

Opinion No. 268.**Taxation—Fort Peck—Counties—
Jurisdiction of United States.**

HELD: Property of persons and corporations located on lands purchased by the United States with consent of the State, used for construction of Fort Peck Dam and necessary administrative purposes, is not taxable by the several counties in which such lands are located, as the United States has exclusive jurisdiction thereof. This rule does not apply to public domain lands.

April 21, 1936.

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May the counties in Montana assess, levy and collect taxes upon personal property of persons and corporations located upon lands in the Fort Peck area, within their borders, over which the War Department has assumed exclusive jurisdiction? (See letter October 10, 1934, from Harry H. Woodring, Acting Secretary of War, to Governor Frank H. Cooney.)

The right of the officers of these counties to assess, levy and collect taxes upon property located in the Fort Peck area, has not been questioned except upon those lands over

which the War Department has assumed exclusive jurisdiction. We are advised that these lands amount to approximately 8% of the total area. So far as concerns the other lands, we are advised that the War Department does not assume, or intend to assume, exclusive jurisdiction and the right of the counties to tax property thereon is therefore not challenged.

Chapter 50, Laws of 1933-34, gives the consent of the State of Montana to the purchase or condemnation of all necessary lands for the Fort Peck dam. To this consent is coupled a cession of concurrent jurisdiction with the express proviso, "saving further to the State the right to tax persons and corporations, their franchises and property within said territory."

Article I, Section 8, paragraph 17, of the United States Constitution, provides:

"The congress shall have power—
* * *

"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 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, dockyards, and other needful buildings."

Section 255, Title 40, U. S. C. A., as amended June 28, 1930, provides: "No public money shall be expended upon any site or land purchased by the United States for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given."

It has been held by a number of Attorneys General of the United States that the "consent" contemplated by said Section 255, is that "consent" contemplated and spoken of in Article I, Section 8, paragraph 17, of the Constitution, and that such

consent must be free from qualifications, conditions and reservations inconsistent with the exercise by the congress of exclusive legislation and jurisdiction over the place ceded. Two constructions may be placed upon Chapter 50,—one that the consent to the purchase of the lands is void because of the reservations, and the other that the reservations are void because inconsistent with the consent to purchase lands for needful buildings as provided by the Constitution.

We have made a careful search of the authorities and do not find that this exact question has been determined by the courts. There have been expressions, however, in support of the view that such reservations are void, as well as valid. Perhaps the most direct statement was made by Attorney General Bates, 10 Opinions of the Attorney General (U. S.), page 34. On page 39, he said: "As to the consent by the legislature of New York, I remark, in the first place, if it do not amount to a consent to the purchase, then it is simply null, and the United States hold the land without exclusive jurisdiction. In the second place, if it do amount to consent, then any exceptions, reservations, or qualifications contained in the act, are void, because, consent being given by the legislature, the Constitution vests in Congress exclusive legislation over the place, beyond the reach both of congress and the legislature of New York."

This language was quoted by Attorney General Charles J. Bonaparte, 26 Opinions of Attorney General (U. S.), 289, who said on page 298: "It is immaterial to inquire whether the legislature of Maryland meant to impose any restriction or limitation upon its cession of jurisdiction by the act of 1853, above quoted, for, the consent of the State to the purchase being once given, the cession takes place by virtue of the Constitution itself, and any attempt to impose a restriction by the legislature would be unconstitutional and, therefore, void. In an opinion relative to the New York post-office site, under date of May 6, 1861, Attorney General Bates said (10 Op., 39): (Here follows quotation above.)"

In support of his opinion the At-

torney General cited and quoted from *Fort Leavenworth Railroad Company v. Lowe*, 114 U. S. 525, at pp. 532, 533, as follows: "'When the title is acquired by purchase by consent of the legislatures of the States, the Federal jurisdiction is exclusive of all State authority. This follows from the declaration of the Constitution that Congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever'. Broader or clearer language could not be used to exclude all other authority than that of Congress, and that no other authority can be exercised over them has been the uniform opinion of Federal and State tribunals and of the Attorneys General'."

See also *Sinks v. Reese*, 19 Oh. St. 306, 2 Am. Rep. 397; *State v. Mack* (Nev.) 47 Pac. 763; *Concessions Co. v. Norris*, 186 Pac. 655. In the Mack case the court said: "If the purchase was made as has been held in this opinion under the provisions of Section 8, Article I of the Federal Constitution, any attempt on the part of the legislature to retain jurisdiction would be in contravention of said section, and therefore void."

It is undoubtedly true that the consent of a state to the purchase of land by the United States for any of the purposes mentioned in Article I, Section 8, paragraph 17, of the Constitution, ipso facto, confers exclusive legislation and jurisdiction upon the United States over the lands so purchased. In addition to the *Fort Leavenworth* case, *supra*, where some of the earlier cases are reviewed, see: *Surplus Trading Co. v. Cook*, 281 U. S. 647; *United States v. Unzeuta*, 281 U. S. 138; *Arlington Hotel Company v. Fant*, 278 U. S. 439, 49 S. Ct. 227, 73 L. Ed. 447; *Battle v. United States*, 209 U. S. 36; *Chicago, R. I. & Pacific R. R. Co. v. McGlinn*, 114 U. S. 542, 5 Sup. Ct. 1005, 29 L. Ed. 270; *Benson v. United States*, 146 U. S. 325, 13 Sup. Ct. 60, 36 L. Ed. 991; *Palmer v. Barrett*, 162 U. S. 399, 16 Sup. Ct. 837, 40 L. Ed. 1015; *United States v. Cornell*, 2 Mason 60 (24), Fed. Cas. No. 14,867; *Sharon v. Hill* (C. C.), 24 Fed. 726; *Martin v. House* (C. C.), 39 Fed. 694; *Bannon v. Burness* (C. C.),

39 Fed. 892; *In re Ladd* (C. C.), 74 Fed. 31; *State v. Mack*, 23 Nev. 359, 47 Pac. 763, 62 Am. St. Rep. 811; *Foley v. Shriver*, 81 Va. 568; 1 Story on Constitution, §§ 1216-1229; *Sinks v. Reese*, 19 Ohio St. 306; *Clark v. County of Milwaukee*, 53 Wis. 65, 9 N. W. 782.

When exclusive jurisdiction over lands is obtained by the United States by virtue of said constitutional provision the right of the state to tax personal property under such lands, does not exist. This was definitely settled in *Surplus Trading Co. v. Cook*, supra; see also *United States v. City of Buffalo*, 54 Fed. (2d) 471.

It has also been determined that a dam is a building within the meaning of the phrase "and other needful buildings" as used in said Article I, Section 8, paragraph 17; *United States v. Tucker*, 122 Fed. 518; see also *Battle v. United States*, supra, holding a postoffice building within this constitutional provision. Since the Fort Peck dam is being constructed under the supervision of United States Army Engineers, for the purpose of improving the navigation of the Missouri river, it is as definitely related to the public safety and defense as are "forts, arsenals, magazines," etc., and we have no doubt that the Supreme Court of the United States, in a proper case before it, would hold the building of such dam within the meaning of "other needful buildings" over which the United States has exclusive legislation.

Since said Section 255, as amended, requires it, we assume that the present Attorney General of the United States necessarily has passed on the title of the lands on which the Fort Peck dam is being constructed, and, in doing so, must have held that the consent given by said Chapter 50, and also by Sections 24 and 25, Revised Codes of Montana, was such consent as would give the United States exclusive legislation and jurisdiction, as provided by the Constitution, and consequently the reservation to tax by the state is not effective on the lands purchased for needful buildings over which the War Department has assumed exclusive jurisdiction. The legality of the work done and to

be done on the dam, can only be justified on that theory. This is also the construction given by the War Department. In view of the fact that the precise question has never been decided by the United States Supreme Court, or any other court, we feel obliged to follow these interpretations in spite of any doubts that we might have as to their soundness, particularly in view of the fact that should we place any other construction thereon, we should thereby not only challenge the title of the United States in these lands, and the validity of the expenditures already made, but also should jeopardize appropriations now pending in congress, and, consequently, the completion of the dam. Consequently, we must assume that the legislature, by the enactment of said Chapter 50, must have intended to fully meet the requirements of the Constitution and of Section 255, as amended, in regard to giving its consent to the purchase of lands for needful buildings in order that money might be validly appropriated and used for building the dam and that it did not intend to fix any reservations or conditions to its consent, which would render it ineffective or void.

For the foregoing reasons, we feel compelled to hold that the United States has exclusive legislation and jurisdiction over those lands purchased for needful buildings in the Fort Peck area over which, by the order of the War Department, it has assumed exclusive jurisdiction, and that as to such lands the several counties in question should not collect taxes on personal property of persons and corporations thereon.

It will be observed, however, that such exclusive jurisdiction is very limited; it extends only to those lands purchased by the United States with the consent of the states, for it is only to such lands that the constitutional provision applies. It does not apply to "public domain" lands. (*Six Cos. v. DeVinney*, 2 Fed. Supp. 693.) It must be understood that exclusive jurisdiction is also limited to lands purchased and used for the purposes named in Clause 17, Section 8, Article I, of the Constitution, which includes area necessary for permanent administrative purposes. (*Six Cos. v. DeVinney, Id.*)