



*Ginger*  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert H. Corbin

January 5, 1981

INTERAGENCY  
Mr. Carl R. Biehler  
State Egg Inspector  
Suite 1, Building E  
1937 West Jefferson  
Phoenix, AZ 85009

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Re: I81- 011 (R80-205)

Dear Mr. Biehler:

In response to your letter, we have reviewed the applicable legal authorities concerning the extent to which the Arizona laws governing the regulation of eggs and egg products are applicable to the sale of eggs to federal military installations.<sup>1/</sup>

The events giving rise to the opinion request involve various egg suppliers who contract with the federal government for the sale of eggs to federal military commissaries. The commissaries, in turn, resell the eggs to consumers. The egg suppliers also sell eggs to federal military installations for mess hall use.

The egg suppliers who supply the eggs are both Arizona and out-of-state suppliers. The issue in this case is to what extent the Arizona Egg Inspection Board can regulate the sale

---

1. We note from the start that although the federal government also regulates eggs and egg products, 21 U.S.C. § 1031 et seq., the area is not preempted and the state therefore, is not foreclosed from regulating eggs and egg products. See 21 U.S.C. § 1031. The only restriction on state regulation is that the states cannot require the use of standards of quality, condition, weight, quantity or grade which are in addition to or different from the federal standards. 21 U.S.C. § 1052. Also, states are prohibited from requiring labels to show the state or area of origin. Id.

Mr. Carl R. Biehler  
January 5, 1981  
Page 2

of eggs to federal military installations. Specifically, the issue is whether the board can impose inspection fees pursuant to A.R.S. § 3-716 on the suppliers of eggs to federal military installations, and, in addition, whether the board can require egg suppliers, who supply eggs to military bases, to obtain a license pursuant to A.R.S. § 3-714. We conclude that the Arizona Egg Inspection Board can impose such regulations.

In resolving this question, we begin by recognizing that Congress has exclusive legislative authority over federal military installations by virtue of Art. I, § 8, cl. 17 of the United States Constitution which gives Congress power

"To exercise exclusive Legislation in all cases whatsoever . . . 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."<sup>2/</sup>

---

2. Arizona has explicitly recognized that jurisdiction over federal military enclaves resides exclusively in Congress. A.R.S. § 26-251 provides:

The consent of the state is 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 the 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.

A.R.S. § 26-252 provides:

Exclusive jurisdiction over any land in the state acquired for any of the purposes set forth in § 26-251, and over any public domain in the state reserved or used for military purposes is ceded to the United States, but such jurisdiction shall continue no longer than the United States owns or leases the land or continues to reserve or use such public domain for military purposes.

Mr. Carl R. Biehler  
January 5, 1981  
Page 3

This clause had been construed to bar any state regulation of federal military installations so long as the federal government owns the land comprising the military installation. If the federal government merely leases the land from the state or a private individual, the state can regulate transactions occurring on the military base. In such a case, the doctrine of exclusive jurisdiction is inapplicable. Penn Dairies v. Milk Control Comm'n, 318 U.S. 261 (1943); Pacific Coast Dairy v. Department of Agriculture of Calif., 318 U.S. 285 (1943). If the federal government owns the land which comprises the military installation, then all state regulation is prohibited and Congress has exclusive legislative authority over the military installation. Therefore, if the federal government owns the land comprising the military base and in addition, follows the requirements of 40 U.S.C. § 255,<sup>3/</sup> then Congress has exclusive legislative authority over the affairs of the military installation.

If the doctrine of exclusive jurisdiction is found to apply, then state regulation is barred even without specific congressional action.<sup>4/</sup> See U.S. v. State Tax Comm'n of Mississippi, 412 U.S. 363 (1973); Paul v. U.S., 371 U.S. 245 (1963); Pacific Coast Dairy v. Dept. of Agriculture, 318 U.S. 285 (1943). By the same token however, Congress can subject federal military installations to state regulation by affirmatively permitting the state regulation. Pacific Coast

---

3. Since 1940, the federal government must accept the cession of jurisdiction as a necessary final step to the exercise of exclusive jurisdiction. U.S. v. State Tax Comm'n of Mississippi, 412 U.S. 363 (1973). The procedures which the federal government must follow are stated in 40 U.S.C. § 255.

4. It is well settled that the doctrine of exclusive jurisdiction does not require that every vestige of state law must vanish. First, jurisdiction acquired from a state by the United States whether by consent to the purchase or by cession may be qualified in accordance with agreements reached by the respective governments. E.g., Collins v. Yosemite Park & Curry Co., 302 U.S. 518 (1938); James v. Dravo Contracting Co., 302 U.S. 134 (1937). Second, state laws existing at the time of the surrender of sovereignty remain in effect until abrogated by the United States. E.g., Paul v. United States, 371 U.S. 245 (1963); James Stewart & Co. v. Sadrakula, 309 U.S. 94 (1940).

Mr. Carl R. Biehler  
January 5, 1981  
Page 4

Dairy v. Dept. of Agriculture, 318 U.S. 261, 296 (1943). Therefore, if Congress has by the passage of a law permitted the state regulation of eggs and egg products, then the State of Arizona can regulate eggs even though the eggs are sold to federal military installations. The critical inquiry therefore is whether Congress has affirmatively permitted states to regulate eggs on military installations.

In answering this question, we begin by a review of the applicable congressional legislation relating to eggs and egg products. The main legislation in the area is the Egg Products Inspection Act (21 U.S.C. § 1031 et seq.) which was passed in 1970. This Act established basic minimum standards for the regulation of eggs and egg products. Although the Act sought uniformity in the regulation of egg quality, condition, weight, quantity or grade, the Act specifically contemplates state participation in the regulation of eggs and egg products. See 21 U.S.C. § 1031. The legislative history also indicates that Congress had intended for the states to assist the federal government in the regulation of eggs and egg products. See H.R. 91-1670, 91st Cong., 2nd Sess. (1970), U.S. Code Cong. & Adm. News 1970, p. 5243. So long as the state does not impose regulations which are in addition to or different from the federal regulations which govern egg quality, condition, weight, quantity, or grade, the state is relatively free to regulate eggs and egg products. 21 U.S.C. § 1052.b.

Our review of the Egg Products Inspection Act of 1970 indicates that Congress clearly contemplated state regulation of eggs. Accordingly, in our opinion the Egg Products Inspection Act is an affirmative Congressional statement that federal military installations should be subjected to state regulation permitted under the Act. The doctrine of federal exclusive jurisdiction, therefore, does not present a bar to the Arizona regulation of eggs even though the sale of the eggs is to federal military installations. See Pacific Coast Dairy v. Dept. of Agriculture, 318 U.S. 261, 296 (1943).

Despite our conclusion that the doctrine of federal exclusive jurisdiction (U.S. Const. Art. I, § 8, cl. 17) does not prohibit state regulation of eggs, our analysis does not cease. The supremacy clause of the constitution is an additional restriction on state regulations. The federal supremacy clause of the United States Constitution, Art. VI provides that the:

Mr. Carl R. Biehler  
January 5, 1981  
Page 5

Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land. . . .

The thrust of this provision is that it bestows upon federal officers and instrumentalities<sup>5/</sup> an immunity from any state regulations which would frustrate or conflict with federal policies.<sup>6/</sup> See, e.g., United States v. Allegheny County, 322 U.S. 174 (1944). Nevertheless, if Congress intends

---

5. Federal commissaries and mess halls located on federal military installations are federal instrumentalities within the meaning of the supremacy clause of the United States Constitution. Paul v. U.S., 371 U.S. 245, 262 (1963).

6. The immunity extended to the federal government under the supremacy clause only bars state regulations imposed upon the federal government. Thus, a state can impose regulations upon suppliers and contractors with the federal government so long as the regulation is not on the federal government. For instance, both the licensing requirement and the egg inspection fee are state regulations imposed only on egg dealers. See A.R.S. § 3-714, § 3-716. Therefore, such regulations are permissible under the supremacy clause. The federal supremacy clause only bestows an immunity upon federal officers or federal instrumentalities. Although the egg suppliers sell to the federal government, they do not by virtue of the sales take on the status of federal entities. See Penn Dairies v. Milk Control Comm'n, 318 U.S. 261 (1943) (holding that private contractors who provided milk to a federal military encampment were not federal instrumentalities and therefore were not exempt from state minimum price regulation). The only effect of these regulations on the federal government would be to possibly increase the cost of the eggs to the government. This result is insufficient to hold the regulations inapplicable. See Penn Dairies v. Milk Control Comm'n., 318 U.S. 261 (1943) (increased milk prices to the federal government resulting from a state minimum price regulation is insufficient to strike down the regulations); Alabama v. King & Boozer, 314 U.S. 1 (1941) (state sales tax imposed upon a contractor with the federal government resulting in the tax being passed along to the federal government was insufficient to exempt the contractors from the tax).

Mr. Carl R. Biehler  
January 5, 1981  
Page 6

to subject federal instrumentalities to state regulation, it can do so by the passage of appropriate legislation. Our preceding review of the Congressional legislation respecting the regulation of eggs and egg products indicated that Congress intended that the states assist the federal government in the regulation of eggs. Just as we concluded in the preceding analysis, in our opinion the Egg Products Inspection Act is an affirmative statement by Congress to subject federal instrumentalities to state regulations respecting eggs. We conclude, therefore, that the federal supremacy clause does not prohibit the Arizona Egg Inspection Board from imposing its regulations upon transactions occurring on the federal military installation. Accordingly, the Arizona Egg Inspection Board can impose inspection fees on the sale of eggs to federal instrumentalities and can also require the suppliers of the eggs to obtain licenses.

Sincerely,



BOB CORBIN  
Attorney General

BC:cp