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INSTALLATION JURISDICTION

To understand the degree of control a commander has over an Air Force installation, it is necessary to have a basic familiarity with the concepts of title and jurisdiction.

Title

Title in relation to a military installation is virtually the same as in a private real estate transaction: Title simply means legal ownership -- the legal right to the use and possession of a designated piece of property.

- In most cases, the Air Force has title to the property on which its installations are located.
- Some installations, however, sit on leased property.
- The installation Civil Engineer maintains the deed or lease to the installation.
- Questions concerning title to the installation's real property should be referred to the Staff Judge Advocate (SJA).

Jurisdiction

The concept of jurisdiction is separate and distinct from that of title. Jurisdiction includes the right to legislate (i.e., implement laws, rules and regulations) and to enforce those laws.

- Having title does not necessarily include legislative jurisdiction.

Sources of Legislative Jurisdiction

Article I, § 8, Clause 17, of the Constitution confers upon Congress the power to exercise legislative jurisdiction over federal property. The Government can acquire the right to exercise legislative jurisdiction in three ways:

- (1) Purchase and Consent: The federal government purchases the property and the state legislature consents to giving the federal government jurisdiction.
- (2) Cession: After the federal government acquires title to property, the state may cede jurisdiction, in whole or in part, to the federal government. The federal government can, with the consent of Congress, later retrocede jurisdiction back to the state. Prior to 1940, it was presumed that jurisdiction was ceded at the time the government acquired the property. Since 1940, however, there must be an affirmative acceptance of jurisdiction before the federal government will have

legislative jurisdiction. 40 U.S.C. § 255. Check the deed to determine when the federal government acquired the property.

- (3) Reservation: At the time the federal government ceded property to establish a state (particularly in the western U.S.) it reserved some of the land as federal property. In that case, the federal government retained legislative jurisdiction over the property it reserved. Again, check the deed.

Types of Legislative Jurisdiction

The inquiry does not stop with determining if the federal government has legislative jurisdiction. It is also necessary to determine what type of jurisdiction it has. There are four types of legislative jurisdiction:

- (1) Exclusive Jurisdiction: As the term implies, this type of jurisdiction gives the federal government sole authority to legislate. Unless exclusive jurisdiction was reserved at the time land was granted to the state, it is necessary to go back to the state for exclusive jurisdiction. The state may have elected to reserve some authority (for instance, authority to serve civil and criminal process on the property). If the state failed to reserve such authority, it is waived. For some years now, it has been federal policy not to acquire exclusive jurisdiction. While at first blush this may seem odd, there are legitimate reasons for the policy. For instance, state and local authorities may be better able to deal with particular situations -- child welfare services, domestic relations matters, etc. -- than the federal government.
- (2) Concurrent Jurisdiction: Both the state and federal governments retain all their legislative authority. In the event of a conflict, the federal government prevails under the Supremacy Clause of the Constitution. Art. VI, Clause 2, U.S. Constitution.
- (3) Partial Jurisdiction: Both the state and federal government have some legislative authority, but neither one has absolute power. For instance, the state may have reserved the authority to impose and collect taxes or it may have ceded only criminal jurisdiction over the property. Again, federal supremacy applies in the event of a conflict.
- (4) Proprietary Jurisdiction: In this case, the U.S. is like any other party who has only a possessory interest in the property it occupies. The U.S. is simply a tenant with virtually no legislative authority. The federal government maintains immunity and supremacy for inherently governmental functions. The only federal laws that apply are those that do not rely upon federal jurisdiction (espionage, bank robbery, tax fraud, counterfeiting, etc.). The installation commander can exclude

civilians from the area pursuant to the commander's inherent authority. Greer v. Spock, 424 U.S. 828 (1976).

References: Art. I, § 8, Clause 17, and Art. VI, Clause 2, U.S. Const.; 40 U.S.C. § 255; Greer v. Spock, 424 U.S. 828 (1976); AFI 32-9002.