



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

February 7, 1985

ATTORNEY GENERAL OPINION NO. 85- 14

The Honorable Edward F. Reilly, Jr.
State Senator, Third District
430 Delaware
Leavenworth, Kansas 66048

Re: Federal Jurisdiction -- Federal Property -- Investigation
of Alleged Child Abuse on Fort Leavenworth Reservation.

Infants -- Code for Care of Children -- Investigation of
Alleged Child Abuse on Federal Reservations.

Synopsis: The United States government has exclusive jurisdiction
over crimes committed on Fort Leavenworth property, which
may be exercised in investigating child abuse pursuant
to 18 U.S.C. §13. Local governmental officials may enter
into an agreement with it authorizing concurrent jurisdiction
in matters of police protection. Cited herein: K.S.A. 12-2904;
27-101; 27-102; 27-104; 18 U.S.C. §13.

*

*

*

Dear Senator Reilly:

As Chairman of the Federal and State Affairs Committee, you request
our opinion on state jurisdiction over crimes committed on Fort
Leavenworth property. Specifically, you ask whether state or federal
officers have the authority to investigate and prosecute allegations
of child abuse occurring on Fort Leavenworth property and involving
civilians both as perpetrator and victim. Information you supplied

The Honorable Edward F. Reilly, Jr.
Page Two

indicates the abuse allegedly occurred while the civilian child attended special education classes on Fort Leavenworth property pursuant to an arrangement between the local school district and the fort.

K.S.A. 27-101 gives the United States consent to acquire land in Kansas. K.S.A. 27-102 states:

"That exclusive jurisdiction over and within any lands so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes; saving, however, to the state of Kansas the right to serve therein any civil or criminal process issued under the authority of the state, in any action on account of rights acquired, obligations incurred or crimes committed in said state, but outside the boundaries of such land; and saving further to said state the right to tax the property and franchises of any railroad, bridge or other corporations within the boundaries of such lands; but the jurisdiction hereby ceded shall not continue after the United States shall cease to own said lands."

K.S.A. 27-104 cedes jurisdiction over the Fort Leavenworth military reservation to the United States government, incorporating by reference Laws 1875, chapter 66, section 1.

In In Re Armed Forces Cooperative Insuring Ass'n, 5 Kan.App. 787 (1981), the Kansas Court of Appeals reviewed the history of this law, stating:

"The lands lying within the boundaries of the Fort Leavenworth reservation have been owned by the United States since their acquisition from France in 1803 as a part of the Louisiana Purchase. They were not acquired by the United States pursuant to K.S.A. 27-101 (L. 1927, ch. 206, §1). It appears the original reservation of the Fort Leavenworth lands by the United States for its purposes was made by an Executive Order in 1854. When Kansas was admitted as a state in 1861, the United States did not reserve jurisdiction. On February 25, 1875, upon passage by the state legislature of 'An Act to Cede Jurisdiction to the United States over the territory of the Fort Leavenworth Military Reservation,' L. 1875, ch. 66, §1, Kansas ceded to the United States exclusive jurisdiction over and within the territory included within

the limits of the reservation saving to the State of Kansas 'the right to tax railroad, bridge and other corporations, their franchises and property,' on the reservation. Similar language of reservation of jurisdiction appears in K.S.A. 27-102. (The background we have highly summarized may be found by examination of K.S.A. 21-101; K.S.A. 27-102; K.S.A. 27-104; L. 1875, ch. 66, §1; Benson v. United States, 146 U.S. 325, 36 L.Ed. 991, 13 S.Ct. 60 [1892]; Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 29 L.Ed. 264, 5 S.Ct. 995 [1885]; Hayes v. United States, 367 F.2d 216 [10th Cir. 1966]; Murphy v. Love, 249 F.2d 783 [10th Cir. 1957]; Ft. L. Rld. Co. v. Lowe, Sheriff, 27 Kan. 749 [1882]; G.S. 1915, ch. 59, §5784; Act for Admission of Kansas into Union, Jan. 29, 1861, ch. 20, §§ 1, 2, 3, 4, 5, 12 stat. 126, 127, 128.)

"As to the case before us, the jurisdiction of the United States on the one hand and the State of Kansas on the other hand is delineated by the 1875 Act. That cession and reservation of jurisdiction is unqualified as to usage or purpose of ownership. Neither the use of the lands nor the purpose of the United States ownership is of any moment. (See Hayes v. United States, 367 F.2d at 220; Benson v. United States, 146 U.S. at 330.) Likewise, the cession, or recession, by the United States to the states of substantial jurisdiction to levy and collect sales or use taxes with respect to sale and use occurring within lands owned by the United States and to levy and collect income taxes as to persons residing within lands owned by the United States. (4 U.S.C. §§105-110) is immaterial." Id. at 789-790. (Emphasis supplied.)

In Benson v. United States, 146 U.S. 325 (1892), a federal prisoner was charged with murder on Fort Leavenworth military reservation. The Supreme Court ruled that the federal court had exclusive jurisdiction to prosecute even though the crime was committed on property which was not used for military purposes. Id. at 331. Clearly then, the Federal government has exclusive jurisdiction over all crimes committed upon Fort Leavenworth property, regardless of the victim's or perpetrator's status or the actual site of the crime.

The Honorable Edward F. Reilly, Jr.
Page Four

Your particular inquiry involves the crime of child abuse. The Federal government has authority to proceed in this area either under its own statutes, if any apply, or under the Assimilative Crimes Act, 18 U.S.C. §13, which states:

"Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

In United States v. Brown, 608 F.2d 551 (5th Cir. 1979), the Fifth Circuit Court of Appeals ruled that the Federal government could use 18 U.S.C. §13 to prosecute a charge of child abuse upon a Texas statute. Id. at 554. The crime took place at Sheppard Air Force Base, Texas. (Id. at 552.) Thus, the federal officials at Fort Leavenworth could under 18 U.S.C. §13 investigate and prosecute allegations of child abuse occurring on the Leavenworth reservation upon the Kansas statutes relative thereto, K.S.A. 1983 Supp. 38-1521 et seq.

If the federal government does not choose to exercise its jurisdiction in this area, local governmental officials may wish to discuss an agreement with federal officials authorizing concurrent state jurisdiction in this area. K.S.A. 12-2901 et seq. authorizes cooperative agreements between local governmental units and the United States Government on issues affecting police protection. K.S.A. 12-2904 states, in part:

"Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state including but not limited to those functions relating to . . . police protection . . . , may be exercised and enjoyed jointly with . . . any public agency of any other state or of the United States"

The agreement must comply with the specifications of K.S.A. 12-2904 and is subject to the Attorney General's approval.

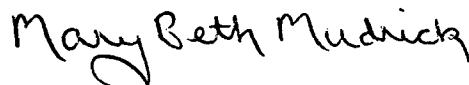
The Honorable Edward F. Reilly, Jr.
Page Five

In conclusion, the federal government has exclusive jurisdiction over all crimes committed on Fort Leavenworth property. If there is no federal statute applicable to the crime alleged, the Federal government can prosecute a violation of Kansas law under the Assimilated Crimes Act. Should the federal government decline to exercise its jurisdiction, local officials may wish to enter into an agreement authorizing concurrent jurisdiction in this area.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Mary Beth Mudrick
Assistant Attorney General

RTS:BLH:MBM:may