

## Acquisition of Federal Legislative Jurisdiction within a State

In June, 1957, the government of the United States published a work entitled Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Part II. The Committee stated at pg. 45 :

**"It scarcely needs to be said that unless there has been a transfer of jurisdiction pursuant to clause 17 by a Federal acquisition of land with State consent, or by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise by the State, subject to non-interference by the State with Federal functions..."**

"The consent requirement of Article I, section 8, clause 17 was intended by the framers of the Constitution to preserve the State's jurisdictional integrity against federal encroachment. **The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State,**" Id., at 46.



According to the April, 1956, report (Part I), pages 41-47 of the Interdepartmental Committee "Study Of Jurisdiction Over Federal Areas Within The States." **the court has recognized three methods by which the federal government may acquire exclusive legislative jurisdiction over a physical area:**

 **Constitutional consent.**--Other than the District of Columbia, the Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction--**purchase with State consent** under article I, section 8, clause 17.

**..."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 creation of forts, magazines, arsenals, dockyards and other needful buildings..."**

"The debates in the Constitutional Convention and State ratifying conventions leave little doubt that both the opponents and proponents of Federal exercise of exclusive legislature jurisdiction over the seat of government were of the view that a constitutional provision such as clause 17 was essential if the Federal government was to have such jurisdiction.... While, as has been indicated in the preceding chapter, little attention was given in the course of the debates to Federal exercise of exclusive legislative jurisdiction over areas other than the seat of government, **it is reasonable to assume that it was the general view that a special constitution provision was essential to enable the United States to acquire exclusive legislative jurisdiction over any area..."**

According to the 1956 report, pages 7-8, "... the provision of the second portion, for transfer of like

jurisdiction [as the District of Columbia] to the Federal Government over other areas acquired for Federal purposes, was not uniformly exercised during the first 50 years of the existence of the United States. It was exercised with respect to most, but not all, lighthouse sites, with respect to various forts and arsenals, and with respect to a number of other individual properties. But search of appropriate records indicates that during this period it was often the practice of the Government merely to purchase the lands upon which its installations were to be placed and to enter into occupancy for the purposes intended, without also acquiring legislative jurisdiction over the lands."

 **"Federal reservation.**--In Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), the Supreme Court approved a method not specified in the Constitution of securing legislative jurisdiction in the United States. Although the matter was not in issue in the case, the Supreme Court said (p. 526):

"The land constituting the Reservation was part of the territory acquired in 1803 by cession from France, and until the formation of the State of Kansas, and her admission into the Union, the United States possessed the rights of a proprietor, and had political dominion and sovereignty over it. For many years before that admission it had been reserved from sale by the proper authorities of the United States for military purposes, and occupied by them as a military post. The jurisdiction of the United States over it during this time was necessarily paramount. But in 1861 Kansas was admitted into the Union upon an equal footing with the original States, that is, with the same rights of political dominion and sovereignty, subject like them only to the Constitution of the United States. **Congress might undoubtedly, upon such admission, have stipulated for retention of the political authority, dominion and legislative power of the United States over the Reservation so long as it should be used for military purposes by the government; that is, it could have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government.** But from some cause, inadvertence perhaps, or over-confidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made."(See also United States v. Gratoit concerning post-statehood reservation of mines, salt licks, salt springs, and mill seats in the (former) Eastern ceded territories.)

 **"State cession.**--In the same case, (Fort Leavenworth R.R. v. Lowe), the **United States Supreme Court sustained the validity of an act of Kansas ceding to the United States legislative jurisdiction over the Fort Leavenworth military reservation, but reserving to itself the right to serve criminal and civil process in the reservation and the right to tax railroad, bridge, and other corporations, and their franchises and property on the reservation.** In the course of its opinion sustaining the cession of legislative jurisdiction, the Supreme Court said (p. 540):

"... Though the jurisdiction and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interests of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the States. **As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat or impair their use for those purposes;**

**and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States."**

