

Opinion No. 60-15

February 2, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Dan Sosa District Attorney Third Judicial District Second Floor Court House Las Cruces, New Mexico

QUESTION

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May the State of New Mexico require that barbers employed at White Sands Missile Range by a concessionaire under contract with the Army and Air Force Exchange Service be subject to licensing and other regulation under the laws of New Mexico as administered by the State Board of Barber Examiners.

CONCLUSION

No.

OPINION

{*355} **ANALYSIS**

The White Sands Missile Range is a Federal installation under the administration of the Department of Defense. In connection with its operations of the Range, the Federal government operates a post exchange through the Army and Air Force Exchange Service. The post exchange includes a barber shop or barber shops under contract between the exchange service and a concessionaire. Article II, Section 1 (g) of this contract provides as follows:

"g. At CONCESSIONAIRE'S expense, to obtain all necessary permits, give all necessary notices, pay all license fees, and comply with all municipal, state or Federal laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the business carried on under this Agreement, and to assume complete and sole liability for all Federal, state, and local taxes applicable to the property, income, and transactions of the concession."

The barbering trade is regulated in this State by the State Board of Barber Examiners pursuant to Sections 67-14-1 through 67-14-38, inclusive; which sections provide generally for a licensing of barbers and apprentices, regulation of barber schools and other general regulations.

The White Sands Missile Range is under the exclusive jurisdiction of the Federal government, the cession of jurisdiction having been made pursuant to Sections 7-2-2 {*356} and 7-2-3, N.M.S.A., 1953 Compilation. The cession of jurisdiction became complete by acceptance thereof by Secretary of the Army Robert T. Stevens in a letter dated October 16, 1953, to the then Governor Edwin L. Mechem.

In this letter, the Secretary of the Army accepted the cession of jurisdiction to the military reservation officially designated Fort Bliss Antiaircraft Range No. 1, which Range is now a part of the White Sands Missile Range.

With this factual background in mind, we now turn to a discussion of the meaning of a cession of exclusive jurisdiction by a State to the Federal Government. The assumption of exclusive legislative jurisdiction by the Federal government over lands within a State means that all authority of the State to enforce its laws ceases upon acceptance thereof within the area covered by the cession of jurisdiction by the State excepting the right to serve State, civil and criminal process resulting from activities which occur off the land involved. Although at one time there was a legal question as to whether the United States could acquire such jurisdiction by a State cession, this question was resolved in the favor of such cession by **Fort Leavenworth Railroad v. Lowe**, 114 U.S. 525 and has subsequently been recognized in a series of cases including the recent cases of **Collins v. Yosemite Park Co.** 304, U.S. 518 and **Bowen v. Johnston**, 306 U.S. 19. Therefore, State law in no way can be enforced within the area of the land so ceded. The jurisdiction of the Federal government is supreme and absolute (excepting the right of civil and criminal process as herein set forth).

We must conclude, therefore, that barbers employed at the White Sands Missile Range are not subject to licensing and other regulation by the State of New Mexico acting through the State Board of Barber Examiners. In this connection, you will note that we have previously held in Opinions No. 5340 and 5348 that neither the Contractors' Licensing Act nor the State Plumbing Act could be enforced of any person or any matter over territory which is under the exclusive jurisdiction and control of the Federal government.

We realize that the Federal government, in its contract with the Concessionaire in the paragraph set forth above, requires compliance with the State Licensing Laws. However, this is a matter for the Federal government to enforce if it wishes, the State of New Mexico being unable to so enforce, since it is in no way a party to the contract.

The military officials at the range have been very cooperative in the efforts to require compliance with New Mexico Statutes and regulations in this regard and perhaps as a matter of fact all barbers employed on the range will be licensed by the State. However, this is not a matter than can be enforced by the State, since it lacks the necessary jurisdiction.

By: Philip R. Ashby

Assistant Attorney General