisdiction over this land prior to the passage of the statute, the taxing authorities were without power to tax any property within the ceded area. In this connection, reference must also be made to Arledge v. Mabry, supra, where the New Mexico Supreme Court said:

"A state cannot legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

To reiterate, it is my opinion that since jurisdiction over the land concerned was ceded by the State to the United States without reservation, except for the service of process, none of the property of the private corporations who have invested funds in the construction project is subject to ad valorem taxation by state, county, or municipal authorities. I believe that this conclusion is amply supported and sustained by both the legislative intent indicated in §§ 8-202 to 8-204, inclusive, and by the authorities discussed above.

I hope that this opinion answers fully your questions on this subject.