

CHAPTER 26

FEDERAL LEGISLATIVE JURISDICTION OVER NAVAL AND MARINE CORPS
AREAS WITHIN STATES

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CHAPTER 26

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1. PURPOSE

This Chapter sets forth definitions, rules, general characteristics of Federal legislative jurisdiction and the policies, procedures, and responsibilities relating to the acquisition and retrocession of such jurisdiction over land areas within the United States that are under the control of the Department of the Navy.

2. DEFINITIONS-CATEGORIES OF FEDERAL LEGISLATIVE JURISDICTION

The term "legislative jurisdiction", as used in this Chapter, in connection with a land area means the power and authority of the Federal Government to legislate and to exercise executive and judicial powers within such area. When the Federal Government has legislative jurisdiction over a particular land area, it has the power and authority to enact, promulgate and enforce general legislation within that area. The Federal Government holds land under varying degrees of legislative jurisdiction. These fall into four distinct types. Each type indicates a different division of authority between the Federal Government and the State Government to exercise the legislative and governmental power within that area. The types are defined below:

a. Exclusive Legislative Jurisdiction. This term is applied when the Federal Government possesses, by whatever method acquired, all of the authority of the State, and in which the State concerned has not reserved to itself the right to exercise any of the authority concurrently with the United States except the right to serve civil or criminal process in the area for activities which occurred outside the area.

b. Concurrent Legislative Jurisdiction. This term is applied in those instances where, in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

c. Partial Legislative Jurisdiction. This term is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area as for example, the right to tax private property.

d. Proprietary Interest Only. This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders with

respect to area in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary capacity.

3. BASIC CHARACTERISTICS OF THE SEVERAL CATEGORIES OF LEGISLATIVE JURISDICTION

To each of the four categories of legislative jurisdictional situations (in which the United States has (a) exclusive, (b) concurrent, (c) or partial jurisdiction, or (d) a proprietorial interest only) differing legal characteristics attach.

a. Characteristics of Exclusive Legislative Jurisdiction. Only Congress has the authority to legislate for areas held under exclusive legislative jurisdiction and the Federal Government has the responsibility for law enforcement. The State cannot enforce its laws and regulations in such areas except as reserved and there is no obligation on the part of the State or on any local subdivision to provide governmental services such as disposal of sewage, trash and garbage removal, road maintenance, and fire protection. In some States, residents in areas under exclusive legislative jurisdiction may be denied many of the important rights and privileges of a citizen of the State concerned, such as access to State Courts.

b. Characteristics of Concurrent Legislative Jurisdiction. State and Federal laws are applicable in a concurrent legislative jurisdiction area. Most crimes fall under both Federal and State jurisdiction, and either the Federal or State Government, or both, may take jurisdiction over a given offense committed in the area. The State, subject to the exemption of the Federal Government, retains its right to tax. The regulatory powers of the State may be exercised in the area, but not in such a manner as to interfere with Federal functions. Persons residing on areas under concurrent legislative jurisdiction are not denied important rights and privileges of citizenship such as the right to vote and to have access to State Courts.

c. Characteristics of Partial Legislative Jurisdiction. As to those State powers granted by the State to the Federal Government without reservation, administration of the Federal area is the same as if it were under exclusive Federal jurisdiction. Such powers may be exercised only by the Federal Government. As to powers reserved by the State for exercise only by itself, administration of the area is the same as though the United States had no jurisdiction whatever. As to those powers granted to the Federal Government with a reservation by the State to exercise the same powers concurrently, administration of the area is as though it were under concurrent legislative jurisdiction. In an area of partial legislative jurisdiction, the right most commonly reserved by the State is the right to tax.

d. Characteristics of Proprietorial Interest Only. The Federal Government has no legislative jurisdiction over lands it holds in a proprietorial interest only but has the same rights in such lands as does any other landowner. In addition, there exists a right of the Federal Government to perform the functions delegated to it by the Constitution.

without interference from any source. Subject to this condition, the State retains all of the legislative jurisdiction over the area which it would have if a private individual rather than the United States owned the land. However, the State may not impose its regulatory power directly upon the Federal Government, nor may it tax the Federal land. Neither may the State regulate the actions of the residents of the land in any way which might interfere with the performance of a Federal function. Persons residing on the land remain residents of the State with all the rights, privileges, and obligations which attach to such residence.

4. STATE LAWS CANNOT OBSTRUCT FEDERAL FUNCTIONS

Regardless of the legislative jurisdictional status of the property concerned, the United States may exercise in all places whatever jurisdiction is essential to the performance of its constitutional functions without interference from any source. Thus, no State may exercise any authority which would in any way interfere with or restrict the United States in the use of its property or obstruct it in the exercise of any of the powers which the States have relinquished to the United States under the Constitution. One of the powers expressly surrendered by the States under the Constitution is the power "To provide and maintain a Navy." It follows that enforcement of a State law may not be permitted to interfere with any authorized Naval function.

5. DEPARTMENT OF THE NAVY POLICY CONCERNING THE ACQUISITION OF FEDERAL LEGISLATIVE JURISDICTION

The Department of the Navy policy governing Federal legislative jurisdiction over lands under its control in the United States is based upon the conclusions and recommendations of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, which the President directed be used as a guide by Federal administrators of real properties. In accordance therewith, it is the policy of the Department of the Navy to acquire legislative jurisdiction over Federal real property only when such acquisition is essential to the proper performance of military functions, missions, and tasks on the property. When legislative jurisdiction is considered essential, the degree of jurisdiction sought should be limited to the minimum degree of jurisdiction required. For example, if it is necessary for the Federal Government to furnish law enforcement service within a particular area, concurrent jurisdiction is all that would be required. Any attempt to obtain exclusive jurisdiction in such a case should be avoided. If the State law in question makes no provision for concurrent jurisdiction, consideration should be given to seeking enactment of special legislation by the legislature of the State concerned.

6. HOW FEDERAL LEGISLATIVE JURISDICTION IS ACQUIRED

The Federal Government cannot by unilateral action on its part acquire legislative jurisdiction over any areas within the boundaries of a State. Assent by the State and acceptance by the Federal Government are essential to the transfer of legislative jurisdiction to the Federal Government.

a. State Assent to Transfer of Jurisdiction. The general method by which the States have assented to the transfer of legislative jurisdiction to the Federal Government is by statutory enactment. These State statutes provide for transfer of varying degrees of legislative jurisdiction.

b. Acceptance of Legislative Jurisdiction by the Federal Government. 40 U.S.C. 255, as amended by the Act of February 1, 1940, provides "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable 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 in the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

7. PROCEDURE FOR ACQUISITION OF LEGISLATIVE JURISDICTION

Matters involving legislative jurisdiction over Naval and Marine Corps areas normally originate with the Commanding Officer of the installation concerned. Final determination of the necessity of legislative jurisdiction and the degree of jurisdiction to be sought will be made by the Assistant Secretary of the Navy (Installations and Logistics) based on appropriate background information and recommendation by the Commander, Naval Facilities Engineering Command. Therefore, each request for acquisition of legislative jurisdiction should be reviewed in light of Department of the Navy policy and forwarded to the Commander, Naval Facilities Engineering Command via the following addressees for comment and recommendation:

- a. the Naval Facilities Engineering Field Division
- b. the Naval District Commandant
- c. cognizant Commander through Echelon Two
- d. The Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate.

The Commander, Naval Facilities Engineering Command will review the request and forward his comments and recommendations together with appropriate background information to the Assistant Secretary of the Navy (Installations and Logistics). Upon approval of a request by the Assistant Secretary of the Navy (Installations and Logistics), the Commander, Naval Facilities Engineering Command will prepare an

appropriate notice of acceptance of jurisdiction and take any other action to comply with the laws of the State concerned.

8. INFORMATION TO BE FURNISHED WITH REQUESTS FOR ACQUISITION OF JURISDICTION

Each request to the Assistant Secretary of the Navy (Installations and Logistics) for the acquisition of jurisdiction should include, but need not be limited to, the following:

- a. The present jurisdictional status of the area over which it is proposed to acquire legislative jurisdiction.
- b. An outline of the circumstances which make it necessary to acquire legislative jurisdiction.
- c. The degree of legislative jurisdiction considered necessary and full justification therefor in light of Department of the Navy policy.
- d. Whether the degree of legislative jurisdiction considered necessary is available under the law of the State concerned. (If the law of the State concerned does not offer concurrent jurisdiction, recommendation should be made concerning enactment of special legislation by the legislature of the State concerned.)
- e. The estate held by the United States in the area, how and when acquired, and an accurate legal description of the area over which it is proposed to acquire legislative jurisdiction.

9. ADJUSTMENTS IN JURISDICTIONAL STATUS

The Report of the Inter-Departmental Committee considered that there exists a major and immediate need to adjust the legislative jurisdictional status of many Federal installations to bring about: (1) better Federal-State relations; (2) more efficient management of Federal installations; (3) clarification of the rights of residents residing in such areas; and (4) the legalization of many acts occurring in these areas which are currently of an extra-legal nature.

However, the Inter-Departmental Committee noted that in the absence of special legislation enacted on a case-by-case basis, neither Federal nor State statutory authority was available which would permit the adjustment of jurisdictional status of land heretofore acquired. For this reason, the Inter-Departmental Committee recommended enactment of both Federal and State statutes which would authorize the appropriate officials of the State and Federal Governments to proceed with the needed adjustments. The second principal Committee conclusion was stated:

"With respect to the large hulk of federally-owned or operated real property in the several States***it is desirable that the Federal Government not receive, or retain, any measure whatever of legislative jurisdiction, but that it hold the installations and areas in a proprietary interest status only, with legislative jurisdiction remaining in the several States."

It was the view of the Committee that the most immediate need was to make provision for the retrocession of unnecessary jurisdiction to the States.

Recent action of the Congress resulted in the enactment of Section 707 of Public Law 92-545 approved October 25, 1972 which provides:

"Section 2683, title 10, United States Code (relating to relinquishment of legislative jurisdiction) is amended by revising subsection (a) thereof to read as follows:

"(a) Notwithstanding any other provision of law, the Secretary of a military department may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in the State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide."

10. PROCEDURE FOR RELINQUISHMENT OF LEGISLATIVE JURISDICTION

Each request to the Assistant Secretary of the Navy (Installations and Logistics) for the relinquishment of legislative jurisdiction by the Navy should be processed in accordance with paragraph 7 and should include, but need not be limited to, the following:

- a. The present jurisdictional status of the area over which it is proposed to relinquish legislative jurisdiction to the State.
- b. An outline of the circumstances which make it desirable to relinquish legislative jurisdiction.
- c. The degree of legislative jurisdiction considered necessary and full justification therefor in light of Department of the Navy policy.
- d. Whether the State acceptance of retrocession of Federal Government held legislative jurisdiction will require an act of the State Legislature concerned. (If the law of the State concerned does not provide for such State acceptance of Federal Legislative Jurisdiction, recommendation should be made concerning enactment of special legislation by the legislature of the State concerned.)
- e. The estate held by the United States in the area, how and when acquired, and an accurate legal description of the area over which it is proposed to relinquish legislative jurisdiction.