STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE

JURISDICTION OVER FEDERAL ENCLAVES IN CALIFORNIA

A COMPILATION OF STATUTORY MATERIAL, DIGESTS OF CASES AND OPINIONS OF THE CALIFORNIA ATTORNEY GENERAL RELATING TO LEGISLATIVE JURISDICTION OVER FEDERAL ENCLAVES IN CALIFORNIA

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P R E F A C E

California, probably more than any other State, has been confronted with the problems growing out of Federal jurisdiction over land within the states. This analysis of the problems was prepared for the INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, a Committee especially appointed by President Eisenhower. The work of the Committee, headed by Mr. Perry W. Morton, Assistant Attorney General of the United States, has done much toward suggesting areas wherein conflict can be removed and where jurisdiction can be appropriately returned to the States.

The results of their efforts are published in a two volume Report. Volume I: The Facts and Committee Recommendations was submitted to Attorney General Herbert Brownell, Jr. and transmitted by him to the President April 1956. Volume II: A Text of the Law of Legislative Jurisdiction was submitted to the Attorney General and transmitted by him to the President June 1957. Copies of the reports are for sale by the Superintendent of Documents, U.S. Printing Office, Washington 25, D.C.

While extracts from the California material appear in Part II of the Committee Report, this full legal study of the situation in California may be of interest to state agencies which, throughout the years, have been confronted with the problem of conflicting jurisdiction and to those generally interested in the subject.

We are indebted to Mr. Herbert E. Wenig, Assistant Attorney General, and Mr. Marc Monheimer, formerly associated with the Attorney General's office, for the basic work involved in this study, and to Mr. Walter S. Rountree, Assistant Attorney General, for the compilation and his liaison work with the Interdepartmental Committee.

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(EXTRACT)

Assistant Attorney General
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Washington

September 9, 1957

Walter S. Rountree, Esquire
Assistant Attorney General of California
Sacramento, California

Dear General Rountree:

We are returning herewith, with many thanks, your very fine thesis on the subject of legislative jurisdiction over Federal enclaves in California. . . .

. . .

Thank you, again, for the loan of your thesis, which aided immeasurably our work on the text. I wish also to express my appreciation for your very many personal contributions, in the Federal-State conferences here in Washington on the subject of jurisdiction legislation, to a better understanding of State problems in this field. The results achieved in these conferences are a shining example, I believe, of marvelous results which can be achieved in eliminating Federal-State frictions through exchange of views by men of good will.

Sincerely yours,

PERRY W. MORTON /s/
PERRY W. MORTON
Assistant Attorney General
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TABLE OF CONTENTS

JURISDICTION OVER FEDERAL ENCLAVES IN CALIFORNIA

INTRODUCTION.

The question of legislative jurisdiction over Federal areas within the State of California (hereinafter referred to as "enclaves") covers a broad field of problems, diverse and complex in nature. It affects not only the State as a governing unit, but also the citizens of the State in their burdens and obligations; the Federal agencies which own the land and operate the installations comprising such enclaves; and the residents of each enclave in their rights and duties as United States citizens.

The following compilation of statutory material, digests of cases and opinions of the California Attorney General reflect the inter-play of problems which have arisen where the United States Government holds title to lands in California and the State has transferred part or all of its jurisdiction over such lands to the United States.

As a result of a similar but much more broad and comprehensive study conducted on the Federal level by the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, legislation has been introduced in Congress designed to alleviate some of the conflicts and difficulties which have arisen from the differing and

shifting quantum of jurisdiction held by the Federal government. (S. 1538, 85th Cong., 1st Sess., March 8, 1957. See Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Part I, "The Facts and Committee Recommendations", pp. 69-81.)

I

STATUTES.

The California statutes dealing with the acquisition of jurisdiction by the United States may be divided into three groups:

1. General consent or cession statutes ceding jurisdiction to or consenting to the acquisition of jurisdiction by the United States (Charts I and III).

2. Consent or cession statutes which deal with particular sites or types of land within the State (Chart II).

3. Statutes which accept recession of jurisdiction over particular parcels of land from the Federal government (Chart IV).

The need for such statutes rests upon the constitutional requirement of consent by the State before the United States may acquire exclusive legislative jurisdiction over land within a State's territorial jurisdiction (U.S.Const., art. I, sec. 8, cl. 17). The confusion which has existed through the years as

a result of this constitutional requirement is attested by the great numbers of statutes dealing with its various aspects and the rampant inconsistencies and redundancies which have existed in the past and to some extent continue to exist today.

Were it not for the doctrine that statutes conferring legislative jurisdiction which are in force at the time when the Federal government acquires land areas, control the quantum of jurisdiction over such land, an analysis of former statutes would have historical value only. This fact then requires a complete analysis to determine exactly which government (State or Federal) has what amount of jurisdiction over each parcel of land.

A glance at the charts attached hereto provides a view of the inconsistencies, vagaries, and redundancies existing in pertinent State legislation. To be considered are the following: (1) variations in wording between consent and cession; (2) variations in wording reserving the right to serve criminal process; (3) other major reservations; (4) operation of statutes now in effect.

A. CONSENT versus CESSION.

The Federal government may acquire jurisdiction over land within a State by two methods: the United States may purchase with consent of the State (U.S.Const., art. I, sec. 8, cl. 17), or it may acquire jurisdiction by cession from the State, title to the land already being in the United States other than by

purchase with the consent of the State (Fort Leavenworth v. Lowe (1885), 114 U. S. 525). In relinquishing jurisdiction by either method, the State may qualify the jurisdiction so given (James v. Dravo Contracting Co. (1937), 302 U. S. 134).

If jurisdiction is acquired by purchase with consent of the State, exclusive jurisdiction vests in the Federal government by operation of the Constitution; however, any reservations contained in such a statute validly limit the amount of jurisdiction transferred. In the event the controlling statute is one of cession, only that jurisdiction which is specifically ceded vests in the United States. In this case, reservations are effective because they merely state the areas of jurisdiction not ceded.

Originally, it was thought that relinquishment of jurisdiction via the constitutional method was the only procedure available, and that no qualification was permissible. With the rejection of this concept, it matters little which method is chosen. However, it must be remembered that in determining the extent of jurisdiction over each particular enclave, resort must be had to the particular statute of consent or cession, or, in the absence thereof, to the general statute then in effect. It thus becomes necessary to engage in a limited discussion of the statutory development in California, in order to construe the statutes and find which government, State or Federal, has what amount of jurisdiction over each individual piece of Federal property within the State. The California law

reflects this development of judicial doctrine, containing, first a consent statute, then cession statutes, and, now, again, a statute of consent (California Government Code, Sec. 126). It is apparent that the Legislature sought to take advantage of the cession doctrine stated in the Lowe case by the statute of 1891 (Calif. Stats. 1891, ch. 181, p. 262). By the time the various statutes were finally compiled into Government Code section 126, in 1946, it was clear that no distinction between methods existed, and this latter statute uses consent terminology.

The first statute, enacted in 1852, was a pure consent statute in precise constitutional terms (Calif. Stats. 1852, ch. 76, p. 149). Political Code section 34, enacted in 1872, was a codification of this statute. Between this statute and the general cession statute of 1891, all but two of the approximately fourteen statutes dealing with specific sites within the State were consent to purchase statutes. The remaining two contained both words of consent and words of cession (Calif. Stats. 1859, ch. 305, p. 223); Calif. Stats. 1861, ch. 255, p. 259). Since the doctrine of cession had yet to be developed, there appears to be no explanation for inclusion of a cession of jurisdiction at such an early date. This is especially true in light of the twelve contemporaneous statutes which made no mention of cession.

However, by 1891, the Lowe case (Fort Leavenworth v. Lowe, supra), had been decided and the cession method established. Thus, the 1891 statute (Calif. Stats. 1891, ch. 181, p. 262) used only the term "cedes jurisdiction." The terms of this

statute were not limited as to the purpose of the Federal acquisition. It would follow that this and the 1852 statute, consent to purchase for constitutional purposes, existed as complementary legislation - the former applicable to acquisition by purchase for "erection of forts, magazines, arsenals, dock-yards, and other needful buildings," the latter applicable to all other forms and purposes of acquisition. However, the 1891 statute includes "land as may have been or may be hereafter ceded or conveyed to the United States." Since a conveyance commonly denotes a transfer pursuant to a purchase, it would seem reasonable that the Legislature intended to combine the required constitutional consent with a general cession in one statute. Any reservations contained in prior statutes would appear to be eliminated by the retroactive wording of the 1891 statute. (See discussion of criminal process, infra.) This reasoning is further supported by the doctrine of implied repeal. This doctrine, though disfavored generally, would seem appropriate here since the later statute deals with precisely the same subject matter.

It is therefore reasonable to conclude that in 1891 the statute then in force was determinative of the jurisdiction over land acquired by the United States both before and after its enactment. The statute of 1852, codified by Political Code Section 34 being repealed by implication (Contra, 14 Ops. Cal.

Atty. Gen. 14).[1]

Six years later, the Legislature again dealt with this matter in the following statute:

> "The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes; provided, that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated; and provided further, that this State reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this State against any person or persons charged with crimes committed without said lands.
>
> "This Act shall take effect immediately." (Calif. Stats. 1897, ch. 56, pp. 51-52.)

This statute had two significant effects. First, it ceded jurisdiction over lands held by the United States for military purposes, which had been so held at the time California entered the Union. Such lands, prior to this statute, had been held to be within the jurisdiction of the State because not "purchased by, conveyed, or ceded to" the United States and therefore not within the terms of either the consent statute of 1852 or the cession statute of 1891 (U. S. v. Bateman (1888), 34 Fed. 86; U. S. v. Watkins (1927),

1 23 Ops. Cal. Atty. Gen. 14 holds that "military purposes" as used in the statute of 1897 includes only those acquisitions other than for forts, arsenals, dock-yards, etc. It concludes that the 1852 statute as codified in 1872 remained applicable at least until 1943, and that acquisitions for the latter purposes had no filing requirement.

22 Fed. 2d 437). Second, the statute, by referring only to "lands . . . (used for) military purposes," drew a distinction between lands acquired for, in effect, constitutional purposes and those acquired for any other purpose. The former were required to be accompanied by a recorded description in metes and bounds in order to vest jurisdiction in the United States; the latter remained controlled by the terms of the statute of 1891.

An additional distinction has been drawn in an opinion rendered by the Attorney General in 1954 (23 Ops. Cal. Atty. Gen. 14). The opinion stated that the 1897 statute did not repeal by implication the consent statute of 1852 (Pol. Code, sec. 34). The theory of the opinion was that the phrase "military purposes" as used in the 1897 statute meant military purposes other than those for which specific consent was given in the earlier statute, that is, forts, magazines, arsenals, dockyards, and other useful buildings. Acquisition for the latter specific purposes would not require a map or plat to be filed, while acquisitions for other military purposes would so require. This interpretation has the effect of preventing implied repeal of the earlier statute and also of validating most acquisitions for military purposes before 1946, even though no map or plat was filed. The great difficulty in interpreting these statutes is pointed up by the fact that the opinion is impliedly inconsistent with an earlier opinion. In Opinion No. NS-3188, it was held that the 1939 reservation of

the State's taxing powers applied to Government Island in Alameda County because the United States had not filed a map or plat as required by the 1897 statute, the conditions of cession had not been met, the "offer" was withdrawn, and a new "offer" substituted by the 1939 amendment to Political Code, Section 34, which reserved the taxing power; therefore, acceptance was under the new statute and the taxing power was effectively reserved.

As a result of the 1891 and 1897 statutes, other factors must be considered in determining the jurisdictional status of Federal enclaves. It now must be known when the land was acquired; the purpose for which it was acquired; if acquired for military purposes before statehood, whether the required description was filed; if acquired for military purposes after 1897, which type of military purpose, that is, constitutional or other; and, finally, if other than constitutional military purposes, whether the required map or plat was filed.

Although the cession method adopted by the 1897 statute provided a vehicle for valid reservations by the State, it was not used for these purposes. The statute reserved only the right to serve all civil process and such criminal process as was issued for crimes committed without the lands acquired. This right had long been established, not on a theory of jurisdiction, but on the theory of comity between the State and Federal governments.

The next major development occurred in 1939 when Political

Code, section 34, was amended to reserve to the State its "entire power of taxation . . . in the same manner and to the same extent as if this consent had not been granted." (Pol. Code, sec. 34, as amended by Calif. Stats. 1939, ch. 710.) Section 34 uses both consent and cession terminology. The consent section is in terms of constitutional purposes while the cession section refers to the "purchase or condemnation by the United States of any tract of land . . ." If it is accepted that the 1891 and 1897 statutes impliedly repealed the original section 34, it is reasonable that the amended section 34 established a new set of reservations to acquisition of jurisdiction. However, since there is nothing in section 34 inconsistent with the statute of 1897, it would follow that the filing requirement continued as to lands acquired for military purposes. The effect of the 1939 amendment being to add the reservation of the State's entire power of taxation.

Following the 1939 amendment, the Political Code was repealed and the applicable sections codified in Title 1, Division 1, Article 2 of the Government Code, enacted in 1943. The sections with which we are here concerned, 111, 112, 113, 114, 115, 116, 117, and 119, are codifications of all the prior law existing in the premises without regard for the repetition and confusion created by the failure to enact a single comprehensive consent or cession statute.

The 1943 enactment "consent[s] to the purchase or condem-

nation for . . . forts, magazines, arsenals, dockyards . . ." (Gov. Code, sec. 111, based on Pol. Code, sec. 34); "cede[s] exclusive jurisdiction over such land as has been or may be conveyed to the United States . . ." (Gov. Code, sec. 113, based on Calif. Stats. 1891, ch. 181, p. 262); "cede[s] exclusive jurisdiction over all lands held . . . for military purposes or defense . . . and . . . which . . . has been or . . . may be ceded . . . A sufficient description . . . shall . . . be filed . . ." (Gov. Code, sec. 114, based on Calif. Stats. 1897, ch. 56, p. 51). In addition, there are two sections devoted entirely to reservations by the State (Gov. Code, secs. 116, 117). The chaotic redundancy of these sections makes it almost impossible to rationally determine the terms of consent or cession which operated during the period these sections remained in force.

Except for section 113, these sections were repealed in 1947 and the subject matter covered in section 126, which read as follows:

> "Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law:
>
> "(a) The acquisition must be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the purview of clause 17 of Section 8 of Article I of the Constitution of the United States, or for the establishment, consolidation and extension of national forests under the provisions of the act of Congress

approved March 1, 1911, (36 Stat. 961) known as the 'Weeks Act';

"(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

"(c) The United States must in writing have assented to acceptance of jurisdiction over the land upon and subject to each and all of the conditions and reservations in this section prescribed;

"(d) The conditions prescribed in subdivisions (a), (b), and (c) of this section must have been found and declared to have occurred and to exist, by the State Lands Commission, and the commission must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the Office of the Secretary of State and recorded in the office of the County Recorder of each county in which any part of the land is situate;

"(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation including that of each state agency, county, city, city and county, political subdivision or public district of or in the State; and reserve to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given.

"(f) This consent continues only so long as the land continues to belong to the United States and is held by it in accordance and in compliance with each and all of the conditions and reservations in this section prescribed.

"(g) Acquisition as used in this section means: (1) lands acquired in fee by purchase or condemnation, (2) lands owned by the United States that are included in the military reservation by presidential proclamation or act of Congress, and (3) leaseholds acquired by the United States over private lands or stateowned lands.

"The finding and declaration of the State Lands Commission provided for in subdivision (d) of this

section shall be made only after a public hearing. Notice of such hearing shall be published once in a newspaper of general circulation to each county in which the land or any part hereof is situated and a copy of such notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of such hearings, which shall provide that the cost of publication and service of notice and all other expenses incurred by the commission shall be borne by the United States.

"The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations in accordance with the provisions of Sections 375 to 380, inclusive, of the Fish and Game Code. (Added Stats. 1946, 1st Ex. Sess., c. 154, p. 199, sec. 1, as amended Stats. 1947, c. 1532, p. 3163, sec. 1; Stats. 1951, c. 875, p. 2394, sec. 1; Stats. 1953, c. 1856, p. 3647, sec. 1.)"

Section 113 was repealed in 1955, so that section 126 now is the sole statute by which acquisition of jurisdiction by the Federal government is determined. It is interesting that also in 1955 a new section 111 was enacted, listing some of the early specific statutes by which the State ceded jurisdiction to the Federal government over certain sites in California. Since unilateral action by the State could not affect the jurisdiction acquired under these statutes, the new section 111 is probably the result of an over-abundance of caution.

As a consent statute, the present section 126 represents completion of the circle moving from consent, to cession, and now back to consent. As earlier pointed out, since reservations are valid in either the consent or cession method, it

would matter little which procedure the Legislature adopted. However, it is important to recall that the various differences appearing in the early statutes remain of manifest importance.

B. RESERVATION OF THE RIGHT TO SERVE PROCESS.

Subsequent to the consent statute of 1852, almost every statute of consent or cession contained a reservation of the right to serve both civil and criminal process within the lands acquired by the Federal government. Judicial decisions have established the validity of the reservation on the basis of comity between the States and the Federal government.

Most of the statutes use the phrase, "to serve criminal process for crimes committed without said lands" or just "service of criminal process." Such phraseology and the service of civil process raise no peculiar difficulties. However, a very serious question arises as to whether the terms of certain statutes, ostensibly intended to reserve the right to serve criminal process, have not, in fact, effected a complete reservation of the State's right to <u>administer</u> its entire criminal law within the lands affected. These are the statutes which reserve the "administration of the criminal laws;" or reserve the right to serve criminal process "without and within" the lands acquired (Calif. Stats. 1891, ch. 181, p. 262; Gov. Code, sec. 113; Calif. Stats. 1854, ch. 43, p. 81; Calif. Stats. 1861, ch. 255, p. 259).

A conclusion that such a reservation was made would be

completely contrary to prevailing opinion. Yet, such a conclusion is by no means impossible and therefore deserves consideration.

Militating against this result is the fact that the issue appears to have been raised only once (U. S. v. Watkins (1917), 22 Fed. 2d 437), and there decided to the contrary. Again, we are faced with a problem which can be analyzed only in terms of possibilities, an authoritative determination being dependent on court action.

In the Watkins case, the court concluded without discussion, that this phrase ". . . administration of the criminal laws . . . may be interpreted . . . to mean that 'only . . . civil and criminal process issued under the authority of the States, which must, of course, be for acts done within and cognizable by the State, may be executed within the ceded lands, notwithstanding the cession. Not a word is said from which we can infer that it was intended that the State should have a right to punish for acts done within the ceded lands. The whole apparent object is answered by considering the clause as meant to prevent these lands from becoming a sanctuary for fugitives from justice for acts done within the acknowledged jurisdiction of the State.'" (Emphasis added.) The court quoted from Fort Leavenworth v. Lowe, 114 U. S. 525, 534.) The court was here dealing with the statute of 1891 and therefore was impliedly supported by the fact that the 1897 statute, so close in time, used only the phrase "criminal

process . . . against . . . persons charged with crimes committed without said lands." Without reflection upon the Legislature of 1891, it may be asked whether they ever intended a result contrary to that of the Watkins case. Yet, the common meaning of "administration of the criminal law" undoubtedly includes the right to enforce the criminal laws of this State in its courts for crimes committed within the Federal enclave.

Since the 1897 statute dealt specifically with lands used for military purposes, the 1891 statute would apply only to such lands acquired between the two dates. However, it would apply to all other types of acquisitions up to 1939, when Political Code, section 34, superseded it.

Adding immensely to the complexities already existing, the phrase was picked up and inserted as section 113 of the Government Code when it was codified in 1943. This section read substantially as follows until repealed in 1955:

> "The State reserves the administration of the criminal law of the State with respect to any land over which any jurisdiction has been or may be ceded or conveyed to the United States during the time the United States is the owner thereof." (Emphasis added.)

The effect of this statute, if the Watkins case should be reversed or held not controlling, is obvious. The numerous Federal properties acquired subsequent to 1943, even assuming all conditions for vesting exclusive jurisdiction in the Federal government have been met, would remain under

the State's jurisdiction for the purposes of criminal law enforcement. (See Appendix, Chart V.)

Possible arguments to avoid this result are available. It could be reasoned that the consent statute (Gov. Code, sec. 126) was controlling, at least as to properties acquired for constitutional purposes, under the doctrine that, where two statutes conflict, the specific controls the general. Criminal jurisdictions would be retained only over those lands acquired for purposes other than those listed in Article 1, section 8, clause 17 of the United States Constitution. Of course, it also can be argued that the Legislature only intended to reserve the right to serve criminal process as was held in the Watkins case. Finally, it could be argued that, since all the code sections must be read as a whole, the effect of section 113 was nullified by operation of its companion sections.

It is interesting to note that, though the effect of this wording has been challenged only in the Watkins case, it has arisen on more than one occasion in questions directed to the California Attorney General by law enforcement agencies and military authorities. Like the problem of whether the recording requirement in the 1897 statute applies to acquisitions for constitutional purposes, the issue remains a potential source of conflict until conclusively interpreted by the courts or alleviated by retrospective legislation. (See commentary on proposed legislation, infra.) Repeal of

Government Code, section 113, in 1955 (Calif. Stats. 1955, ch. 1447, p. 2636) has eliminated this difficulty as to future acquisitions.

Before concluding discussion of the reservation of the right to serve process, one other point is deserving of mention.

A few statutes have reserved the right to serve criminal process "without and within" the acquired lands (Calif. Stats. 1854, ch. 26, p. 41; Calif. Stats. 1861, ch. 255, p. 259; Gov. Code, sec. 112). It is even more clear that this wording would effectively retain complete jurisdiction over the ceded area. Such a conclusion is supported by the fact that this wording is used in Government Code, section 112. There is no doubt that in enacting section 112 the Legislature actually intended to retain complete criminal jurisdiction over areas to be ceded as national forests. This is so because the Federal statute authorizing the acquisition of lands for such use specifically reserved to the States criminal jurisdiction over these areas (16 U.S.C. sec. 480). The reservation in section 112 results from an over-abundance of legislative caution, but causes no difficulties. However, the same phraseology in the special statutes consenting to the acquisition of Mare Island in 1854 (Calif. Stats. 1854, ch. 43, p. 48), and of certain lighthouse sites in 1861 (Calif. Stats. 1861, ch. 255, p. 259) could present great difficulties under the doctrine that the statute in force at the time of

acquisition controls the jurisdictions ceded. It is obvious from an historical vantage that the Legislature did not intend to retain criminal jurisdiction in the broad sense over Mare Island, nor did the Federal government so interpret the right it acquired. The remedy to this ludicrous situation was supplied, though probably inadvertently, by the retrospective wording of the 1891 statute.

It is difficult, if not impossible, to retaionalize wordings such as discussed above into complementary, harmonious legislation. Such inaccuracies should be eliminated through retrospective cessions or recessions of jurisdiction and by careful statutory enactment to preserve future acquisitions from being accompanied by such dilemmas.

C. OTHER RESERVATIONS.

1. Taxing Power.

As indicated by Chart II, the first reservation of the State's power of taxation was in the statute of 1919, ceding jurisdiction over the lands contained in Yosemite, General Grant, and Sequoia National Parks (Calif. Stats. 1919, ch. 51, p. 74). This reservation was made in various subsequent specific statutes (see Chart II), and was finally inserted in Political Code, section 34, by amendment in 1939 (Calif. Stats. 1939, ch. 710).

Inclusion in Political Code, section 34, was the logical consequence of the line of cases culminating in James v.

Dravo Contracting Co. (1937), 302 U. S. 134, wherein it was held inter alia that reservation of a State's taxing power is valid either in a statute of consent or a statute of cession.

The State's power to tax persons resident on Federal enclaves was further confirmed by a broad recession of the power to tax enacted by the United States Congress in 1940 (Buck Act, 4 U.S.C. secs. 105-110).

The effect of such a reservation and the 1940 recession is to permit the State and its local sub-divisions to levy personal income taxes on residents of an enclave who otherwise qualify, and to tax the personal property of all residents. It does not permit taxation of property owned by the Federal government, either real or personal.

The most significant problem in this particular area has arisen over the questions of whether the property to be taxed is owned by the Federal government and therefore exempt, or whether it is privately owned and therefore subject to tax. A very recent example is the question of taxing the private interests in what are known as "Wherry Housing Projects" located on military reservations.

The California Supreme Court has recently held that the possessory leasehold interest in such projects is taxable to the private owner thereof, notwithstanding the fact that the property is located within an area under the exclusive jurisdiction of the Federal government and that the reversionary

said is that the acts were mere surplusage, the Federal government ceding jurisdiction it did not have and the State accepting that which it already had.

Also requiring corrective action is the situation discussed in Op. No. NS-3019 (Welfare Legislation, supra), that is, that the statutes of cession and consent concerning Yosemite, Sequoia, and General Grant National Parks (Calif. Stats. 1919, ch. 51, p. 74) do not apply to privately owned property within the boundaries of the parks at the time of cession. Although Op. No. NS-3019 dealt only with regulatory jurisdiction, the possible vast affects of the reasoning are very apparent. Assuming this opinion to be correct, criminal jurisdiction over these private plots would remain in the State. The confusion which results from such diverse control is totally unnecessary. Possibly unwittingly, this dichotomy was averted in the statute ceding jurisdiction over Kings Canyon National Park (Govt. Code, Sec. 119, as interpreted in Peterson v. United States (1951) (9th Cir.) 191 Fed. 2d 154). Here, again, remedial legislation should provide for accurate cessions and recessions of jurisdiction in accordance with the requirements of the State and the Federal agencies involved.

Finally, it is appropriate to note the problem concerning Indian lands within this State. As a matter of legal theory, the same rules apply to Indian lands as apply to other holdings of the Federal government. Unfortunately, the power

of the Federal government to exercise exclusive control over Indians themselves has led our courts into somewhat erroneous analysis of the problem.

There is a tendency to confuse exclusive jurisdiction over lands owned by the Federal government and used as Indian reservations with the exclusive right of the Federal government to legislate on Indian matters. (See People v. Carmen (1954), 43 Cal. 2d 342, 273 Pac. 2d 521, especially the dissent of Carter, J. beginning at page 351.) Absent this error, Indian lands owned by the Federal government are no different than any other lands so owned. Jurisdiction depends on the manner of acquisition and the grants of cession or terms of consent statutes.