

## OPINION 28

### OFFICIAL OPINION NO. 28

November 23, 1971

Mr. Robert K. Konkle, Superintendent  
Indiana State Police  
State Office Building  
Indianapolis, Indiana

Dear Superintendent Konkle:

This is in response to your request for my official opinion concerning the authority and jurisdiction of state and local law enforcement officers over certain federal lands and buildings, specifically, Grissom Air Force Base at Peru, Indiana.

Specifically, you asked the following questions:

- (1) "Whether the state has maintained concurrent jurisdiction over federal properties in Indiana.
- (2) "If so, is this jurisdiction restricted to the service of process, or may state and local officers conduct investigations of crime committed on federal properties and make arrests for violations of state laws without a warrant, and;
- (3) "Are state and local enforcement officers empowered to take enforcement action on federal lands against both military and civilian personnel.
- (4) "With relation to the question of jurisdiction, are all federal lands treated the same, or does a different rule apply for military bases as opposed to post offices or the federal building or with reference to federal game preserves."

### ANALYSIS

Any analysis of jurisdiction of state and local law enforcement officers on federal lands and buildings must be preceded by a summary of the law prior to 1940 and subsequent to 1940.

Concerning any lands acquired by the United States after 1940, it is conclusively presumed that no jurisdiction has been accepted by the United States without certain procedural

steps being taken. Section 255, Title 40 U.S.C., being the Act of October 9, 1940, reads in part as follows:

“\* \* \* and indicate *acceptance* of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the governor of such state or in such other manner as may be prescribed by the laws of the state where such lands are situated.” (My emphasis)

The applicable law in Indiana is found in Acts of 1883, Ch. 7, Sec. 1, as found in Burns' (1961 Repl.), Section 62-1001, and reads, in part, as follows:

“The jurisdiction of this state is hereby ceded to the United States of America over all such pieces or parcels of land within the limits of this state as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting post-offices, custom-houses, or *other structures exclusively owned by the general government and used for its purposes*: Provided, That an accurate description and plat of such land so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of the state, And, provided further, That this cession is upon the expressed condition that *the state of Indiana shall so far retain concurrent jurisdiction with the United States in and over all lands acquired or hereafter acquired as aforesaid, that all civil and criminal process issued by any court of competent jurisdiction, or officer having authority of law to issue such process; and all orders made by such court or any judicial officer duly empowered to make such orders and necessary to be served upon any person, may be executed on said lands, and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid.*” (My emphasis)

Prior to the enactment of the above quoted federal statute, the presumption was that there was acceptance of exclusive

## OPINION 28

jurisdiction by the federal government for those state lands acquired. *United States v. Heard* (1967), 270 F. Supp. 198.

Since the enactment and effective date of Section 255, Title 40 U.S.C. February 1, 1940, the presumption runs against the federal acceptance of jurisdiction over land acquired subsequent to 1940. *United States v. Johnson* (1970), 426 F. (2) 1112.

“We read 40 U.S.C. §255 as clearly requiring notice of acceptance of jurisdiction only on those cases where, prior to the passage of section 255, jurisdiction had not yet been obtained. The presumption against the acceptance of jurisdiction in that statute is applicable only to land acquired subsequent to the 1940 amendment See *Markham v. United States*, 215 F. (2d) 56, 58 (4th Cir. 1954).”

Both of the above presumptions may be overcome by a showing of certain facts. To overcome the presumption that the government did not accept exclusive jurisdiction on property acquired subsequent to February 1, 1940, it is necessary to show that the federal government has accepted jurisdiction by filing a verified plat of the land affected with the office of the governor.

The presumption that the federal government has accepted jurisdiction over lands acquired prior to February 1, 1940, may also be overcome. This requires looking at the method by which the federal government acquired the land and the uses or non-uses the land has been put to by the federal government.

Therefore, the answer to the question concerning whether the state has maintained concurrent jurisdiction over federal properties in Indiana depends upon the parcel of land in question and the facts surrounding the acquisition by the federal government and action taken subsequent to acquisition. Each parcel of land must have a determination made individually.

Jurisdiction of this state is ceded to the United States of America by Burns' Section 62-1001, *supra*, over parcels of land acquired by the federal government with the proviso

that the cession is upon the expressed condition that the State of Indiana may retain concurrent jurisdiction in the issue of criminal and civil process and the execution of orders by any competent court. However, the United States Government may not assume jurisdiction if it does not formally accept such jurisdiction. *State v. Johnson* (1964), 130 N.W. (2d) 106;

“The Supreme Court of the United States has said that a transfer of jurisdiction rests upon a grant by the state and acceptance by the United States. There is no constitutional principle ‘which compels acceptance by the United States of an exclusive jurisdiction contrary to its own conception of its interest.’ *Silas Mason Co. v. Tax Commission of Washington*, 302 U.S. 186, 58 S. Ct. 233, 82 L. ed. 187. The fact that there is an outstanding grant to the United States of the right to exercise exclusive jurisdiction does not divest a state of jurisdiction. It retains jurisdiction until there is acceptance.”

However, if the federal government has assumed jurisdiction by the filing of a plat and by formal acceptance notice to the office of the governor as required by the federal statute, it has been held that the state may still retain the service of process and execution of orders jurisdiction as prescribed by *Burns’ 62-1001, supra, United States v. Unzenta* (1929), 281 U. S. 142.

Aside from service of process and execution of orders and as to investigation of crimes and arrests for violations of state laws without a warrant, it is necessary to look to the time of the acquisition of the property by the federal government and the procedural steps followed subsequent to this acquisition as outlined in question one to determine if this property is under the exclusive jurisdiction of the federal government or if there is concurrent jurisdiction of the state and federal government.

You also asked whether the state and local law enforcement officers are empowered to take enforcement action on federal lands against both military and civilian personnel.

## OPINION 28

Chapter 4, paragraph 12, pages 4-3 of the 1969 United States Manual for Courts-Martial states that the military personnel are subject to criminal and civil process and arrests as well as arrests by military personnel, as stated below:

### "12. EXCLUSIVE AND NONEXCLUSIVE JURISDICTION.

Courts-martial have exclusive jurisdiction of purely military matters. But a person subject to the code is, as a rule, subject to the law applicable to persons generally, and if by an act or omission he violates the code and the local criminal law, the act or omission may be made the basis of a prosecution before a court-martial or before a proper civil tribunal, and in some cases before both \* \* \*” Uniform Code of Military Justice, Art. 12, as found in Manual for Courts-Martial—United States—1969.

Therefore, if the facility in question is not under exclusive jurisdiction of the federal government and the states have maintained concurrent jurisdiction, both military and civilian personnel are subject to enforcement action by state and local law enforcement officers.

Specifically you also ask about the jurisdiction of state and local law enforcement officers on Grissom Air Force Base at Peru in Miami County, Indiana. The records of the governor's Office show that Grissom Air Force Base at Peru, formerly known as Bunker Hill Air Force Base, was originally acquired by the Federal Government on December 7, 1942. Since this property was acquired subsequent to February 1, 1940, it was necessary for the Federal authorities to file a verified description and plat of land in the office of the Governor of the State of Indiana and to accept exclusive jurisdiction from the State.

These procedures were followed and on date of January 6, 1943, formal acceptance was made by the then Governor Henry F. Schricker for this originally acquired acreage. However, there were subsequent acquisitions of acreage in 1954 and 1958. Without further proof of acceptance of jurisdiction by the federal government over this subsequently acquired

acreage, the state of Indiana retains concurrent jurisdiction over this land with the federal government.

## CONCLUSION

It is therefore my official opinion that:

1. Determination of concurrent jurisdiction over federal property in Indiana must be made with each individual piece of property in accordance with the law prior to 1940, and with the law subsequent to 1940.

2. If there is concurrent jurisdiction of the State and Federal Government of property acquired by the Federal Government, state and local officers may conduct investigation of crimes committed on federal properties and make arrests for violations of state laws without a warrant. However, acquisition must be made as outlined by statute. Even though acquisition has been made and the United States has accepted jurisdiction, the state still may retain jurisdiction in the serving of process and the execution of orders of its courts.

3. If the facility in question is not under exclusive jurisdiction of the Federal Government and the state has maintained concurrent jurisdiction, both military and civilian personnel are subject to enforcement action by state and local enforcement officers.

4. Determination as to whether jurisdiction of federal lands has been maintained by the state or is an exclusive jurisdiction of the Federal Government, must be determined by each individual case. Your specific question as to Grissom Air Force Base indicates there is exclusive jurisdiction in the Federal Government only as to those lands acquired by the original acquisition, and there is concurrent jurisdiction with the State of Indiana as to lands subsequently acquired. In either case, the State of Indiana retains jurisdictional authority so far as service of process and execution of court orders.