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November 12, 1953
Opinion No. 53-187

TO: Mr. Clifford Sorrells, Chief
Division of Law Enforcement
Arizona Game and Fish Commission
Phoenix, Arizona

RE: Jurisdiction over game and fish
on military reservation.

QUESTIONS: (1) Can military personnel hunt
and/or fish on a military reser-
vation without a valid state
license?
(2) Does military authority have
jurisdiction to allow persons to
hunt on a military reservation
considering that such area has
been closed to all hunting and is
set up as a game refuge by the
Arizona Game and Fish Commission?

From your letter and other information which we have here in our office, we first note that the situation at hand arises out of the area commonly known as the Yuma Test Station Military Reservation, more specifically townships R22W-T1S, R21W-T1S, R20W-T1S, R22W-T1N, R21W-T1N, R20W-T1N, R21W-T2N, and R20W-T2N thereof. By way of investigating the facts in this matter we have determined that the following described property located in those townships belongs to the State of Arizona:

NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 32,
Township 1 North, Range 21 West, G&SRB&M,

SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the
SW $\frac{1}{4}$ of Section 2, Township 2 North, Range 20
West, G&SRB&M, and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the
S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 36, Township 2 North,
Range 20 West, G&SRB&M,

and that the remainder of the land so far as we can determine is public domain. The records of the State Land Department show that the Federal Government has not taken steps to acquire the state land involved and a check with the Federal Land Office shows that, although

the military authorities have filed a proposed withdrawal of the Federal domain involved, no steps have been taken to make a final withdrawal of that portion.

Let us at this point consider the law involved in this matter. The seventeenth clause, eighth section of the first article of the Constitution of the United States provided the only mode by which the Federal Government may acquire the right of exclusive legislation and jurisdiction within the territorial limits of the United States. Under this provision power is conferred upon Congress to exercise exclusive legislation and like authority over all places purchased by the consent of the legislature of the state in which the same shall be for the location of forts, magazines, arsenals, dockyards, and other needful buildings. The United States at the discretion of Congress may acquire and hold real property in any state whenever such property is needed for the use of the Government in the execution of any of its powers for military purposes. Where Congress has not acted in the matter the laws of the state and the jurisdiction of its courts remain unaffected in consenting to the transfer of such lands to the United States Government. STEWART CO. v. SADRAKULA, 309 U. S. 94, 60 S. Ct. 431. The various states may reserve certain jurisdiction over said lands if the reservation of the same does not interfere with the use and purposes for which the United States has taken the land.

Let us consider at this point what the Arizona Legislature has done about this:

"11-602. Consent to transfer of land to U. S. government for military purposes. The consent of the state of Arizona is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, lease, condemnation, or otherwise, of any land in this state required for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or for any other military installations of the government of the United States."

"11-603. Exclusive jurisdiction granted-- Limited to this land is used for military purposes.--Exclusive jurisdiction over any land in this state so acquired for any of the purposes aforesaid, and over any public domain land in this state, now or in the future reserved or used for military purposes, is hereby ceded to the United States; but the jurisdiction so ceded shall continue no longer than the said United States shall own or lease such acquired land, or shall continue to reserve or use such public domain land for military purposes."

"11-604. Reservation of concurrent jurisdiction to serve process.--As to any land over which exclusive jurisdiction is herein ceded, the state of Arizona retains concurrent jurisdiction with the United States, so far, that all process, civil or criminal, issuing under the authority of this state or any of the courts or judicial officers thereof, may be executed by the proper officials of the state, upon any person amenable to the same within the limits of such land, in like manner and like effect as if no such cession had taken place."

A study of these statutes will disclose that the state has given exclusive jurisdiction over all matters except the concurrent jurisdiction to serve process on any lands so taken.

Applying these principles to the facts set forth above, it is the opinion of this office, in light of the fact that the Federal Government has not completely reduced the land in question to a military reservation by making final arrangements with the State Land Department or the Federal Land Department, that the state law concerning fish and game still applies to the territories herein involved and that you should continue to enforce that law in the area named. We are of this opinion aside from the question as to whether Congress has acted in the matter or not. This latter question might be resolved by investigation and checking with the Federal Government.

In the event that Congress has not acted in the matter, this opinion would be even stronger. It might be argued that by the words "used for military purposes" set out in Section 11-603, supra, that the Federal Government had already obtained jurisdiction. However, we are of the opinion that is necessary in addition to the use that they purchase, lease or take some other formal action to reduce the ground to a military reservation.

In answer to the first question concerning the licensing of military personnel in the area described, we state that such personnel should be licensed within the provisions of Section 57-116, A.C.A. 1939, as amended, concerning licensing of members of the Armed Forces. In answer to the second question concerning a game refuge, in the event that this area has been declared a refuge, we state as above that the jurisdiction of the state of Arizona continues in the area until the Federal military authority has acted to reduce the area to its exclusive jurisdiction.

ROSS F. JONES
The Attorney General

RWF:PMO

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Attorney General