

Opinion No. 12-940

August 28, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Antonio Lucero, Secretary of State, Santa Fe, N. M.

AUTOMOBILES ON MILITARY RESERVATIONS.

Property not belonging to United States on Military Reservations is subject to taxation by state.

OPINION

{*93} I have before me by reference from your office a letter of Colonel Bushnell, commanding the United States Army General Hospital at Fort Bayard, of the 21st instant, relative to the paying of a state license upon automobiles owned on the military reservation where the hospital is situated. This presents what is a new question to us in New Mexico, but one which I find has been distinctly passed upon by the Supreme Court of the United States in a case which went up from Kansas and affected the Fort Leavenworth Military Reservation. I do not mean that that case involved the licensing of automobiles, but it shows very distinctly what is the present status of the Fort Bayard Reservation.

That case is reported in volume 114 of the Reports of the Supreme Court of the United States beginning at page 525. The land constituting the reservation was part of the territory acquired in 1803 by cession from France, and until the formation of the State of Kansas the United States possessed the rights of a proprietor and had political dominion and sovereignty over it, just as the government has over the Fort Bayard Reservation, and for many years before the admission of Kansas the reservation had been reserved from sale by the United States for military purposes and occupied by them as a military post. The court says that the jurisdiction of the United States over it during this time was necessarily paramount, but in 1861 Kansas was admitted into the Union upon an equal footing with the original states and subject like them only to the constitution of the United States. It is further shown that congress might undoubtedly, upon such admission, have stipulated for the retention of the political authority, dominion and legislative power of the United States over the reservation; that is, it could have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government. But from some cause, inadvertence perhaps, or from overconfidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made, so that the United States retained after the admission of the state only the rights of an ordinary proprietor; except that, as an instrument for the execution of the powers of the general government, that part of the tract, which was actually used for a fort or military post, was beyond such control of the state, by taxation or otherwise, as would defeat its use for those purposes. The court

goes on to say that so far as the land in the reservation was not used for military purposes, the possession of the United States was only that of an individual proprietor, and the state could have exercised with {*94} reference to it, the same authority and jurisdiction which she could have exercised over similar property held by private parties. It will be seen that the status of the Leavenworth Reservation upon the admission of the state of Kansas to the Union was the same as the Fort Bayard Reservation now is. There has been no stipulation or condition imposed by congress as to any such reservations in New Mexico any more than in the case of Kansas. The only approach to anything of the kind is to be found in Section 2 of the Enabling Act where it is declared "that no taxes shall be imposed by the state upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use." A similar provision is to be found in the act for the admission of Kansas in Section 3 thereof, which imposes various conditions upon the new state, among which is, "And the said state shall never tax the lands or the property of the United States in said state."

The opinion in the Kansas case goes on to state that the defect in the jurisdiction of the United States was called to the attention of the government in 1872, when the Secretary of War submitted the matter to the Attorney General for his official opinion as to whether, under the constitution, the reservation of the land for a military post and for public buildings took it out of the operation of the law of March 3, 1859, 11 Statutes at Large 430, and, if so, what action would be required on the part of the executive or congress to restore the land to the exclusive jurisdiction of the United States. The Attorney General replied that the act admitting Kansas as a state had the effect of withdrawing from federal jurisdiction all the territory within the boundaries of the new state, excepting only that of the Indians having treaties with the United States, and the reservation was not within this exception; and to restore the federal jurisdiction over the land included in the reservation, it would be necessary to obtain from the state a cession of jurisdiction. In 1875 the legislature of the state passed an act to cede jurisdiction to the United States over the territory of the reservation, with a proviso saving to the state among other things, the right to tax railroad, bridge, and other corporations, their franchises and property on said reservation.

With the law in this condition taxes were imposed upon the Fort Leavenworth Railroad Company, upon its property within the reservation; and the contention was substantially as suggested by Colonel Bushnell, that the state could have no right to tax any property on the reservation, and that the reservation was not a part of the state. The court reviews the law at very great length, and held against the claim of the railroad company. The following quotations from the opinion will probably be sufficient to show the correctness of the conclusion which this office has reached.

"Where, therefore, lands are acquired in any other way by the United States within the limits of a state than by purchase with her consent, they will hold the lands subject to this qualification: That if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference

and jurisdiction of the state as would destroy {*95} or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over any other places within her limits.

"As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a state; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the state since her admission into the Union. It not being a case where exclusive legislative authority is vested by the constitution of the United States, that cession would be accompanied with such conditions as the state might see fit to annex not inconsistent with the free and effective use of the fort as a military post."

"The Military Reservation of Fort Leavenworth was not, as already said, acquired by purchase with the consent of Kansas. And her cession of jurisdiction is not of exclusive legislative authority over the land, except so far as that may be necessary for its use as a military post; and it is not contended that the saving clause in the act of cession interferes with such use. There is, therefore, no constitutional prohibition against the enforcement of that clause. The right of the state to subject the railroad property to taxation exists as before the cession."

There can be no doubt from a consideration of the opinion from which the foregoing quotations are made that any property on the Fort Bayard Reservation which does not belong to the United States, is subject to the jurisdiction and control of the state government, by way of taxation or otherwise, the same as property anywhere else within the limits of the state; and we must conclude, therefore, that the automobiles referred to in Colonel Bushnell's letter owned in the reservation by individuals are subject to the state license imposed by the recent act of the legislature. Of course, this does not extend to the automobile ambulance mentioned by him belonging to the hospital, as that is clearly in use for the purposes of the government, whether title is directly vested in the government or not, and cannot therefore be subjected to the payment of the license.

I return Colonel Bushnell's letter herewith.