



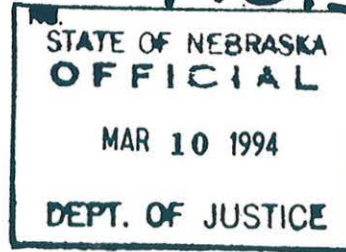
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#94013



DATE: March 9, 1994

SUBJECT: Proper Protocol for State of Nebraska to Accept Retrocession of Federal Legislative Jurisdiction Over the Cornhusker Army Ammunition Plant

REQUESTED BY: The Honorable E. Benjamin Nelson
 Governor, State of Nebraska

WRITTEN BY: Don Stenberg, Attorney General
 Lauren L. Hill, Assistant Attorney General

On July 27, 1993, you requested an opinion from this office as to the procedures required for the State of Nebraska to accept retrocession of federal legislative jurisdiction over the Cornhusker Army Ammunition Plant which is comprised of 11,936.08 fee acres and located near Grand Island, Nebraska. Your opinion request was subsequently withdrawn pending receipt of additional information which your office requested from the U.S. Army Corps of Engineers. Following receipt of that information, your opinion request was renewed on February 7, 1994. We now address your question.

History of State and Federal Jurisdiction

Pursuant to legislation enacted in 1883, the State of Nebraska consented to cede to the United States its jurisdiction over state lands which were required for a multitude of federal purposes. See Laws 1883, Ch. 90. Thus, from the date on which it acquired title to the Cornhusker Army Ammunition Plant, the federal government has been vested with exclusive legislative jurisdiction over the property. See *id.* at § 4. Federal law provides that "[n]otwithstanding any other provision of law, the Secretary concerned may, whenever he considers it desirable, relinquish to a State . . . all or part of the legislative jurisdiction of the

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United States over lands or interests under his control in that State. . . ." 10 U.S.C. § 2683 (1983). Your office has been notified that the U.S. Army may be interested in effecting a retrocession of legislative jurisdiction over the Cornhusker Plant in accordance with this provision.

Effecting Retrocession

The federal statute expressly provides that "[r]elinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor . . . of the State . . . concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State . . . may otherwise provide." 10 U.S.C. § 2683 (1983 and Supp. 1993). Last year, the Nebraska Legislature enacted LB 545 for the express purpose of providing the state with a means of accepting cession or retrocession of federal jurisdiction. Pursuant to enactment of this legislation, you may act by executive order to effect such a transfer. The law specifies that

[b]y appropriate executive order, the Governor may accept on behalf of the state full or partial cession or retrocession of federal jurisdiction, criminal or civil, over any lands, except Indian lands, in federal enclaves within the state where such cession or retrocession has been offered by appropriate federal authority. An executive order accepting a cession or retrocession of jurisdiction shall be filed in the office of the Secretary of State and in the office of the register of deeds of the county in which the affected real estate is located.

Neb. Rev. Stat. § 84-168 (Supp. 1993).

Respectfully submitted,

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24-11-14.op

Approved by:


Attorney General