

therefore, the state may not enforce any tax or license upon any property located upon said Fort Missoula Military Reservation as retained by the federal government as such.

December 20, 1947

Mr. Robert F. Swanberg
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Swanberg:

I have your communication of December 3, in regard to the reserve officers association maintaining an officers' club on part of the ground of Fort Missoula Military Reservation.

Your inquiry is whether or not any licenses must be obtained for slot machines or any tax be paid thereon to the State of Montana.

The Constitution of the United States, paragraph 8, clause 17 of Article I, provides as follows:

"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, dock-yards, and other needful buildings, and

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

The Constitution of the State of Montana by Section 1 of Article II, provides, in part, as follows:

"Authority is hereby granted to and acknowledged in the United States, to exercise exclusive legislation, as provided by the constitution of the United States, over the

Opinion No. 87

Officers' Club—Fort Missoula Military Reservation—Tax, Authority to enforce—License, Authority to enforce

Held: In view of the provisions of the Constitution of the United States, the Constitution of the State of Montana, the statutes of the State of Montana, the decision of the Supreme Court of the State of Montana, and the decision of the Supreme Court of the United States, the state of Montana has no jurisdiction over Fort Missoula and the military reservation thereof retained by the federal government for those purposes, except the reservation to the state of the right to serve all legal processes of the state, both civil and criminal, upon persons and property found within said reservation, and

military reservations of Fort Assinaboine, . . . Fort Missoula, . . . as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the State of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

"Provided that there be and is hereby reserved to the state the right to serve all legal process of the state, both civil and criminal, upon persons and property found within any of said reservations, in all cases where the United States has not exclusive jurisdiction."

The legislature of our state enacted Section 21, Revised Codes of Montana, 1935, which provides, in part, as follows:

"Authority is granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of . . . Fort Missoula . . . as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the State of Montana.

"All legal process of the state, both civil and criminal, may be served upon persons and property found within any of said reservations, or on any Indian reservation, in all cases where the United States has not exclusive jurisdiction."

It will be noted that by the federal constitution the federal government is granted exclusive legislation, which the courts have interpreted as meaning exclusive jurisdiction, 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, and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

By the above Article of the Constitution of Montana, the state of Montana ceded or granted to the United States the exclusive jurisdiction over the lands and properties of the military reservation known as Fort Missoula. Likewise, the legislature by Section 21, supra, ceded and granted the exclusive jurisdiction over such area.

I also call your attention to the case of State v. Tully, 31 Mont. 365, which arose over a murder alleged to have been committed on the grounds covered by the Military Reservation known as Fort Missoula in Missoula County, Montana, in which the Court discusses the above constitutional and statutory provisions, and in which the Court held:

"The Constitution of Montana thus acknowledges absolute sovereignty in the United States over the places named or referred to in the section of that instrument just quoted. . . ."

You will note that Tully had been convicted in the lower Court of murder in the first degree and appealed to the Supreme Court and that the Court, holding that it had no jurisdiction because the offense had been committed upon a military reservation, reversed the low Court and remanded the cause.

In the case of Concessions Co. v. Morris, Sheriff, et al, 186 Pac. 655, the Supreme Court of the State of Washington held:

"While the state's cession of jurisdiction to the federal government over land acquired as provided in the Constitution of the United States Article I, paragraph 8, clause 17, is an absolute cession, a provision for service of criminal and civil process within such lands is not invalid, and does not render the cession conditional. . . ."

In the recent case in the Supreme Court of the United States of Pacific Coast Dairy v. Department of Agriculture, 318 U. S. 285, the Supreme Court held:

"The exclusive character of the jurisdiction of the United States on Moffett Field is conceded. Article I, paragraph 8, clause 17 of the Con-

stitution of the United States declares the Congress shall have power 'To exercise exclusive legislation in all Cases whatsoever, over' the District of Columbia, '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; . . .

"To hold otherwise would be to affirm that California may ignore the Constitutional provision that 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; . . . It would be a denial of the federal power 'to exercise exclusive legislation.' As respects such federal territory Congress has the combined powers of a general and a state government.

"Here we are bound to respect the relevant constitutional provisions with respect to the exclusive power of Congress over federal lands. . . "

I have gone over this matter with Mr. J. B. Chew, Chief, Army Engineers, Great Falls Field Office, who has submitted to me a map of plat showing the officers' club building as being located on that part of Fort Missoula Military Reservation which is being retained by the federal government for the purpose of a fort and military reservation.

From the foregoing constitutional provisions, the statutes provided by our legislature, the decision of our State Supreme Court and of the Supreme Court of the United States, it appears, and it is my opinion that the State of Montana has no jurisdiction over Fort Missoula and the military reservation thereof retained by the federal government for those purposes, except the reservation to the state of the right to serve all legal processes of the state, both civil and criminal, upon persons and property found within said reservation, and therefore, the state may not enforce any tax or license upon any property located upon said Fort Missoula Mili-

tary Reservation as retained by the federal government as such.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General