

Real Estate

Federal Legislative Jurisdiction

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SUMMARY of CHANGE

AR 405-20

Federal Legislative Jurisdiction

This is a transitional reprint of this publication which places it in the new UPDATE format. Any previously published permanent numbered changes have been incorporated into the text.

Effective 15 September 1973

Real Estate

Federal Legislative Jurisdiction

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS
General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS
Major General, United States Army
The Adjutant General

History. The original form of this regulation was published on 1 August 1973. Since that time, Change 1 has been issued to amend the original, and this change remains in effect.

This UPDATE issue is a reprint of the original regulation with the change incorporated directly into the text.

Summary. This is a complete revision of AR 405–20. The regulation provides for implementation of the additional authority granted to the military departments by Congress relative to relinquishment of legislative jurisdiction and Department of Defense Directive 5160.63 dated 6 July 1972.

Applicability. Proponent and exception authority. Not applicable.

Army management control process. Supplementation. Local limited supplementation of this regulation is permitted, but is not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each to HQDA(DAEN–REM–U), WASH DC 20314;

other commands will furnish one copy of each to the next higher headquarters.

Suggested Improvements. The proponent agency of this regulation is the Office of the Chief of Engineers. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) direct to HQDA(DAEN–REM–U), WASH DC 20314.

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*This regulation supersedes AR 405–20, 28 June 1968.

RESERVED

1. Purpose and scope

This regulation sets forth definitions, basic characteristics of Federal legislative jurisdiction and the policies, procedures, and responsibilities relating to the acquisition and retrocession of such jurisdiction over land areas within the United States that are under the control of the Department of the Army. This regulation will also be followed by the Office of the Chief of Engineers in processing acquisition and retrocession requests in connection with land under the control of the Department of Air Force, as its real estate agent, subject to any additional requirements and regulations of the Air Force.

2. Citation of authority

a. *Road areas.* Title 40 U.S.C. 319–319c (Public Law 87–852, dated 23 October 1962) authorized relinquishment of Federal legislative jurisdiction over road or right-of-way areas only.

b. *Installation or project lands generally.* In order to alleviate the time consuming previous requirement for special Congressional action over general lands, other than roads, Title VI, Section 613(1) was included in Public Law 91–511, dated 26 October 1970. This has been codified as 10 U.S.C. 2683. The section is general in nature, is in addition to and not in lieu of the authority cited in a above and is applicable only to lands of the military departments. All lands permitted to a Department of Defense Agency are in the inventory of Real Property of one of the military departments. The duplication was purposeful to avoid nullifying actions in process under citation a above. Citation of 10 U.S.C. 2683 as authority for any proposed action would be more appropriate on all future retrocession actions to avoid the occurrence of valid technical objection being raised because the proposed action includes minor increments of lands outside a defined road right-of-way, such as turnouts, rest stops, etc.

c. *Department of Defense Directive.* The Office of the Secretary of Defense by DOD Directive Number 5160.63, dated 6 July 1972, has delegated to the Secretaries of the Military Departments his authority to relinquish legislative jurisdiction. This authority has not been redelegated by the Secretary of the Army.

3. Definitions and Discussion of Terms

a. *Legislative Jurisdiction.* The term “legislative jurisdiction,” when used in connection with a land area means the *authority* to legislate and to exercise executive and judicial powers within such area. When the Federal Government has legislative jurisdiction over a particular land area, it has the power and authority to enact, execute, and enforce general legislation within that area. This should be contrasted with other authority of the Federal Government, which is dependent, not upon area, but upon subject matter and purpose and which must be predicated upon some specific grant in the Constitution. Federal legislative jurisdiction is a sovereign power, whereas land ownership is in the nature of proprietorial action of the Government. The fact that the Federal Government has legislative jurisdiction over a particular land area does not establish that it has actually legislated with respect thereto. All that is meant is that the United States has the *authority* to do so. The Federal Government holds land under varying degrees of legislative jurisdiction. These fall into four distinct types. Each type indicates a different division of authority between the Federal Government and the State government and its political subdivisions to exercise the general municipal legislative and governmental power within that area. The types are defined below. The second and third definitions assume that all general municipal authority was originally vested in the State wherein the land is located.

b. *Exclusive legislative jurisdiction.* This term is applied when the Federal Government possesses, by whatever 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 relative to activities which occurred outside the area. This term is applicable even though the State may exercise certain authority over the land pursuant to the authority

granted by Congress in several Federal Statutes *permitting* the State to do so.

c. *Concurrent legislative jurisdiction.* This term is applied in those instances wherein, in 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.

d. *Partial legislative jurisdiction.* This term is applied in those instances where 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 and criminal process in the area attributable to actions outside the area. For example, the United States is considered to have partial legislative jurisdiction where the State has reserved the additional right to tax private property.

e. *Proprietorial interest only.* This term is applied to those instances wherein the Federal Government has acquired some degree of 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, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landowners with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental capacity as distinguished from an action performed by a private owner or citizen.

4. Basic characteristics of Federal legislative jurisdiction

a. *Characteristics of exclusive legislative jurisdiction.* Only Congress has the authority to legislate for areas held under exclusive legislative jurisdiction and the Federal Government has the responsibility for law enforcement. The State cannot enforce its laws and regulations in such areas, except as to the service of civil or criminal process pertaining to matters or actions outside the area or as permitted by Congress, and there is no obligation on the part of the State or any of its political subdivisions to provide governmental services such as disposal of sewage, trash and garbage removal, road maintenance and fire protection. In some States residents on areas under exclusive legislative jurisdiction may be denied many of the important rights and privileges of a citizen of the State concerned, such as the right to vote and to have access to State courts. The language of the State statutes generally governs the remaining degree of State obligation where exclusive Federal legislative jurisdiction exists over an area.

b. *Characteristics of concurrent legislative jurisdiction.* Both State and Federal laws are applicable in a concurrent legislative jurisdiction area. Most major crimes violate both Federal and State laws and both the Federal and State governments may punish an offender for an offense committed in the area. The State, subject to the exemption of the Federal Government, retains its right to tax. The regulatory powers of the State may be exercised in the area, but not in such a manner as to interfere with Federal functions. Persons residing on areas under concurrent legislative jurisdiction are not denied important rights and privileges of a citizenship such as the right to vote or access to the State courts.

c. *Characteristics of partial legislative jurisdiction.* As to the authority to legislate, execute and enforce municipal laws granted without reservation by the State to the Federal Government, administration of the Federal area is the same as if it were under exclusive Federal legislative jurisdiction. Such powers may be exercised only by the Federal Government. As to the authority to legislate, execute and enforce municipal laws reserved by the State, administration of the area is the same as though the United States had no legislative jurisdiction whatever. As to those powers granted to the Federal Government with a reservation by the State to exercise the same powers concurrently, administration of the area is as though it were

under concurrent legislative jurisdiction. In an area of partial legislative jurisdiction, the right most commonly reserved by the State is the right to tax.

d. Characteristics of proprietorial interest only. The United States exercises no legislative jurisdiction. The Federal Government has only the same rights in the land as does any other landowner. However, there exists a right of the Federal Government to perform the functions delegated to it by the Constitution and directed by statutory enactment of Congress without interference from any source. Subject to these conditions, the State retains all the legislative jurisdiction over the area it would have if a private individual rather than the United States owned the land. However, the State may not impose its regulatory power directly upon the Federal Government nor may it tax the Federal land. It may tax a lessee's interest in the land, if State law permits. Neither may the State regulate the actions of residents of the land in any way which might directly interfere with the performance of a Federal function. Persons residing on the land remain residents of the State with all the rights, privileges, and obligations which attach to such residents.

5. Army policy

The Department of the Army policy governing Federal legislative jurisdiction over lands under its control in the United States is based upon the conclusions and recommendations of the Interdepartmental Committee for the Study of Jurisdiction over Federal areas within the States, which the President directed be used as a guide by Federal administrators of real properties, and the 1970 Report and Recommendations to the President and to the Congress by the Public Land Law Review Commission on the subject of Federal jurisdiction. In accordance therewith, it is the policy of the Department of the Army to acquire only a proprietorial interest in land and not to acquire any degree of legislative jurisdiction except under exceptional circumstances. It is further the policy of the Department of the Army to retrocede unnecessary Federal legislative jurisdiction to the State concerned. This is particularly applicable to the jurisdiction held over public roads that traverse or border a military installation.

6. Criteria for exceptional cases

a. General. Under exceptional circumstances acquisitions of one or another of the three types of legislative jurisdiction may be authorized by the Department of the Army provided it is established that the acquisition of such legislative jurisdiction is essential to the proper performance of military functions, missions, and tasks on the property. When one of the three types of legislative jurisdiction is considered to be essential, the degree of jurisdiction sought to be acquired must be limited to the minimum required. The criteria set forth in *b* below will govern.

b. Acquisition of legislative jurisdiction.

(1) Concurrent legislative jurisdiction may be acquired where it is found necessary that the Federal Government furnish or augment law enforcement otherwise rendered by a State or local government. These circumstances might exist where the Army installation or project is of great size, large population, is in a remote location, or where, because of peculiar requirements stemming from Army use, it is beyond the capacity of State or local governments to render effective service and control. When the acquisition of such jurisdiction is contemplated, it is desirable (if the State so permits):

(a) That State law, judicial and administrative authority continue to apply with respect to taxation, marriage, divorce, annulment, adoption, guardianship, commitment to mentally incompetent, descent and distribution of property, notarizations and inquests;

(b) That the State retain concurrent power to enforce the criminal law and to execute on the installation any civil or criminal process;

(c) That the inhabitants of the installation not thereby be deprived of any civil or political rights, especially rights to vote and attend State or local schools;

(d) That there be specifically excluded from the acquisition wherever possible and reasonable, all legislative jurisdiction over public

roads traversing the installation and over areas not lying within the perimeter of the main installation or project.

(2) Exclusive or partial legislative jurisdiction may be acquired in those few instances where, due to the peculiar nature of the military operation, the State or local laws unduly interfere with the purpose of the project or mission of the installation. Prior to initiation of requests for such jurisdiction, the following will be considered:

(a) That in most instances, even without any measure of Federal legislative jurisdiction, the Federal Government is legally insulated from any State or local interference with the use of Government property such as would impede the Federal mission.

(b) That the acquisition of exclusive Federal legislative jurisdiction entails many disadvantages, principally the loss of State or local fire, police, and sanitation services, and the denial of rights incident to residence or domicile such as attendance at State or local schools, right to vote, and access to the authority of State or local courts, officials or laws in matters relating to probate, domestic relations, notarization and inquests.

(3) In any event, no request for the acquisition of exclusive or partial legislative jurisdiction will be made—

(a) Unless it is considered that the principle cited in (2)(a) above is applicable, impractical of application, or that the interests of the Federal Government are not adequately protected thereunder;

(b) Unless the possible disadvantage in (2)(b) above has been examined and weighed against the benefits expected to attach to the acquisition of exclusive legislative jurisdiction;

(c) Unless there is excluded, wherever possible and reasonable, all legislative jurisdiction over public roads traversing the installation and over areas not lying within the perimeter of the main project or installation, and, wherever possible, reservations will be made in the acquisition request so as not to deprive inhabitants of the project or installation of any or all of the incidents of residence or domicile, as applicable.

7. Procedure for Acquisition of Legislative Jurisdiction

a. Requests. Although Army policy generally is not favorable to requests to acquire any degree of Federal legislative jurisdiction, major field commanders, Headquarters, Department of the Army, chiefs and executives having command responsibility may initiate requests therefor in exceptional cases, subject to the criteria set forth in paragraph 6. Requests will be forwarded to the Chief of Engineers, (HQDA(DAEN-REM-U)), through the District Engineer for the Corps of Engineers having responsibility for the geographical area, and will identify the project or military installation and the particular tract of land involved. The request will include a vicinity map and a drawing or description of the tract of land involved. The request will set forth the present legislative jurisdiction status; will state in detail the background of the request and the circumstances which make it necessary to acquire legislative jurisdiction; the degree of legislative jurisdiction considered necessary, and the full justification therefor in light of the Army policy; and will state whether the degree of legislative jurisdiction considered necessary is available under the present law of the State concerned. If the laws of the State concerned do not offer concurrent legislative jurisdiction and acquisition of exclusive legislative jurisdiction is recommended solely because of this deficiency, a recommendation should be made concerning the feasibility of seeking enactment of special legislation by the legislature of the State concerned.

b. Processing and approvals. The Chief of Engineers will evaluate requests in the light of departmental policy and refer them with recommendations through The Judge Advocate General to the Assistant Secretary of the Army (Installations and Logistics) as to Army military installations. Requests received in connection with Air Force installations will be referred to Headquarters, Air Force, with recommendations for determination by the Secretary of the Air Force. Any requests involving civil works lands of the Army will be forwarded with recommendations to the Assistant Secretary of the Army (Installations and Logistics) for determination. In each instance the request and recommendation will consider the necessity for acquiring any degree of legislative jurisdiction and the degree of

legislative jurisdiction to be sought. In accordance with the determination made in each instance, the Chief of Engineers will take further action as appropriate, to include, as required, those necessary to comply with the laws of the State concerned governing acquisition of legislative jurisdiction, in the degree approved, and will submit assemblies for accomplishing the acquisition, including appropriate notices of acceptance through the above-mentioned officials set forth herein.

8. Procedure for retrocession of legislative jurisdiction

Requests for retrocession of any degree of Federal legislative jurisdiction to the particular State concerned will be initiated by major field commanders, Headquarters, Department of the Army, chiefs and executives having command responsibility. The requests will be forwarded to the appropriate District Engineer having responsibility for the geographical area in which the land is located. The District Engineer will prepare the necessary assembly required to support the request. All requests will identify the military installation or project and the particular tract or tracts of land involved; will include a vicinity map and a drawing or legal description of the land; will set forth the present type of legislative jurisdiction held over the land; will explain the background of the request and the circumstances which make retrocession of legislative jurisdiction desirable; and will recommend the degree of legislative jurisdiction desired to be retroceded. The complete file and assembly prepared by the District Engineer will be forwarded to the major commander for his approval or recommended denial, to the Chief of Engineers, (HQDA (DAEN-REM-U)), who will review the entire documentation for completeness and evaluate the request in the light of departmental policy and refer it with recommendations, through channels as appropriate, to the Secretary of the Army or the Secretary of the Air Force for determination of the desirability of retrocession and the degree of legislative jurisdiction to be retroceded. In accordance with the determination made, the Chief of Engineers will take further action, as appropriate, to include, if necessary, actions required to comply with the laws of the State concerned governing retrocession of jurisdiction by the United States, including drafts of necessary legislation appropriately amending State law when required to permit the desired retrocession for consideration of State governing bodies.

9. Notice and Information

a. Posting or publication. If installation commanders consider it advisable to inform the public of applicable governmental responsibility for law enforcement within areas under their jurisdiction frequented by the public such as roadways or recreational areas, they may post suitable notices that the area is under Federal, State, or concurrent Federal and State legislative jurisdiction. If the Chief of Engineers considers that the acceptance or retrocession of Federal legislative jurisdiction over a particular area of Army-controlled land is of national interest he will secure publication of a notice thereof in the Federal Register. The Chief of Engineers will, at the request of the Air Force, take similar action as to lands under control of the Air Force.

b. Documents. The Chief of Engineers (DAEN-REM-U) will maintain the record files with all documents evidencing Federal acceptance or retrocession of legislative jurisdiction relating to installations or projects and will furnish copies of such documents to The Judge Advocate General (HQDA (DAJA-LD)) for incorporation in the title files of a particular project or installation, and will furnish copies to the appropriate installation commander and District Engineer. As an exception thereto, the letter bearing the original signature of the State official accepting the retrocession will continue to be transmitted to The Judge Advocate General (HQDA (DAJA-LD)).

c. Information on jurisdiction status. The Chief of Engineers and District Engineers will maintain factual records pertaining to Federal legislative jurisdiction existing in connection with Army and Air Force installations and civil works projects and provide information thereof upon request. Questions relating to legislative jurisdiction over military lands should be submitted to the Command Staff

Judge Advocate. In the event there are questions as to the degree of legislative jurisdiction presently existing over the particular lands in question the matter should be submitted to the Chief of Engineers (HQDA (DAEN-REM-U)), for assistance. In the event a legal problem relating to legislative jurisdiction over lands within a military installation cannot be answered by the Command Staff Judge Advocate through the use of research material available to him, he will submit all available facts to HQDA (DAJA-LD), WASH DC, for Army controlled lands and to HQAF (PRERO), WASH DC, for Air Force controlled lands. The Chief of Engineers will provide administrative and technical assistance as required. If the particular legal problem involves the determination of the status or degree of legislative jurisdiction existing at a precise fixed point on the installation or project, the precise point should be identified on an installation real estate tract map which will be included in the transmittal. Real estate tract maps are usually available from the Post Engineer or the District Engineer having real estate responsibility over the area where the installation is located.

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