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October 24, 2013

ATTORNEY GENERAL OPINION NO. 2013- 16

The Honorable Melanie Meier
Representative, Forty-first District
State Capitol Room 451-S
300 S.W. 10th Avenue
Topeka, Kansas 66612

Re: Constitution of the United States—Article I—Legislative Powers—Powers of Congress; Jurisdiction on Federal Military Installations

Federal Jurisdiction—Federal Property—Consent Given to United States to Acquire Land; Limitations; Jurisdiction; Fort Leavenworth Reservation; Fort Riley Military Reservation; Jurisdiction on Federal Military Installations

Pet Animal Act—Penalties for Violations of Act; Inspections and Investigations; Violations of Act or Rules and Regulations; Purpose of Act; Jurisdiction on Federal Military Installations

Synopsis: Kansas ceded its jurisdiction over the federal military installations in Kansas prior to the enactment of the Kansas Pet Animal Act. Consequently, Kansas cannot enforce that Act on the federal military installations in Kansas. Cited herein: K.S.A. 27-101; 27-102; 27-104; 27-105; K.S.A. 2013 Supp. 47-1707; 47-1709; 47-1715; 47-1726; U.S. Const., Art. 1, § 8.

* * *

Dear Representative Meier:

As Representative for the Forty-first District, you ask whether the Kansas Department of Agriculture, Division of Animal Health (Division), can enforce the Kansas Pet Animal Act (PAA)¹ on military installations within Kansas. Your specific concern is whether the

¹ K.S.A. 47-1701 *et seq.*

Division has jurisdiction to investigate complaints about pet foster homes that are located on federal military installations within Kansas.

The purpose of the PAA is to "license . . . and regulate the conditions of certain premises and facilities *within the state* . . . where animals are maintained, sold or offered or maintained for sale."² The PAA authorizes the Animal Health Commissioner to inspect the premises of persons who have applied for or been granted a license or permit under the PAA and the premises of persons who may have violated the PAA.³ A person who violates any provision of the PAA may be subject to criminal prosecution, a civil fine, or both.⁴ To determine whether the federal military installations are "within the state" for purposes of enforcement of the PAA, we must examine the federal government's acquisition of the federal military installations in Kansas—McConnell Air Force Base, Fort Leavenworth, and Fort Riley.

Acquisition of Land by Federal Government

The United States government may acquire land in a state by purchase or cession.⁵ When it purchases land, the federal government acquires jurisdiction pursuant to Article 1, § 8, of the United States Constitution. It provides that "The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever, . . . 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." Although the Constitution refers to the "exclusive legislation" of Congress, it is well settled that the extent of the federal government's jurisdiction may be qualified in the consent given by a state.⁶ Thus, the question of jurisdiction on a federal military installation in Kansas is dependent upon the consent given by the Kansas Legislature.

Consent by Kansas

Purchase of McConnell Air Force Base

The United States government purchased the land now known as McConnell Air Force Base through a condemnation proceeding in 1951.⁷ At that time, the statutes providing consent to the purchase of land in Kansas by the federal government and granting jurisdiction over such purchased land to the federal government stated:

That the consent of the state of Kansas is hereby given, in accordance with the provisions of paragraph number seventeen, section eight, article one of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in the state of Kansas,

² K.S.A. 2013 Supp. 47-1726. Emphasis added.

³ K.S.A. 2013 Supp. 47-1709(a)-(c).

⁴ K.S.A. 2013 Supp. 47-1707; 47-1715.

⁵ *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 99 (1940).

⁶ 309 U.S. at 99.

⁷ Susan Thompson, *Prairie Runways, The History of Wichita's Original Municipal Airport* (Air Capital Press, Kansas Aviation Museum, 2000), p. 105.

which may hereafter be, required for custom houses, courthouses, post offices, national cemeteries, arsenals, or other public buildings, or for other purpose of the government of the United States.⁸

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 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.⁹

Cession of Fort Leavenworth and Fort Riley

Prior to Kansas becoming a state in 1861, the United States owned the military reservations in Kansas and had exclusive jurisdiction over those lands.¹⁰ When statehood was achieved, the federal government failed to reserve jurisdiction over the military reservations, giving Kansas jurisdiction over the reservations subject only to the Constitution of the United States. Thus, Kansas could have exercised the same jurisdiction over the federal military reservations that it could have exercised over private landowners.¹¹ To obtain jurisdiction over the federal military reservations, the federal government had to obtain a cession of jurisdiction from the State of Kansas.¹²

Kansas ceded to the United States the Fort Leavenworth military reservation in 1875 and the Fort Riley military reservation in 1889.¹³ The law ceding jurisdiction of the Fort Leavenworth military reservation stated:

That exclusive jurisdiction be and the same is hereby ceded to the United States over and within all the territory owned by the United States, and included within the limits of the United States military reservation known as the Fort Leavenworth reservation, in said state, as declared from time to time by the president of the United States, saving, however, to said state the right to serve civil or criminal process within said reservation, in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said cession and reservation,

⁸ R.S. 1923, 27-101 (1930 Supp.). A subsequent amendment to this statute continued the consent given in R.S. 1923, 27-201, but placed limitations on acquisitions exceeding 80 acres. See K.S.A. 27-101(a).

⁹ R.S. 1923, 27-102 (1930 Supp.). This statute is now codified in K.S.A. 27-102.

¹⁰ *Benson v. United States*, 146 U.S. 325, 329-30 (1902); *Ft. Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 526 (1885); and *Hayes v. United States*, 367 F.2d 216, 219 (10th Cir. 1966).

¹¹ *Ft. Leavenworth R. Co.*, 114 U.S. at 527.

¹² *Id.*

¹³ L. 1875, Ch. 66, § 1; L. 1889, Ch. 150, § 1, respectively.

and saving further, to said state, the right to tax railroad, bridge, and other corporations, their franchises and property, on said reservation.¹⁴

The Kansas law for ceding the Fort Riley military reservation to the federal government contained similar language and also continued state taxing authority over “the property of citizens, not otherwise exempt, on said reservation.”¹⁵ As a result, the jurisdiction of Kansas that was reserved in all of the cession laws does not apply to the enforcement of the PAA in the federal military installations.

Effect of State Laws When Jurisdiction Transfers

Although Kansas ceded jurisdiction over the military reservations to the federal government, the courts have recognized that state laws in existence at the time of cession that are not inconsistent with federal policy remain in effect until Congress enacts federal legislation to supersede the state laws.¹⁶ “Since only the law in effect at the time of the transfer of jurisdiction continues in force, future statutes of the state are not a part of the body of laws in the ceded area. Congressional action is necessary to keep it current.”¹⁷ Thus, state jurisdiction within a military reservation is also dependent upon whether the state law was enacted before or after cession.

Here, the Kansas Legislature enacted the PAA in 1972.¹⁸ At that time, Kansas had ceded jurisdiction in the military installations of McConnell Air Force Base, Fort Riley, and Fort Leavenworth to the federal government. The reservation clauses in the cession laws applied only to service of process and certain taxes. We are not aware of any federal statute that gives Kansas the authority to enforce the PAA on the federal military installations. Thus, Kansas lacks jurisdiction to enforce the provisions of the PAA on the McConnell Air Force Base, the Fort Riley military reservation, and the Fort Leavenworth military reservation.

You also indicated that pet foster homes are located at the housing quarters on the military installations; typically, a private person or entity contracts with the federal government to provide housing on the reservation to military families. We assume that you are inquiring whether the federal government has jurisdiction only over those portions of the military installation that are actually being used for military purposes. This issue has been addressed by the United States Supreme Court.

In *Benson v. United States*, the defendant argued the federal government lacked jurisdiction to convict him of a murder that occurred in a part of the Ft. Leavenworth military reservation used for farming. The Court responded:

¹⁴ L. 1875, Ch. 66, § 1. This provision is now codified in K.S.A. 27-102 and 27-104.

¹⁵ L. 1889, Ch. 150, § 1. This provision is now codified in K.S.A. 27-102 and 27-105.

¹⁶ *James Stewart & Co.*, 309 U.S. at 99; *Pacific Coast Dairy v. Dep’t of Agriculture of California*, 318 U.S. 285, 294 (1943); *Craig v. Craig*, 143 Kan 624, 631 (1936); and *Orlovetz v. Day & Zimmerman, Inc.*, 18 Kan. App. 2d 142, 144 (1993).

¹⁷ 309 U.S. at 100.

¹⁸ L. 1972, Ch. 201, § 1-17; now codified in K.S.A. 47-1701 *et seq.*

The entire tract had been legally reserved for military purposes. The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put.¹⁹

Under *Benson*, the fact that the federal government leases a part of the military installation to a private person or entity for the purposes of providing housing does not divest the federal government of its jurisdiction.²⁰

Your letter also describes other activities at the military installations that are being regulated by state or local government agencies. Reviewing those activities will not assist our analysis. Although a state has consented to the exclusive jurisdiction of the federal government over property situated in the state, the federal government is free to restrict or extend the powers of the state over activities and persons within the federal reservation.²¹ We are aware of no such extension by the federal government of the powers of the State over activities and persons related to enforcement of the Kansas Pet Animal Act.

Sincerely,

Derek Schmidt
Attorney General

Janet L. Arndt
Assistant Attorney General

DS:AA:JLA:sb

¹⁹ 146 U.S. at 331; 367 F.2d at 220. See also *Hayes v. United States*, 367 F.2d 216, 220 (10th Cir. 1966) affirming a murder conviction that occurred in the Leavenworth Penitentiary that was not a part of the military reservation but was within the Ft. Leavenworth military installation.

²⁰ See also Kansas Attorney General Opinions No. 2005-19 and 2009-1 (state taxation of property within Fort Leavenworth and Fort Riley military reservations, respectively, is dependent upon whether the private housing corporation owns the property).

²¹ *Evans v. Cornman*, 398 U.S. 419, 423-24 (1970) and *Offutt Housing Co. v. County of Sarpy, Nebraska*, 351 U.S. 253, 260-61 (1956). See also Kansas Attorney General Opinion No. 94-20 addressing legislation entitling a person who resides in a federal enclave to vote in Kansas and Kansas to tax such resident.