



PRICE DANIEL  
ATTORNEY GENERAL

**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

R-746

September 17, 1947

Hon. William N. Hensley  
Criminal District Attorney  
Bexar County  
San Antonio, Texas

Opinion No. V-380

Re: Authority of the  
Justice of the  
Peace to conduct  
an inquest on a  
federal military  
reservation.

Dear Sir:

Your request for our opinion on the above  
subject matter is in part as follows:

"We have a request for an opinion  
from the Honorable M. D. 'Buck' Jones,  
Justice of the Peace, Precinct No. 1,  
Place No. 1, Bexar County, Texas (a copy  
of which is inclosed herein) wherein he  
has asked us the following questions:

"1. Does a Justice of the Peace  
have authority to conduct an inquest on  
Government Reservations?

"2. Does it make any difference  
whether the individual upon whom the  
inquest is conducted be civilian or  
military personnel?

"3. Am I as a Justice of the  
Peace required, in the mandatory sense,  
to hold an inquest upon a Military Re-  
servation where the circumstances of  
the death come within the terms of Ar-  
ticle 968, R.C.S.?"

Article 5247, V.C.S., provides:

"Whenever the United States shall  
acquire any lands under this title, and  
shall desire to acquire constitutional  
jurisdiction over such lands for any

purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place; and such condition shall be inserted in such instrument of cession. (Emphasis added)

We quote the following from *Curry v. State* (Crim. App.), 12 S. W. (2d) 796:

"Title XVI of the 1895 statute which contains the articles above mentioned deals with the subject of cession of jurisdiction by this state. There is neither constitutional nor statutory inhibition against ownership of land by the United States government in Texas. Consent of its Legislature was not necessary as a precedent for such ownership, such being necessary only to a transfer of exclusive jurisdiction. *People v. Humphrey*, 23 Mich. 471, 9 Am. Rep. 94. The right to withhold consent altogether carries with it necessarily the right to annex such conditions as it sees fit to the giving of such consent. Evidently the Legislature had in mind only the question of cession of jurisdiction in the enactment of the articles in question, as legislation on the question of ownership of land in Texas

by the United States was useless and wholly unnecessary. If it intended that cession of jurisdiction by implication should pass under article 361, R.S. 1895, then the addition of articles 374 and 375, (now 5247) granting to the Governor the right to cede same, was futile and useless. If jurisdiction passed by implication under the first-mentioned article, it did so unincumbered by the conditions of concurrent jurisdiction to serve criminal and civil process as expressed in article 375 of said title. That such was not the intent of the Legislature we think is clear from reading the entire enactment upon the subject under consideration. Rather, we think the Legislature intended to give its consent to the cession of jurisdiction to become operative only when the Governor legally ceded same upon the conditions mentioned in articles 374 and 375. In other words, complete consent of the state, which carries with it exclusive jurisdiction over such land as above stated, has been withheld unless and until the Governor of this state under the terms of articles 374 and 375, R.S. 1895, makes a transfer of same. Our reasoning in this regard is supported by the Circuit Court of Appeals, Fifth Circuit, in the case of *Brown v. United States*, 257 F. 46, in which the said articles of the Texas statute received consideration and discussion."

In view of the foregoing, the State of Texas can only transfer jurisdiction to the United States upon the condition contained in Article 5247.

10 U.S.C.A., p. 329, Section 1585, provides:

"When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and, for this

purpose, such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death."

In view of the provisions of Article 5247, V.C.S., it is our opinion that the words "and under the exclusive jurisdiction of the United States" as used in Section 1585 of Volume 10 of U.S.C.A., when applied to military reservations in Texas, is meant that jurisdiction which the United States acquired through "Deeds of Cession" executed under the provisions of Articles 5242, 5247 and 5248, V.C.S.

We have carefully examined various "Deeds of Cession" executed by the Governor of Texas to the United States for military purposes, copies of which are on file in the Secretary of State's office, and find in each "Deed of Cession" the following provision:

"Such cession, however, is made upon the express condition that the State of Texas shall retain concurrent jurisdiction with the United States over every portion of the land so ceded, so far, that all process, civil or criminal, issuing under the authority of the State of Texas or any of the courts or judicial officers of said State may be executed by the proper officers of the State upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place.

"This deed of cession is made in compliance with Articles 5242, 5247, and 5248 of the revised statutes of Texas of 1925, and in accordance therewith the United States of America shall be secure in their possession and enjoyment of all said land, and said land and all improvements thereon shall be exempt from any taxation under the authority of the State of Texas so long as the same are held, owned, used and occupied by the United States of America for Army purposes and not otherwise."

We quote the following from our Opinion No. 0-4707:

"In answer to the question submitted, it is our opinion that justices of the peace are not authorized nor is it their duty to hold inquests at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States."

Therefore, it is our opinion that a Justice of the Peace does not have the authority nor is it his duty to hold an inquest on any military reservation where the United States has acquired exclusive jurisdiction over such lands for any purposes except that of issuing process. For your information, we are informed by the Secretary of State that copies of the "Deeds of Cession" executed by the Governor to the United States are on file in the county clerk's office of the county in which the land is situated.

SUMMARY

A Justice of the Peace does not have the authority to conduct an inquest on a Federal Military Reservation where the United States has acquired "exclusive jurisdiction" through "Deeds of Cession" executed under the provisions of Articles 5242, 5247 and 5248, V.C.S., 10 U.S.C.A., Section 1585.

Yours very truly

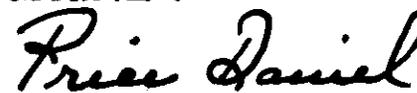
ATTORNEY GENERAL OF TEXAS

By

  
John Reeves  
Assistant

JR:djm:jt

APPROVED:

  
ATTORNEY GENERAL