

Opinion No. 53-5698

March 12, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard A. Stanley Assistant District Attorney Alamogordo, New Mexico

{*90} You addressed an inquiry to this office on February 24, 1953, in which you inquired whether the State of New Mexico or the United States possessed criminal jurisdiction over Holloman Air Force Base in Otero County, and specifically in regard to crimes committed by civilians within the confines of that base.

On the 8th day of August, 1944 the Secretary of War accepted the ceding of all of the State and private lands embraced by the Holloman Air Force Base, then called Alamogordo Army Air Force Base. This land was ceded to the United States pursuant to Section 8-202 N.M.S.A., 1941 Compilation. The lands were ceded subject to the right, retained in the State of New Mexico to "serve criminal and civil process thereon."

Through an oversight the jurisdiction over the federal lands, known as public domain, was not ceded at the time the previous transfer occurred. There is now a bill in the State Legislature this date known as Senate Bill No. 174 in which the jurisdiction over the public domain is ceded to the United States.

Criminal jurisdiction generally is in the United States on all of its military bases. **14 Am.Jur. page 925** states in part:

"Where a state cedes to the United States lands for forts, etc reserving concurrent jurisdiction to serve state process, criminal and civil, in the ceded place, such reservations merely operates as a condition of the grant and does not defeat the **exclusive jurisdiction** of the United States over such place, and the State courts have no jurisdiction of crimes committed thereon." (Underlining supplied)

In **22 CJS at page 231**, the following statement appears:

"Whether or not the federal courts acquire exclusive jurisdiction depends upon the nature and terms upon the legislature's consent or cession, and, while a state can reserve jurisdiction over offenses committed on lands acquired by the federal government with the legislature's consent, the mere reservation of the right to serve civil and criminal process on the lands acquired does not operate to deprive the federal courts of exclusive jurisdiction."

The courts of the United States have exclusive jurisdiction on lands within the confines of a military reservation where such jurisdiction is contained in the ceding to the United States and that jurisdiction is accepted by the United States. **United States vs.**

Unzeuta 50 Supreme Court 284, 281 U.S. 138, 74 Law Edition 761 and United States vs. Watkins, 22 Fed. 2d. 437.

Therefore it is the opinion of this office that the United States has exclusive jurisdiction over all of that part of Holloman Air Force Base accepted by the Secretary of War on the 8th day of August, 1944. However, the lands that comprise the public domain and are contained in Senate Bill No. 174, a copy of which is enclosed herewith, are still under the jurisdiction of the State of New Mexico. It will be necessary, until this bill becomes law, to ascertain where the crime was committed. This office realizes that the procedure outlined herein is cumbersome, but Senate Bill No. 174 will alleviate this situation entirely.

It is further the opinion of this office that the fact that the defendant {*91} involved in the case cited in your request are civilians makes no difference whatsoever. The jurisdiction is exclusive to the United States and any prosecutions must be conducted by the United States District Attorney in the Courts of the United States.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General