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January 16, 1981

ATTORNEY GENERAL OPINION NO. 81- 14

Mr. Steven Opat
Geary County Attorney
County Courthouse
Junction City, Kansas 66441

Col. Paul J. Rice
J.A.G.C.
Staff Judge Advocate
Fort Riley
Riley, Kansas 66531

Re: Infants - Juvenile Code - Jurisdiction of Court Over
Matters On Federal Enclave

Synopsis: Where there is no federal legislation preempting a state's interest in exercising jurisdiction over juveniles residing within federal enclaves, the jurisdiction of a state district court does extend to hear and adjudicate proceedings pursuant to the juvenile code, with respect to neglected, wayward or abused children, concerning incidents occurring on the Fort Riley Military Reservation. Cited herein: K.S.A. 27-101, 27-102, 27-105, K.S.A. 1980 Supp. 38-806, U.S. Const. Art. I, §8, cl. 17.

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Dear Mr. Opat and Colonel Rice:

You request our opinion whether the jurisdiction of the District Court of Geary County, Kansas, in juvenile matters "extends to hear and adjudicate issues of neglected, wayward, and abused children, when said issues arise from incidents which occur on the Fort Riley Military Installation."

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We note pertinent constitutional and statutory provisions by way of general background.

Article I, Section 8, Clause 17 of the United States Constitution provides that Congress is empowered

"[t]o exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority 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, dockyards, and other needed buildings."

The area comprising Fort Riley in Geary County was made a federal enclave by the Secretary of War on March 30, 1853, under the provisions of General Orders #9 issued from the Headquarters of the Sixth Military Department, Jefferson Barracks, Missouri, over which the United States has exclusive jurisdiction within the meaning of the foregoing constitutional provision. Consent by the State of Kansas to the federal government's acquisition thereof is provided by K.S.A. 27-101, and said jurisdiction was ceded to the United States by the State pursuant to Section 1 of Chapter 150 of the 1899 Session Laws of Kansas. (See K.S.A. 27-105.) Also of importance is K.S.A. 27-102, which provides:

"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."

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The question arises, therefore, whether the State's consent to the federal government's acquisition of land comprising Fort Riley, and the cession of exclusive jurisdiction over said land to the federal government, precludes the exercise of the State's authority over juveniles residing on the Fort Riley Military Reservation.

Generally, the federal government will exercise exclusive jurisdiction over persons residing within a federal enclave. However, the field of domestic relations, including the adjudication of custody of an abused and neglected child, is reserved to the several states. "It is understood that the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States." [Citations omitted.] State of Ohio v. Agler, 280 U.S. 379, 74 L.Ed. 489, 497, 498, 50 S.Ct. 154 (1929). This does not conflict with the exclusiveness of federal jurisdiction over Fort Riley or any other federal enclave, since the state may exercise its power over federal areas within its boundaries so long as there is no interference with said jurisdiction asserted by the United States. Howard v. Commissioners of the Sinking Fund of the City of Louisville, 344 U.S. 624, 97 L.Ed. 617, 73 S.Ct. 465 (1953). In Howard, the Court states:

"The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries. . . . The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim." 344 U.S. at 627.

At the present time, there is no legislation preempting a state's interest in neglected juveniles or status offenders residing within federal enclaves, and the jurisdiction of military tribunals does not extend to non-military persons, including military dependents who reside within federal enclaves. Reid v. Covert, 354 U.S. 1, 21, 1 L.Ed.2d 1148, 77 S.Ct. 1222 (1957). Even in the case of a juvenile violation of federal law, through the guidelines stated in 18 U.S.C. §5032, Congress has expressed an intent to subject juveniles to the jurisdiction of state courts if that state has proper jurisdiction over the juvenile, will accept jurisdiction, and has available programs and services adequate for the needs of said juvenile.

A similar issue was presented in State in Interest of D.B.S., 349 A.2d 105 (1975). Here, the question presented was whether a state court had jurisdiction over a juvenile delinquent who committed an act of delinquency within a federal enclave. The New Jersey court held:

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"Here, the juvenile was housed on a federal enclave but received his education in the public school system of New Jersey and benefited from the extracurricular activities provided by the school and the surrounding community. As stated in State v. Tuddles, 38 N.J. 565, 571, 186 A.2d 284 (1962), the legislative approach to juvenile delinquency is protective and rehabilitative, and not punitive. The statutory scheme is designed to permit the exercise of the powers of the State as parens patriae, for the purpose of rehabilitating youthful offenders and not of punishing them for the commission of a crime.

"Accordingly, not only would it be inconsistent to hold that a juvenile who benefits from the State's educational system and community life cannot also benefit from its juvenile laws, but it is our view that the State has an obligation to protect and rehabilitate a juvenile such as D.B.S. who, although housed on land ceded to the Federal Government, is a member of the social community of New Jersey. Cf. Burlington Cty. Freeholders v. McCorkle, 98 N.J. Super. 451, 237 A.2d 640 (Law Div. 1968.) So long as there is no interference with the jurisdiction asserted by the Federal Government, the State's jurisdiction continues. In re Salem Transportation Co. of New Jersey, 55 N.J. 559, 563, 264 A.2d 47 (1970)." Id. at 107, 108.

Clearly, application of state jurisdiction would be a benefit to juveniles and would be in accord with the policy of the United States, and it is our understanding the personnel of Fort Riley do not oppose the jurisdiction of the Geary County courts. Army Regulation 608-1, Chapter 7, issued by order of the Secretary of the Army on October 1, 1978, which describes the Army Child Advocacy Program (ACAP), announces that "[m]ost foster care placements will be done by direction of appropriate civilian authorities." (Id. at §III, p. 7-7).

We also find persuasive the case of In re Terry v. Benny, 80 Daily Journal D.A.R. 264 (Cal. C.A., 1980), in which the court concluded that application of state jurisdiction over a juvenile residing on a federal enclave did not conflict with federal sovereignty. There, reference was made to the Social Security Act to support the court's decision:

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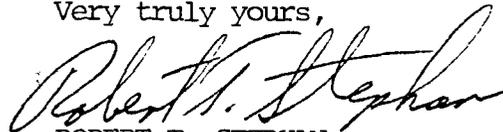
"[I]n Title IV-B of the Social Security Act (42 U.S.C. §§620-626), Congress has authorized grants to the states for establishing, extending and strengthening 'child welfare services' (§§620, 621). 'Child welfare services' include, inter alia, public social services which supplement or substitute for parental care and supervision for the purpose of preventing or remedying the neglect or abuse of children and protecting and caring for dependent or neglected children (§625). In order to qualify for funds under Title IV-B, a state must make a satisfactory showing that it is making available its child welfare services 'in all political subdivisions of the State, for all children in need thereof' (42 U.S.C. §622(a)(2)). As federal enclaves such as Fort Ord remain geographically and legally a part of the state in which they are located (Howard v. Commissioners of Sinking Fund of Louisville, supra, 344 U.S. 624), it follows that Congress contemplated that the state would make its services available to the children on federal enclaves."

Jurisdiction of the district courts over juvenile proceedings is stated in K.S.A. 1980 Supp. 38-806, which provides in pertinent part:

"(a) Except as provided in K.S.A. 1978 Supp. 21-3611, and subsection (b) of 38-808, proceedings concerning any child, living or found within the county, who appears to be a delinquent, miscreant, wayward or deprived child or a traffic offender or truant, as defined in K.S.A. 1978 Supp. 38-802, shall be governed by the provisions of the Kansas juvenile code."

The above stated provision does not interfere with federal jurisdiction, absent a Congressional enactment amounting to preemption of the questioned area. In addition, Geary County's exercise of its statutory jurisdiction promotes the federal policy regarding abused children, as reflected in the applicable Army Regulations and the Social Security Act. Accordingly, it is our opinion the jurisdiction of the Geary County District Court does extend to hear and adjudicate proceedings pursuant to the juvenile code, with respect to neglected, wayward, or abused children, concerning incidents occurring on the Fort Riley Military Reservation.

Very truly yours,



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