

9 December 1946

Office of the Staff Judge Advocate
Headquarters, Fifteenth Air Force
Colorado Springs, Colorado.

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ARIZONA ATTORNEY GENERAL

Dear Sir:

The press of business has delayed our reply to your letter of 1 October 1946, in which you request our opinion with respect to the jurisdiction exercised by the state of Arizona over personnel stationed at, or for offenses committed on, military bases in this state.

I.

No Arizona cases have been found on the question of the respective jurisdiction of the military and state authorities over soldier-offenders against state laws. Most cases noted arise under Article 92, Articles of War, 10 U.S.C.A., Section 1564, which provides:

"When any person subject to military law is accused of a crime committed within the limits of the state and punishable within the law of the lands, the commanding officer is required, except in time of war, upon application duly made, to deliver such accused person to the civil authorities in order that he may be brought to trial".

It has been held that the jurisdiction is concurrent, even in time of war, where the offense is a violation of both military and state laws.-- Caldwell v. Parker, 252 U.S. 376, 40 Sup. Ct. 388. As to the right of custody in time of peace, the above article is authority for the state's right to demand custody. In time of war it seems to be the better rule that where the state has the actual custody, the exception in Article 92 does not deprive the state of right to custody and does not require the civil authorities to surrender such defendants to the military, People v. Williams, 55 N.Y.S. (2d) 181, but that such exception is only designed to foreclose the state's right to demand custody of the military authority in time of war. United States v. Matthews, 49 Fed.Sup. 203. For further discussion of this question, we refer you to 135 A.L.R. 10, 147 A.L.R. 1429, 154 A.L.R. 1457, 158 A.L.R. 1462.

46-1469

II.

With regard to offenses committed on a military base, you cite three typical instances in which the status of the base is involved, and we quote them:

- "a. Where the base is situated on property which was reserved by the Federal Government in the original grant to your state.
- b. On property to which the title in fee has been conveyed to the Federal Government by the state or by private individuals prior to or following the passage of the State Ceding Act.
- c. Where the base is presently held by the Federal Government under a leasehold, either from the state or from private individuals".

Since we found no Arizona cases involving these situations, the general law must be regarded as controlling. In a case where the military base is located on property reserved by the Federal Government in the original grant to the state, the Enabling Act for Arizona, approved June 20, 1910, has the following pertinent provision in Section 20 thereof:

"§ 20. * * * * *

Second. That the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the congress of the United States; * * * * *".

46-1469

Office of the Staff Judge Advocate
Headquarters, Fifteenth Air Force
Colorado Springs, Colorado

9 Dec. 1946
Page Three

In our opinion this provision continues exclusive jurisdiction in the Federal Government over this category of bases.

Where the property in which the base is situated has been granted in fee or leased by the state to the Federal Government, the general rule, which in our opinion is the Arizona rule, is stated as follows in 22 C.J.S., section 139:

"As appears in the C.J.S. title United States § 7, also 65 C.J. p. 1256 note 87-p 1258 note 7, when the United States acquires title to lands, which are purchased by the consent of the legislature of the state within which they are situated for the erection of forts, magazines, arsenals, dockyards and other needful buildings in accordance with the terms of the federal constitution, the federal jurisdiction is exclusive of all state authority, and when land is acquired by the United States by cession, the terms of the cession, to the extent that they may lawfully be prescribed, determine the extent of the federal jurisdiction. Exclusive legislative jurisdiction carries with it exclusive judicial jurisdiction of crimes. Accordingly, the federal courts have exclusive jurisdiction over offenses committed on lands within a state lawfully purchased by the federal government with the consent of the state legislature for the erection of forts, magazines, arsenals, dockyards and other needful buildings, or for any other lawful purpose, and the same applies to offenses committed on lands ceded by a state to the federal government where the state under the terms of the cession expressly relinquishes, or fails to reserve, its jurisdiction. * * * * *"

From this rule it appears that an examination of each grant, deed or lease must be examined to determine whether the state has, either expressly or impliedly, relinquished its criminal power. People v. Mouse, 265 P. 944; appeal dismissed, 278 U.S. 622, and certiorari denied, 278 U.S. 614; People v. Hillman, 159 N.E. 400 (N.Y.).

46-1469

Office of the Staff Judge Advocate
Headquarters, Fifteenth Air Force
Colorado Springs, Colorado

9 Dec. 1946
Page Four.

Where the property has been granted or leased for military purposes by a private individual, it follows from the above rule that the state has not relinquished jurisdiction, and this is the rule whether the individual was granted the property by either the state or the Federal Government.

Hoping this answers your inquiry, we are,

Very truly yours,

JOHN L. SULLIVAN
Attorney General

WILLIAM P. MAHONEY, Jr.,
Assistant Attorney General

46-146a