

# State-Federal Jurisdiction Over Lands Within a State

## ➔ 1. Exclusive Legislative Jurisdiction (Federal Enclave)

**Exclusive Jurisdiction** is the term applied when the Federal Government possesses, by whichever method acquired, all of the authority of the State, and in which the State concerned has not reserved to itself the right to exercise any of the authority concurrently with the United States except the right to serve civil or criminal process in the area for activities which occurred outside the area.

**Part 2, Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States**, Ch. 3 (Acquisition of Legislative Jurisdiction), Page 46 declares: "NECESSITY OF STATE ASSENT TO TRANSFER OF JURISDICTION TO FEDERAL GOVERNMENT: Constitutional consent.—**The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State.** Article I, section 8, clause 17, of the Constitution, provides that legislative jurisdiction may be transferred pursuant to its terms only with the consent of the legislature of the State in which is located the area subject to the jurisdictional transfer."

## ➔ 2. Concurrent Legislative Jurisdiction

**Concurrent Jurisdiction** is the term applied in those instances wherein granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

**Part 1, Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States**, Chapter IV, Page 20 declares: "State law, including any amendments which may be made by the State from time to time, is applicable in a concurrent jurisdiction area. ... Most crimes fall under both Federal and State sanction, and either the Federal or State Government, or both, may take jurisdiction over a given offense. Unlike the situation in exclusive jurisdiction areas, the State and the local governmental subdivisions have the same obligation to furnish their normal governmental services, such as sewage disposal, to and in the area, as they have elsewhere in the state. They also have the compensating right of imposing taxes on persons, property, and activities in the area (but not, of course, directly on the Federal Government or its instrumentalities). The regulatory powers of the States may be exercised in the area but, again, not directly on the Federal Government or its instrumentalities, and not so as to interfere with Government activities."

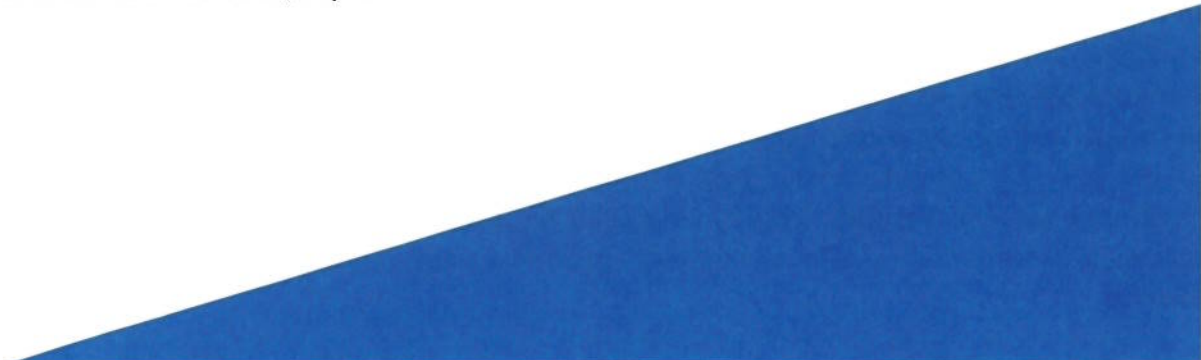
### → 3. Partial Legislative Jurisdiction

**Partial Jurisdiction** is the term applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area (e.g., the right to tax private property).

### → 4. Proprietorial Interest Only

**Proprietorial Interest Only** – the Federal Government has acquired **no form of legislative jurisdiction** over the federally owned lands in question. Those instances wherein the Federal Government has some right or title to an area in a State, but has not obtained any measure of the State's authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution (Property Clause, Commerce Clause, Necessary and Proper Clause, etc), has many powers and immunities not possessed by ordinary landholders with respect to federal lands, and the fact that all its properties and functions are held or performed in a governmental rather than a proprietary capacity.

**Part 1, Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States**, Chapter IV, Page 21 defines **Proprietorial Interest Only** as: “Where the Federal Government has no legislative jurisdiction over its land, it holds such land in a proprietorial interest only and has the same rights in the land as does any other landowner. ... in the case where the United States acquires only a proprietorial interest, the State retains all the jurisdiction over the area which it would have if a private individual rather than the United States owned the land. However, for the reasons indicated, the State may not impose its regulatory power directly upon the Federal Government nor may it tax the Federal land. Neither may the state regulate the actions of the residents of the land in any way which might directly interfere with the performance of a Federal function. State action may in some instances impose an indirect burden upon the Federal Government when it concerns areas held in a proprietorial interest only, as in the *Penn Dairies case, supra.*”





## Three Ways the Federal Govt Can Acquire Jurisdiction

In June 1957 (Part II), the government of the United States published the most comprehensive work on 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 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, Part I" **the court has recognized three methods by which the federal government may acquire exclusive legislative jurisdiction over a physical area:**

➡ **1. Constitutional Consent.** Other than the District of Columbia, the Constitution gives express recognition to only 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...."**

➡ **2. 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):

"... 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."



**3. 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.**"