

Opinion No. 13-1094

August 17, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Col. George H. Bushnell, Fort Bayard, N. M.

MARRIAGES.

Licenses required for performance of marriage ceremonies on U. S. Military Reservations.

OPINION

{*266} In answer to your letter No. 1805 received on Friday, I take pleasure in enclosing herewith copy of House Bill No. 53 of the last session of our legislature, which became a law without change and appears as Chapter 35 of the Laws of 1913. That is the act which cedes jurisdiction to the United States over the military reservation of Fort Bayard.

You particularly ask, however, as to whether persons contemplating marriage on the reservation must obtain a license from the county authorities, and you ask in substance whether this matter has been decided, or can be decided by me. I know of no decision upon this exact point, but my own opinion is that unless congress should legislate in the exercise of its exclusive jurisdiction over the reservation, on such subjects as marriage, the laws of the state would still be in force, and a license would be necessary. If you have opportunity to refer to the case of the Chicago and Pacific Railway Co. vs. McClinn, in volume 114 of the Reports of the Supreme Court of the United States, on page 545 et seq., you will see the foundation for my opinion. That case was one with regard to the military reservation of Fort Leavenworth in Kansas, and the question decided was as to whether a statute of Kansas relating to the killing of stock by railroads continued in force within the limits of the reservation after the state had ceded to the United States exclusive jurisdiction. On page 546 of the report it is stated as a general rule of public law that whenever political jurisdiction and legislative power are transferred from one nation to another, the municipal laws of the county continue in force until changed by the new government, and that this principle is applicable to territory the jurisdiction over which is ceded by a state to the general government. In harmony with this decision I feel confident that it would be held by the courts that the laws relating to marriages continue in force in the Fort Bayard reservation unless congress in the exercise of the exclusive jurisdiction of the United States, should by appropriate legislation provide a different system.