WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE April 19, 2023

TO Members, Joint Transportation, Highways and Military Affairs Committee

FROM TaLise Hansen, Staff Attorney

SUBJECT Topic Summary: Jurisdiction on Military Reservations

INTRODUCTION

The Joint Transportation, Highways and Military Affairs Committee's (Committee) interim topics include review of jurisdictional issues on military reservations under Priority #2, Military Affairs. The Committee heard testimony at the March 2023 interim topics meeting from the Wyoming Military Department, which requested that the Committee revisit the topic of jurisdiction on F.E. Warren Air Force Base and explore the possibility of concurrent jurisdiction for specified criminal matters or for matters involving juveniles. This summary provides background information on jurisdiction on military reservations, including the types of jurisdiction, the methods for obtaining exclusive jurisdiction, the acceptance of jurisdiction by the United States, and the relinquishment of jurisdiction. This summary also provides historical information regarding the jurisdiction over F.E. Warren Air Force Base located in Cheyenne, Wyoming.

JURISDICTION IN GENERAL

Jurisdiction is "a government's general power to exercise authority over all persons and things within its territory."[1] There are three types of jurisdiction: exclusive, concurrent, and partial.[2] As it pertains to the federal government, exclusive jurisdiction applies to areas where the federal government has the sole authority "with no authority reserved to the state, except the right to serve process resulting from activities or incidents which occurred off the land."[3] Concurrent jurisdiction "exists where both the state and the federal government have the independent authority to apply and enforce their laws over federal lands, so long as there is no interference with federal government uses of the lands."[4] Partial jurisdiction applies to land "where the state granted the

[1] Maj. Emily M. Roman, Article, *Where There's a Will, There's a Way: Command Authority over Juvenile Misconduct on Areas of Exclusive Federal Jurisdiction, and the Utilization of Juvenile Review Boards*, 2015 Army Law 25, 36 (2015).
[2] Maj. Stephen E. Castlen & Lt. Col. Gregory O. Block, Article, *Exclusive Federal Legislative Jurisdiction: Get Rid of It!*, 154 Mil. L. Rev. 113, 115 (1997).
[3] *Id.* at 116.
[4] Maj. George R. Lavine III, Article, *Protect Our Military Children: Congress Must Rectify Jurisdiction on Military Installations to Address Juvenile-on-Juvenile Sexual Assault*, 18 Wyo. L. Rev. 115, 119 (2018).

federal government some . . . authority, but the state reserved to itself the right to exercise *other* authority in addition to the right to serve civil or criminal process."[5]

METHODS OF OBTAINING EXCLUSIVE JURISDICTION

The federal government may obtain exclusive jurisdiction through three methods.[6] The first method is pursuant to Article 1, Section 8, Clause 17 of the United States Constitution, also known as the enclave clause, which provides:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, 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 Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings[.][7]

This constitutional provision allows the federal government to purchase real property from a state.[8] It applies "only to land acquired with the consent of the state for forts, magazines, arsenals, dockyards, and other needful buildings."[9] The United States Supreme Court has interpreted "other needful buildings" broadly to include "whatever structures are found to be necessary in the performance of the functions of the Federal Government."[10]

The second method the federal government may use to obtain exclusive jurisdiction is by "a cession of . . . authority and political jurisdiction" by a state.[11] A cession of authority means the state originally exercised some form of jurisdiction over the area but then ceded jurisdiction to the federal government.[12] A state may expressly cede jurisdiction to the federal government through legislation.[13] When a state cedes jurisdiction, "the [s]tate may impose conditions which are not inconsistent with . . . carrying out . . . the purpose of the acquisition."[14] The terms of the cession determine the scope of the federal government's jurisdiction.[15] However, "ceding statutes should not be so construed as to make a no-man's land within the boundaries of the state."[16] A no-man's land might refer to a situation where police regulations are unenforceable within an area.[17]

---

[5] Castlen & Block, *supra* note 2, at 117 (emphasis in original).
[6] *See State v. Cline*, 322 P.2d 208, 212 (Okla. Crim. App. 1958).
[7] U.S. Const. art. 1, § 8, cl. 17.
[8] *Id.*
[9] *Cline*, 322 P.2d at 213.
[10] *James v. Dravo Cont. Co.*, 302 U.S. 134, 143 (1937).
[11] *Paul v. United States*, 371 U.S. 245, 264 (1963) (citing *Ft. Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 541, 542 (1885)).
[12] Castlen & Block, *supra* note 2, at 117.
[13] *Id.*
[14] *Id.* (citing *Lowe*, 114 U.S. at 529, 541).
[15] *United States v. Unzeuta*, 281 U.S. 138, 142 (1930).
[16] *Cline*, 322 P.2d at 216.
[17] *See id.*

LSO LEGAL SERVICES DIVISION • 200 W. 24th Street • Cheyenne, Wyoming 82002
TELEPHONE 307-777-7881 • E-MAIL lso@wyoleg.gov • WEBSITE www.wyoleg.gov

The third method the federal government may use to obtain exclusive jurisdiction is "by excepting the place from the jurisdiction of the state upon the admission of the state into the Union."[18] This means "when the federal government admits a state into the union and grants statehood, the federal government may reserve or retain jurisdiction over particular sections of land."[19]

ACCEPTANCE OF JURISDICTION

Before 1940, it was presumed that the United States accepted "jurisdiction over federal lands within state boundaries whenever offered by a state because jurisdiction was deemed a benefit to the sovereign."[20] But "in 1940, Congress passed a law specifying how the United States . . . [must] assume exclusive jurisdiction if it wanted such authority."[21] This law states:

> When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.[22]

In addition, Congress created a conclusive presumption that jurisdiction has not been accepted until the federal government accepts jurisdiction over the land as provided in the statute noted above.[23] This means that, after 1940:

> a state does not lose its police powers over land acquired by the federal government—legislative jurisdiction may remain with the state, subject always to overriding federal legislation—unless (1) the state consented to the land's acquisition or later ceded certain powers, (2) the federal government has assumed the ceded authority, and (3) the land's federal use is consistent with the enclave clause.[24]

The "enclave clause" refers to Article 1, Section 8, Clause 17 of the United States Constitution.[25] "Under the enclave clause, a web of statutory provisions, practice and case law has developed to

---

[18] *Id.* at 212.
[19] Castlen & Block, *supra* note 2, at 118.
[20] *United States v. Goodwin*, 927 F. Supp. 2d 807, 810 (D. Ariz. 2013) (citing *Lowe*, 114 U.S. at 528).
[21] *Torrens v. Lockheed Martin Servs. Group, Inc.*, 396 F. 3d 468, 470 (1st Cir. 2005).
[22] 40 U.S.C. § 3112(b). The presumption that existed before 1940 was originally "statutorily reversed by the enactment of 40 U.S.C. § 255, now codified at [40 U.S.C.] § 3112." *Goodwin*, 927 F. Supp. 2d at 810 (citing *Adams v. United States*, 319 U.S. 312, 313 (1943)).
[23] *See* 40 U.S.C. § 3112(c) ("It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.").
[24] *Torrens*, 396 F.3d at 470 (citing *Paul*, 371 U.S. at 263–67).
[25] *Id.*

LSO LEGAL SERVICES DIVISION • 200 W. 24th Street • Cheyenne, Wyoming 82002
TELEPHONE 307-777-7881 • E-MAIL lso@wyoleg.gov • WEBSITE www.wyoleg.gov

determine whether and when property acquired by the federal government meets the conditions for treatment as a federal enclave to which state regulation does not apply."[26]

RELINQUISHMENT OF JURISDICTION

After the United States accepts jurisdiction over the land, it cannot be "recaptured by the action of the [s]tate alone."[27] A "state cannot by an amending statute recapture jurisdiction of land once granted to the United States."[28] Instead, the federal government must retrocede or relinquish jurisdiction over the land.[29] On military installations, "the Secretary of Defense delegated retrocession authority to the military department—Army, Navy, or Air Force—having real property accountability for the installation."[30] A request for retrocession on a military installation must be initiated by the installation commander.[31] The Secretary of the Army, Navy, or Air Force may relinquish to a state "all or part of the . . . jurisdiction of the United States over lands or interests under his control in that State[.]"[32] The Secretary of the Army, Navy, or Air Force relinquishes jurisdiction by filing with the governor of the state "a notice of relinquishment to take effect upon acceptance" or as the laws of the state may otherwise provide.[33] This topic summary does not indicate the specific procedures that the federal government must undertake to relinquish jurisdiction as that is beyond the scope of this summary.

WYOMING AND F.E. WARREN AIR FORCE BASE

The United States Army Department established Fort D.A. Russell, in the area now known as Cheyenne, in 1867 to protect the workers constructing the transcontinental railroad.[34] The Act admitting Wyoming into the Union in 1890 did not reserve the land constituting Fort D.A. Russell for the federal government.[35] However, the Act of Admission expressly reserved exclusive jurisdiction over Yellowstone National Park, which provides evidence that the omission of reserving exclusive jurisdiction of Fort D.A. Russell was intentional.[36] The United States received

---

[26] *Torrens*, 396 F.3d at 470.
[27] *Unzeuta*, 281 U.S. at 143 (citing *In re Ladd*, 74 F. 31, 41 (C.C. Neb. 1896)).
[28] *United States v. Heard*, 270 F. Supp. 198, 200 (W.D. Mo. 1967).
[29] Castlen & Block, *supra* note 2, at 135.
[30] Lavine III, *supra* note 3, at 130.
[31] Castlen & Block, *supra* note 2, at 135.
[32] 10 U.S.C. § 2683(a). The language of the entire statute provides:

> Notwithstanding any other provision of law, the Secretary concerned 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 that 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.

Id.
[33] *Id.*
[34] Jeremiah D. Foster, *The History of Fort D.A. Russell and F.E. Warren Air Force Base*, F.E. Warren Air Force Base, **https://www.warren.af.mil/About-Us/Base-History/** (last visited March 17, 2023).
[35] Act of Admission §§ 1–21, 26 Stat. at Large 222, ch. 664 (1890).
[36] Act of Admission § 2, 26 Stat. at Large 222, ch. 664 (1890); *see Dellit v. Tracy*, 2015 WY 153, ¶ 29, n.3, 362 P.3d 353, 359, n.3 (Wyo. 2015) (quoting *Walters v. State ex. rel. Wyo. Dep't of Transp.*, 2013 WY 59, ¶ 18, 300 P.3d 879,

exclusive jurisdiction when the state of Wyoming ceded jurisdiction over certain military reservations including Fort D.A. Russell in 1893.[37] With the cession of exclusive jurisdiction, the state of Wyoming expressly retained the following rights: (1) the right to serve civil and criminal process within the fort in lawsuits or prosecutions for crimes committed in the state but outside the fort or for obligations incurred in the state; and (2) "the right to tax persons and corporations, their franchises and property" in the territory.[38] This reservation of rights is still enshrined in statute today; the reservation of rights also includes irrigation rights for unrelated lands ceded in Sheridan County.[39]

Acceptance of jurisdiction by the United States was presumed because the United States acquired jurisdiction of the fort through cession in 1893 before Congress created the presumption of non-acceptance in 1940.[40] The United States retained exclusive jurisdiction over the land even as Fort D.A. Russell was renamed to Fort Francis E. Warren in 1930.[41] This retention of jurisdiction is reflected in the current statute, W.S. 19-7-301(a), which states:

> Exclusive jurisdiction is ceded to the United States over all the territory owned by the United States within the limits of the United States military reservations known as Fort Francis E. Warren, Fort Washakie, Camp Sheridan, Camp Pilot Butte, and the United States powder depot at Cheyenne, together with such other lands in the state as are now or hereafter acquired or held by the United States for military purposes, either as additions to the posts above named or as new military posts or reservations, established for the common defense.[42]

The federal District Court of Wyoming addressed the issue of jurisdiction on Fort Francis E. Warren in *Danielson v. Donmopray*.[43] In that case, a car accident occurred within the boundaries of the fort, and the plaintiffs sought to recover damages in state court for the alleged negligence.[44] The state court issued a summons, and the summons was served upon the defendants within the fort's boundaries.[45] The defendants argued that neither the cause of action nor the service of the summons could be sustained in state court because the United States possessed exclusive jurisdiction over the fort.[46] The district court reasoned that:

> Congress having failed to adopt legislation within the scope of its exclusive legislation and jurisdictional power after the cession to it by the state of the area included within the reservation, the general laws covering civil liability in the area

884 (Wyo. 2013)) ("The doctrine of *expression unius est exclusion alterius* requires us to construe a statute that enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things . . . as excluding from its effect all those not expressly mentioned.").

[37] 1893 Wyo. Sess. Laws ch. 20, § 1.

[38] *Id*.

[39] W.S. 19-7-301(f).

[40] 1893 Wyo. Sess. Laws ch, 20, § 1; 40 U.S.C. § 3122(b); *see also Heard*, 270 F. Supp. 198 at 200.

[41] Foster, *supra* note 32.

[42] W.S. 19-7-301(a).

[43] *Danielson v. Donmopray*, 57 F.2d 565 (D. Wyo. 1932).

[44] *Id*. at 566.

[45] *Id*.

[46] *Id*.

> as then constituted must be regarded as the law applicable to the situation; and the statute here being invoked by plaintiff having been adopted in 1871 and in force before the cession in 1893 by the state to the government of the area embraced within the reservation, that it must be held as the law in force and effect as applied to the circumstances in the present case.[47]

The district court held that the state court had jurisdiction over the controversy and implied a "reasonable inference that the service of process may [also] be made upon the reservation."[48] This case is the most recent case dealing with the exclusive jurisdiction on F.E. Warren Air Force Base.[49]

To date, the United States has not relinquished jurisdiction over F.E. Warren Air Force Base and, as a result, the United States still retains exclusive jurisdiction pursuant to W.S. 19-7-301(a).[50] To change jurisdiction of the base from exclusive jurisdiction to concurrent jurisdiction, both the state and the federal government would need to separately act. First, the state would need to amend W.S. 19-7-301 to reflect the state's intent to provide for concurrent jurisdiction within F.E Warren Air Force Base and, if desired, specify the parameters of that concurrent jurisdiction. During the 2020 interim, the Committee considered a bill draft that would have created a process for Wyoming to accept concurrent jurisdiction over specified federal military property located in Wyoming. The bill draft would have authorized the Governor of Wyoming to accept concurrent jurisdiction over federal land and would have amended W.S. 19-7-301(a) to reflect the state's intent to modify exclusive jurisdiction.[51]

Second, the Secretary of the Air Force (or some other personnel or entity) may need to affirmatively relinquish jurisdiction by filing with the Governor of Wyoming a notice of relinquishment.[52] The notice may relinquish all or part of the United States' exclusive jurisdiction.[53] This means the United States could relinquish solely exclusive criminal jurisdiction over, for example, juvenile offenders, civilian offenders, or both, to concurrent criminal jurisdiction over those offenders apprehended on base.[54] The notice of relinquishment becomes effective upon acceptance by the Governor.[55] Some states have specifically authorized its governor to accept the relinquishment of jurisdiction, whether partially or wholly, on behalf of the state.[56]

---

[47] *Id.* at 567
[48] *Id.* at 569.
[49] Foster, *supra* note 32.
[50] W.S. 19-7-301(a).
[51] https://wyoleg.gov/InterimCommittee/2020/08-2020092121LSO-0176v0.6.pdf
[52] 10 U.S.C. § 2683(a).
[53] *Id.*
[54] *See* Lavine III, *supra* note 3, at 166–67.
[55] 10 U.S.C. § 2683(a).
[56] N.D. Cent. Code § 54-01-09.3 (authorizing the governor to accept retrocession of jurisdiction either partially or wholly); Ga. Code Ann. § 50-2-27 (same); Conn. Gen. Stat. § 48-1(b) (same); 5 Ill. Comp. Stat. 537/5-5 (same); Iowa Code § 1.17 (same); Mo. Rev. Stat. § 12.028 (same). Other states expressly authorize its governor to accept retrocession of jurisdiction under certain circumstances. *See* Cal. Sts & Hy Code § 77.5 (authorizing the governor to accept retrocession of jurisdiction "over real property upon which an easement or right-of-way or any other interest for highway purposes"); Ind. Code § 4-20.5-18-2 (authorizing the governor to accept retrocession of jurisdiction on behalf of the state "if the governor considers retrocession to be in the best interest of the state"); Mont. Code Ann. §

CONCLUSION

This summary is meant to provide a broad basic overview of exclusive jurisdiction at F.E. Warren Air Force Base. Please let me know if you have any questions or need further information.

2-1-215 (authorizing the governor to accept retrocession of jurisdiction, either partially or wholly, over lands "used for national park purposes").

LSO LEGAL SERVICES DIVISION • 200 W. 24th Street • Cheyenne, Wyoming 82002
TELEPHONE 307-777-7881 • **E-MAIL** lso@wyoleg.gov • **WEBSITE** www.wyoleg.gov