OFFICIAL OPINION NO. 1

January 3, 1961

Mr. Joda G. Newsom, Chairman
State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in response to your request for my Official Opinion in regard to the following question:

> "Is the personal property situated on Camp Atterbury, Indiana, of an Indiana domiciliary subject to taxation by the State of Indiana?"

Since Camp Atterbury is known to be federally-owned land acquired for military purposes, your question implies that the answer is dependent upon the jurisdictional status of Camp Atterbury. The Indiana Statute, Acts of 1919, Ch. 59, Sec. 5, as amended, as found in Burns' (1951 Repl.), Section 64-201, recognizes of necessity the supremacy of provisions of the Constitution of the United States in the realm of taxation, whenever real or personal property of the Federal Government is involved, and provides, in part, as follows:

> "The following property shall be exempt from taxation:
>
> "First. The property of this state; and the property of the United States, its agencies and instrumentalities, to the extent that this state is prohibited by law from taxing said property of the United States, but any right, title, interest, lien, claim or lease held in, on, to or of said property shall be assessed and taxed as other property is assessed, and taxed to the extent that this state is not prohibited from taxing the same by the Constitution of the United States. * * *"

As will be noted from the above-quoted statutory provision, the exemption thereby provided is dependent ultimately upon the extent to which Indiana is prohibited from taxing by the Constitution of the United States. Also this provision concerns property owned by the United States, its agencies and

instrumentalities, and would not necessarily extend to the property of private individuals if jurisdiction to tax such is otherwise existent in the state. Referring to the Constitution of the United States, it will be seen that Article I, Section 8, Clause 17 thereof specifically authorizes the Congress of the United States to exercise the following power:

> "[17.] To 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 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 needful buildings; and * * *." (Our emphasis)

This provision from the United States Constitution has been the basis for the decision of many cases, the first reported decision thereon being that of Commonwealth v. Clary (1811), 8 Mass. 72, having to do with the question of whether the law of Massachusetts restricting the sale of intoxicating liquors to persons procuring and paying for licenses applied to a United States arsenal in that state, the land for which had been purchased with the consent of the Commonwealth of Massachusetts. The leading case concerning said Federal constitutional provision which specifically concerned the question of whether personal property not belonging to the United States, but situated on land ceded to the Federal Government for military purposes, could be taxed by a state is the case of Surplus Trading Co. v. Cook (1930), 281 U. S. 647, 50 S. Ct. 455, 74 L. Ed. 1091. Involved in that case was a large quantity of woolen blankets which had been acquired by a private concern from the authorities at Camp Pike, Arkansas, said territory having been purchased by the United States with the consent of the Legislature of the State of Arkansas, for the purpose of establishing, erecting, and maintaining an army station thereon, and on which camp these blankets were situated at the time of tax assessment as provided by the Arkansas law.

In discussing the effect of Article I, Section 8, Clause 17 of the Constitution of the United States, above-quoted, the

United States Supreme Court stated in the Surplus Trading Co. case, 281 U. S. at page 652, as follows:

> "* * * The constitutional provision says that Congress shall have power to exercise 'exclusive legislation in all cases whatsoever' over a place so purchased for such a purpose. 'Exclusive legislation' is consistent only with exclusive jurisdiction. It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dock-yards, etc. That no divided jurisdiction respecting the seat of government is intended is not only shown by the terms employed but is a matter of public history. Why as to forts, magazines, arsenals, dock-yards, etc., is the power given made to depend on purchase with the consent of the legislature of the State if the jurisdiction of the United States is not to be exclusive and that of the State excluded?
>
> "The question is not an open one. It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction."

The decision of the Supreme Court of the United States at that time and under the circumstances then existing held that these blankets could not be subjected to state taxation so long as they were so located upon lands over which the United States had acquired exclusive jurisdiction. The Surplus Trading Co. case, *supra,* has been universally recognized as establishing the proposition that privately-owned personal property located upon an army camp, the lands for which were acquired by the United States with the consent of the Legislature of the state in which such lands are situated, cannot be subjected to state taxation, because of Article I, Section 8, Clause 17 of the Constitution of the United States delegating the exclusive legislative authority over such lands so acquired only to the Congress of the United States. The office of the Attorney General of Indiana has previously recognized the broad import of this case in 1945 O. A. G., page 59, No. 12, at pages 59, 62.

The Indiana law providing the consent of this state to the acquisition of jurisdiction by the United States and providing for the ceding of the jurisdiction of this state to the United States over lands acquired by the Federal Government for the purposes therein designated is the Acts of 1883, Ch. 7, Sec. 1, as found in Burns' (1951 Repl.), Section 62-1001, which provides 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 postoffices, 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 lands 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 express 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 upon 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."

It will be noted from the above provision of the state law that the only express condition reserved by the state as to lands so acquired by the Federal Government is that Indiana shall retain concurrent jurisdiction with respect to all civil and criminal process issued by any court of competent jurisdiction or officer having authority to issue such process and as to orders made by such court or any judicial officer having power to make such orders and necessary to be served upon any person who may be upon said lands or in the buildings

thereon. The records indicate that Camp Atterbury was acquired in pursuance of the foregoing Indiana statute for the letter of June 26, 1943 from the War Department to the Honorable Henry F. Schricker, then Governor of Indiana, stated as follows:

"Dear Governor Schricker:

"The United States has acquired 40,201.745 acres of land, more or less, located in Bartholomew, Johnson and Brown Counties, State of Indiana, for use in connection with a military reservation officially designated as Camp Atterbury.

"In compliance with the provisions of an act of the General Assembly of Indiana approved January 25, 1883 (chap. VII, p. 8, Laws of Indiana, 1883) (see also Burns' Annotated Indiana Statutes, 1933, sec. 62-1001), there is inclosed an accurate description and plat of such land so acquired, verified by the oath of an officer of the United States having knowledge of the facts.

"Notice is hereby given that the United States accepts exclusive jurisdiction over this area. The transfer of jurisdiction has been authorized by virtue of the provisions of the above act, as amended by section 1 of an act of the General Assembly of Indiana approved March 9, 1901 (chap. 158, p. 344, Laws of Indiana, 1901), as amended by section 1 of an act of the General Assembly of Indiana approved March 11, 1941 (chap. 211, p. 641, Indiana Acts, 1941).

"Return of the duplicate copy of this letter, with your indorsement thereon designating time of receipt of this acceptance by your office, would be appreciated.

"Sincerely yours,
/s/ Henry L. Stimson
Secretary of War"

Section 2 of the Acts of 1883, Ch. 7, as amended, as found in Burns' (1951 Repl.), Section 62-1002, expressly recognizes the tax-exempt status of the "lands" so acquired and provides as follows:

> "The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments so long as the same shall remain the property of the United States: Provided, however, That this exemption shall not extend to or include taxes levied by the state of Indiana upon the gross receipts or income of any person, firm, partnership, association, or corporation which is received on account of the performance of contracts or other activities upon such lands or within the boundaries thereof."

Therefore, at the time of acquisition by the Federal Government of lands constituting Camp Atterbury, it is without question and as indicated by 1945 O. A. G., page 59, No. 12, because of Article I, Section 8, Clause 17 of the Federal Constitution as interpreted by the United States Supreme Court in the Surplus Trading Co. case, *supra*, that privately-owned personal property then located within such camp would have been exempt from the imposition of personal property tax by the State of Indiana.

However, because the jurisdiction over such lands is vested in the Congress of the United States by virtue of Article I, Section 8, Clause 17 of the Federal Constitution, the Congress itself has the power to divest itself of all or a portion of such jurisdiction and may consent to taxation by the states in circumstances under which otherwise the said constitutional provision would preclude such a tax. An example of such congressional consent for state taxation to be applied in areas over which the Congress has the right of exclusive jurisdiction may be found in the enactment by Congress in 1940 of what is commonly known as the "Buck Act," 4 U. S. C. A. §§ 104 to 110. This Federal Act generally provided for the congressional consent whereby states could impose taxes upon the use of gasoline or other motor vehicle fuels, sales and use taxes, and any income taxes which might be levied by any state under the circumstances therein provided, notwithstanding that without such consent the states would be precluded from imposing such taxes by reason of the exclusive jurisdiction of the Federal Government. The Buck Act was re-enacted in 1947 and is the basis for the right to impose the gross income tax upon the receipt of gross receipts derived from contracts for

erecting buildings for the United States Government on lands ceded to the Federal Government. Such right to levy gross income tax under those circumstances was upheld in the recent case of State of Indiana, Gross Income Tax Div., *et al.* v. Pearson Constr. Co. (1957), 236 Ind. 602, 141 N. E. (2d) 448. Not only did the Indiana Supreme Court uphold Indiana's right to tax such receipts, but the Court stated at 236 Ind. 614:

> "We do not concur with appellee that these cases hold that it is necessary to repeal the State law prohibiting State taxation of Government property before a tax would be valid, when permission to levy and collect such tax is granted by Congress."

The Indiana Supreme Court in this case referred to the former case of State *ex rel.* Cashman *et al.* v. Board, etc. (1899), 153 Ind. 302, 54 N. E. 809, holding that a formal positive act of the Legislature in accepting congressional retrocession is not necessary to permit the state to exercise the jurisdiction over ceded land to the extent authorized by Congress, and that the restoration of such jurisdiction does not depend upon a positive act of acceptance on the part of the Indiana Legislature.

Although the Buck Act would not be applicable to the imposition of an *ad valorem* tax upon privately-owned personal property situated on lands ceded to the United States Government because it applies only to motor fuel use taxes, sales and use taxes and income taxes, nevertheless a later congressional enactment provides for the taxation by state or local governments of the interest of the lessee of property leased pursuant to the provisions of 10 U. S. C. A. § 2667, passed by the Congress on August 10, 1956, which provides as follows:

> "(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—
>
> "(1) under the control of that department;
>
> "(2) not for the time needed for public use; and

"(3) not excess property, as defined by section 472 of title 40.

"(b) A lease under subsection (a)—

"(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

"(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

"(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

"(4) must be revocable by the Secretary during a national emergency declared by the President; and

"(5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

"(c) This section does not apply to oil, mineral, or phosphate lands.

"(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

> "(e) *The interest of a lessee of property leased under this section may be taxed by State or local governments.* A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated. Aug. 10, 1956, c. 1041, 70A Stat. 150." (Our emphasis)

This section in substantially identical form and substance in a prior enactment was the basis for the case of Offutt Housing Co. v. Sarpy County (1956), 351 U. S. 253, 76 S. Ct. 814, 100 L. Ed. 1151, holding that Congress, by the enactment of Section 6 of the Military Leasing Act, 5 U. S. C. A. § 626s-6, 10 U. S. C. A. § 1270d, now Section 2667, providing:

> "The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation."

permitted Nebraska to levy and collect personal property taxes upon property situated upon Offutt Air Force Base.

In said case, the United States Supreme Court stated at 351 U. S., pages 256 and 257, as follows:

> "The District Court of Sarpy County held that, since title to the buildings and improvements was in the United States, Nebraska and Sarpy County could not tax them. The Supreme Court of Nebraska reversed, holding that Congress had given Nebraska the right to tax petitioner's interest in the property and that for tax purposes, under Neb. Rev. Stat., Reissue 1950, § 77-1209, petitioner was in fact and as a matter of law the owner of the property sought to be taxed. 160 Neb. 320, 70 N. W. 2d 382. Petitioner's attack on the Nebraska judgment raises serious questions of state-federal relations with respect to taxation of private housing developments on Government-owned land, and therefore we granted certiorari. 350 U. S. 893.
>
> "This is another in a long series of cases in this Court dealing with the power of the States to tax property in private hands against a claim of exempt status deriving from an immunity of the Federal Government from state taxation. Offutt Air Force Base falls within

the scope of Article I, § 8, cl. 17 of the United States Constitution, providing that the Congress shall have power

> " 'To exercise exclusive Legislation in all Cases whatsoever, over such District [of Columbia] * * * 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, dock-Yards, and other needful Buildings. * * *'

The course of construction of this provision cannot be said to have run smooth. The power of 'exclusive Legislation' has been held to prohibit a state tax on private property located on a military base acquired pursuant to Art. I, § 8, cl. 17. *Surplus Trading Co.* v. *Cook,* 281 U. S. 647. On the other hand, the State may acquire the right to tax private interests within such a location by permission of Congress, see, e.g., the Buck Act, 54 Stat. 1059 (permitting state sales, use, and income taxes), and we have also held that the State may tax when the United States divests itself of proprietary interest over the area on which the tax is sought to be levied. *S. R. A., Inc.* v. *Minnesota,* 327 U. S. 558; see also *Baltimore Shipbuilding Co.* v. *Baltimore,* 195 U. S. 375."

In affirming the decision of the Supreme Court of Nebraska, holding that that state had a right to tax the petitioner's interest in the property because of the congressional consent provided by 10 U. S. C. A. § 2667, the United States Supreme Court traced the history of this legislation, stating that it indicates a concern regarding the loss of revenue to states and a desire to prevent unfairness toward competitors of such private interests as might otherwise escape taxation if it were not for such congressional consent.

With this judicial and legislative background in mind let us now turn to the precise question submitted by your inquiry. From my investigation it appears that the privately-owned personal property which is the subject matter of your letter consists of cattle and sheep which are grazing on the lands comprising Camp Atterbury since it is now in an inactive

status. My investigation also reveals that the lands so used are leased to residents of Indiana using "Department of the Army Lease for Agricultural or Grazing Purposes" designated as form No. 286, which states in the beginning that such lease is pursuant to 10 U. S. C. A. § 2667, which is substantially the same congressional act as considered in the Offutt case, *supra*.

I am also reliably informed that all of the lessees using the lands of Camp Atterbury for such grazing purposes derived their rights to such use from the same identical form of lease and thereby pursuant to the same congressional statutory authority. As heretofore indicated from the quotation from said Federal statute, it is stated specifically that "the interest of a lessee of property leased under this section may be taxed by state or local governments. * * *"

Not only does the Federal statute itself confer this right upon the state and local governments, but all lessees signing such lease are placed on notice of such fact by reason of Section 14 of the lease which provides as follows:

> "14. *That the lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease, may be taxed, assessed or imposed upon the Government or upon the lessee with respect to or upon the leased premises.* In the event any taxes, assessments, or similar charges are imposed with the consent of Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the lessee therein), this lease shall be re-negotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments or similar charges and the amount of any taxes, assessments or similar charges which were imposed upon such lessee with respect to his leasehold interest in the premises prior to the granting of such consent by the Congress; provided that in the event that the parties hereto are unable to agree within 90 days from the date of the imposition of such taxes, assessments, or similar charges,

> on a rental which in the opinion of the said officer constitutes a reasonable return to the Government on the leased property, then, in such event, the said officer shall have the right to determine the amount of the rental, which determination shall be binding on the lessee subject to appeal in accordance with Condition No. 13 of this lease." (Our emphasis)

It would seem, therefore, pursuant to 10 U. S. C. A. § 2667 as interpreted by the United States Supreme Court in the Offutt case, *supra,* that Congress has consented to the taxation of *any* interest of a lessee, deriving rights to use Federal land pursuant to said section, and under the Indiana case of Gross Income Tax Div. *et al.* v. Pearson Constr. Co., *supra,* that no affirmative act on the part of the Indiana Legislature after the enactment of such Federal consent is necessary for Indiana to derive the benefits of the Federal statute.

Other cases of like import involving 10 U. S. C. A. § 2667 or the former Section 1270 are the following:

> Ft. Dix Apt. Corp. v. Borough of Wrightstown (1955), 225 Fed. 2d 473, certiorari denied, 351 U. S. 962, 76 S. Ct. 1024, 100 L. Ed. 1483;
>
> Conley Housing Corp. v. Coleman (1955), 211 Ga. 835, 89 S. E. (2d) 482;
>
> Meade Heights, Inc. v. State Tax Comm. (1953), 202 Md. 20, 95 Atl. (2d) 280;
>
> Quintard Terrace Apts., Inc. v. State (1959), 269 Ala. 136, 111 So. (2d) 602.

In view of the above and foregoing it is, therefore, my opinion that all privately-owned personal property of a lessee which is situated upon Camp Atterbury by reason of a lease governed by 10 U. S. C. A. § 2667 is subject to taxation by state and local authorities to the same extent as other property not on Federal lands, but on lands over which the State of Indiana has jurisdiction.

This same conclusion would follow with respect to privately-owned personal property of a lessee situated on Federal lands other than Camp Atterbury if such lands are within the terri-

torial boundaries of Indiana, and if such property is situated thereon pursuant to lease under the same authority stated in said Federal statute, 10 U. S. C. A. § 2667.

In connection with the above conclusion in answer to your question, it should be noted that the Indiana statute makes specific provision for the time and place of assessment of privately-owned personal property situated upon lands of the United States, the Indiana Acts of 1919, Ch. 59, Sec. 10, as amended, as found in Burns' (1959 Supp.), Section 64-404 providing, in part, as follows:

> "All personal property shall be assessed to the owner in the township, town or city of which he is an inhabitant on the first day of March of the year for which the assessment is made, with the following exceptions:
>
> * * *
>
> "Eighth. *All personal property of any person situate upon,* also all buildings situate and being upon *the land of the United States,* or of this state, or upon the lands of any county, township, town or city, shall be deemed personal property for purposes of taxation and assessment, and *shall be assessed* as personal property *to the owner* or occupant *thereof in the township, town or city to which said lands belong or of which they form a part,* and such buildings shall be subject to sale for taxes in the same manner as herein provided for personal property: Provided, however, It shall not be necessary to remove such buildings for the purpose of sale." (Our emphasis)

I wish to emphasize however that, inasmuch as the right of the state and local government to impose such tax is by reason of the consent of Congress, and because such Federal lands involved remain under the jurisdiction of the United States Government, therefore, all township assessors acting in pursuance of the Federal statute and of this Opinion must obtain permission from the Commanding Officers of the various lands which may be so leased before entering upon such lands, so as not to interfere with federally-owned property and government functions and also in order to derive the benefit of co-

operation from such Commanding Officers as may be expected in the light of the congressional consent evidenced by the Federal statute.

OFFICIAL OPINION NO. 2

January 6, 1961

Mr. John R. Peters, Chairman
State Highway Department
11th Floor, State Office Building
Indianapolis, Indiana

Dear Mr. Peters:

This is in response to your request for my Opinion concerning highway signalization and the revision of the State Manual for uniform system of traffic control devices. The facts and the request are set out in your letter as follows:

> "For many years it has been the practice to place a 'Stop' sign with the words 'When Light Is Out' on it in small letters at all signalized intersections on State Routes. The Federal Manual on Uniform Traffic Control Devices was revised in 1954. One of the changes was to prohibit the use of any other message on a 'STOP' sign except the word 'STOP'. This requirement was not included in the Indiana State Manual and has been ignored during the last few years even though the State Law requires the State Manual to conform with the Federal Manual so far as possible (Burns' 47-1901).
>
> "The Federal Manual is now being revised again. One of the proposals is as follows:
>
> " 'Stop signs should not be erected at intersections where traffic control signals are present. The conflicting commands of two types of control devices are confusing.'
>
> "In view of the fact that we would be conflicting with the Federal Manual on two counts, we believe the sign should be eliminated if we can do so legally. We