

AMEMU-LO-FR

21 March 1973

Office of the Attorney General
State of Ohio
ATTN: Richard J. Dickinson
Assistant Attorney General
220 Parsons Avenue
Columbus, Ohio 43215

Gentlemen:

Re: Ravenna Army Ammunition Plant
Licensing of Boiler Operators

In reference to your letter of March 15, 1973, inclosed is a copy of a legal memorandum discussing the authorities supporting the opinion of this office that Ravenna AAP is not required to comply with the license requirements for boiler house operators of the State of Ohio. In addition, to the authorities cited in said memorandum, your attention is invited to the following Opinions of the Attorney General of Ohio, as cited in Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Jurisdiction Over Federal Areas Within the States (June 1957): Op. A. G., Ohio, No. 3704 (1941), p. 319; Op. A. G., Ohio, No. 2890 (1940), p. 923; Op. A. G., Ohio, No. 1320 (1937), p. 2255; Op. A. G., Ohio, No. 3042 (1925), p. 783.

If further information regarding this matter is required, please contact this office.

Sincerely yours,

1 Incl
As stated

JOHN E. SOFTCHECK
Counsel, Proc Law Div
Legal Office

AMSMU-LO-PR (13 Dec 72)

SUBJECT: State Inspections and License Requirements Ravenna AAP

TO AMSMU-PP-PGA

FROM AMSMU-LO-PR

DATE 21 Dec 72 CMT 2
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1. Pursuant to the laws of the State of Ohio -- An act of the General Assembly of the State of Ohio approved May 6, 1902 (Ohio Laws, 1902, p. 368), as amended by the act of May 10, 1902 (Ohio Laws, 1902, p. 536), and interpreted by the act of May 12, 1902 (Ohio Laws, 1902, p. 625) -- the United States has exclusive jurisdiction over all land within the Ravenna Army Ammunition Plant. Said jurisdiction was formally accepted by the Federal Government by letters dated 16 July 1942 and 17 April 1943. There appears to have been no subsequent retrocession of jurisdiction.

2. The general rule, derived from both the Supremacy Clause of the United States Constitution (Article VI, Clause 2) and the lack of a reservation of jurisdiction in the state cession or consent statutes, is that activities of the Federal Government are necessarily free from State regulation in a territorial area over which the Federal Government exercises exclusive legislative jurisdiction. The nature of exclusive jurisdiction was discussed in S.R.A., Inc. v. State of Minnesota, 327 U.S. 558, 562-63, 66 S. Ct. 749, 752-53 (1946), where the Supreme Court stated:

"The right of a state to tax realty directly depends primarily upon its territorial jurisdiction over the area. The realty of petitioner had been conveyed to and used by the United States for the essential governmental activities which authorized the exercise of its exclusive legislative jurisdiction. Exclusive legislative power is in essence complete sovereignty. That is, not only is the federal property immune from taxation because of the supremacy of the Federal Government but state laws, not adopted directly or impliedly by the United States, are ineffective to tax or regulate other property or persons upon the enclave."
(emphasis added)

There appears to have been no adoption by the United States of state laws such as the Ohio statute in question requiring inspection and licensing of boiler operators. See DA Fam 27-164, paragraph 8.5. Although the enactment of such a statute must be deemed a valid exercise of the state's police power, such power does not apply to an area under exclusive federal jurisdiction. In Oklahoma City v. Sanders, 94 F.2d 323, 327 (10th Cir. 1938), the court stated:

"Under our federal system, the municipal or state police power having been lodged and reserved in the state, a corresponding power in appropriate cases naturally arises under the general welfare provision contained in the Federal Constitution, article I, § 8, cl. 1.

"The cession of exclusive jurisdiction over premises acquired by the United States government, included the power of regulation

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and control in such matters as ordinarily fall within the police power of the state."

See also McQueary v. Laird, 449 F.2d 608, 612 (10th Cir. 1971), in which it was stated:

"In its proprietary military capacity, the Federal Government has traditionally exercised unfettered control with respect to internal management and operation of military establishments. (citations omitted) Upon cession by a state to the national government of jurisdiction over property to be used for military purposes, the Congress has exclusive jurisdiction to legislate in respect thereto."

3. In an opinion at 31 Comp. Gen. 81 (1951), the Comptroller General held in a case similar to the present one that a state statute prohibiting any person from projecting any motion picture without first obtaining a state license therefor had no application to the United States in the conduct of its activities.

"(T)he test is whether the requirements of the State statute, if applied to the carrying out of a function of the Federal Government, would limit control or regulate the exercise of such function. It is obvious that the requirement of the statute, insofar as the exercise of the activities of the Federal Government is concerned, infringes the right of the Government to conduct such activities free from State interference, control or regulation."

This standard was reaffirmed in the recent case of Lockheed Air Terminal, Inc. v. City of Burbank, 457 F.2d 667 (9th Cir. 1972), which involved a city ordinance prohibiting jet aircraft from taking off at the local airport during certain hours of the day. After holding that the subject matter in question had been preempted by the pervasive federal regulations governing air commerce, the court in Burbank, citing the recent Supreme Court decision in Perez v. Campbell, 402 U.S. 637, 91 S. Ct. 1704 (1971), also held that the city ordinance in question must be deemed invalid because it "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." Similarly, in the present case, the enforcement of the Ohio statute in question at Ravenna AAP presents an obstacle to the execution of the objectives of Congress stated in 10 U.S.C. §4532 (1970), i.e., the production of materials or the maintenance in readiness of facilities needed by the Department of Defense in factories or arsenals owned by the United States.

4. In United States v. City of Chester, 144 F.2d 415 (3rd Cir. 1944), the issue was whether the city could compel a federal agency to comply with local building regulations in building emergency housing to house war workers in the city. There the court stated:

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21 December 1972

SUBJECT: State Inspections and License Requirements Ravenna AAP

"A state statute, a local enactment or regulation or a city ordinance, even if based on the valid police powers of a State, must yield in case of direct conflict with the exercise by the Government of the United States of any power it possesses under the Constitution."

Thus, it was held that the city building requirements had to yield to the applicable Congressional enactment. The same rationale was applied by the Supreme Court in Leslie Miller, Inc. v. State of Arkansas, 352 U.S. 187, 77 S. Ct. 257 (1956) to hold that application of state statutes, requiring procurement of licenses by contractors, to a federal contractor not only interfered with the exercise of Government functions but also was in conflict with federal statutes and regulations (ASPR) promulgated to insure "responsibility" of government contractors. Commenting upon this conflict between state and federal requirements, the Supreme Court stated:

"Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder."
Id. at 190, 77 S. Ct. at 258-59.

With respect to the present case at Ravenna AAP, it is to be noted that the Department of the Army, in AR 420-49, Chapter 5, has prescribed operating personnel requirements for boiler plants and heating systems. Since both the referenced Army Regulation and the Ohio regulation contain classifications based on outputs of plants and since both contain requirements as to frequency of operational visits, the conflict between the two is as readily apparent as it was in the Leslie Miller case, supra.

5. In view of the foregoing legal authorities, Ravenna AAP is not required to comply with the Ohio license requirements for Boiler House Operators.

1 Incl
nc

BRUCE R. HOWAT
CPT, JAGC
Proc Law Div, Legal Office

Re: Ravenna Arsenal
Licensing of Boiler Operators

THE ARMY'S ARGUMENT:

1. The state granted exclusive jurisdiction to the U.S. per H.B. 820, 1902

the General Assembly did grant "exclusive jurisdiction" to the United States over any land acquired w/in this state for custom houses, court houses, post offices, arsenals, or other public buildings, or for any other purposes of the government; such jurisdiction shall vest when the U.S. acquires title to said lands by purchase, condemnation, or otherwise

according to the notes on file of your conversation w/R.R. Emerson, title to the land and buildings of the Ravenna arsenal lies with the United States

a check of Shepard's Ohio Citations, Statute Addition, reveals that there has been no retrocession of the jurisdiction granted under H.B. 820 (Ohio Laws, 1902, p. 368)

2. Pursuant to the Supremacy Clause of the U.S. Constitution, activities of the federal government are free from state regulation in a territorial area over which the federal government exercises exclusive jurisdiction.

S. R. A., Inc. v. Minnesota, 327 U.S. 558

1. properly cited in support of this proposition
2. has not been overruled in any subsequent cases, expressly followed in Guistina v. U.S., 190 F. Supp. 303 (1960)

3. Pursuant to a consistent line of federal court cases, state police powers do not apply to an area under exclusive federal jurisdiction.

A. Oklahoma City v. Saunders, 94 F. 2d 323

1. properly quoted
2. has not been overruled

B. McZueary v. Laird, 449 F. 2d 608

1. properly quoted
2. has not been overruled

C. Lockheed v. Burbank, 457 F. 2d 667

1. properly cited as supporting general premise
2. has not been overruled

D. U. S. v. Chester, 144 F. 2d 415

1. properly quoted
2. has not been overruled; expressly followed in U.S. v. City of Philadelphia, 147 F.2d 291;

- E. Miller v. Arkansas, 352 U.S. 187
1. properly quoted
 2. has not been overruled,
expressly followed in
G.L. Christian and Assoc. v. U.S.,
320 F. 2d 345

of all taxable property within such city, and the proceeds of such levy shall be applied exclusively for the construction of fire engine houses and the equipment thereof; and the council of such city may anticipate the whole or a part of the annual levy for said purposes, by borrowing an amount of money not to exceed in the aggregate the amount that will be raised by said levy of one mill for the years aforesaid, at a rate of interest not to exceed six per cent per annum, and issue bonds therefor, payable on the collection of said taxes.

Bonds in anticipation of levy.

Repeals, etc.

SECTION 2. That said original Sec. (1545-282) (1) shall take effect and be in force from and after its passage

W. S. MCKINNON,
Speaker of the House of Representatives.

F. B. ARCHER,
President of the Senate.

Passed May 6, 1902.

251G

[House Bill No. 820.]

AN ACT

Ceding to the United States exclusive jurisdiction over certain lands acquired for public purposes within this state, and authorizing the acquisition thereof.

Be it enacted by the General Assembly of the State of Ohio, hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom houses, court houses, postoffices, arsenals, or other public buildings whatever, or for any other purposes of the government.

Consent of this state given to acquisition by United States of any land required for purposes of government.

Exclusive jurisdiction over such land ceded to United States; exception.

When such jurisdiction shall vest.

SECTION 2. That exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

SECTION 3. The jurisdiction ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state.

SECTION 4. This act shall take effect and be in force from and after its passage.

W. S. MCKINNON,
Speaker of the House of Representatives.
F. B. ARCHER,
President of the Senate.

Passed May 6, 1902.

252G

[House Bill No. 301.]

AN ACT

To amend section 2496 of the Revised Statutes of Ohio.

enacted by the General Assembly of the State of Ohio: SECTION 1. That section 2496 of the Revised Statutes of the state of Ohio be amended so as to read as follows:

Lighting corporation.

Sec. 2496. Notice of such requirement to light any bridge or railway shall be given at least twenty days before such notice or charge shall be imposed for default, and such notice may be given by delivering to any owner or manager, or any person having possession, charge or management of such bridge or railway, a written or printed copy of the ordinance, provided, however, that when such ordinance requires the lighting of a railway, service of such written or printed copy of the ordinance upon any ticket or agent of such railway company in such city or village, and if there be no such ticket or freight agent in such city or village, upon any ticket or freight agent of such railway company in the county wherein such city or village located, shall be deemed sufficient and shall charge the person, company, corporation, or partnership, owning or operating such railway with notice of the passage of said ordinance and the requirements thereof.

Notice of requirement to light bridge or railway shall be given at least twenty days before such notice or charge shall be imposed for default, and such notice may be given by delivering to any owner or manager, or any person having possession, charge or management of such bridge or railway, a written or printed copy of the ordinance, provided, however, that when such ordinance requires the lighting of a railway, service of such written or printed copy of the ordinance upon any ticket or agent of such railway company in such city or village, and if there be no such ticket or freight agent in such city or village, upon any ticket or freight agent of such railway company in the county wherein such city or village located, shall be deemed sufficient and shall charge the person, company, corporation, or partnership, owning or operating such railway with notice of the passage of said ordinance and the requirements thereof.

SECTION 2. Said original section 2496 of the Revised Statutes of Ohio is hereby repealed, and this act shall take effect and be in force from and after its passage.

W. S. MCKINNON,
Speaker of the House of Representatives.
F. B. ARCHER,
President of the Senate.

Passed May 6, 1902.

253G

[House Bill No. 400.]

AN ACT

To amend section 4364-60 of the Revised Statutes of Ohio.

enacted by the General Assembly of the State of Ohio: SECTION 1. That section 4364-60 of the Revised Statutes of Ohio be amended so as to read as follows:

Labels and marks.

March 15, 1973

Office of the Staff Judge Advocate
U.S. Army Munitions Command
Joliet, Illinois 60434

re: Ravenna Army Ammunition Plant

Dear Sir:

I am writing in an attempt to resolve a controversy which has arisen concerning the licensing of boiler operators at the above-referenced plant.

Briefly, the facts, as I understand them, are as follows: The Ravenna Plant is a venture involving both the federal government and private industry. The personnel who work at the facility are not employees of the federal government.

The Ravenna Plant has several stationary steam boilers, all of which are operated by persons licensed according to Ohio law, with the exception of the boiler in powerhouse #8. At issue is whether such a licensed operator is required for that boiler.

There is apparently no dispute that the boiler in question exceeds thirty horsepower. This being the case, Ohio law requires a licensed operator (see section 4739.04, Ohio Revised Code) unless the exclusion of section 4739.10, Ohio Revised Code, is applicable. The latter section provides that the Ohio statutes requiring licensed operators do not apply to boilers "under the jurisdiction" of the United States.

The enclosed letter dated 11 January 1973 from Mr. R.D. Emerson to Mr. Ronald D. Harris has been forwarded to this office. It indicates that a determination has been made that the "Ravenna AAP is not required to comply with the State of Ohio License requirement for boilerhouse operators."

In view of the dual public-private nature of this enterprise, I would appreciate the reasoning and authorities which have lead to this conclusion.

Your assistance in this matter is appreciated.

Very truly yours,

William J. Brown
Attorney General

Richard J. Dickinson
Assistant Attorney General
220 Parsons Avenue
Columbus, Ohio 43215
614/469-4282

CC: R.D. Emerson
Firestone Tire & Rubber Co.
Division of Examiners of Steam Engineers,
State of Ohio



DEPARTMENT OF THE ARMY CPT Howat/jbm/815-424-2527
UNITED STATES ARMY MUNITIONS COMMAND
Office of the Deputy Commanding General
JOLIET, ILLINOIS 60436

AMSMU-LO-PR

21 March 1973

Office of the Attorney General
State of Ohio
ATTN: Richard J. Dickinson
Assistant Attorney General
220 Parsons Avenue
Columbus, Ohio 43215

Gentlemen:

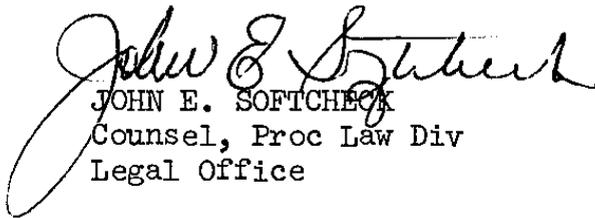
Re: Ravenna Army Ammunition Plant
Licensing of Boiler Operators

In reference to your letter of March 15, 1973, inclosed is a copy of a legal memorandum discussing the authorities supporting the opinion of this office that Ravenna AAP is not required to comply with the license requirements for boiler house operators of the State of Ohio. In addition, to the authorities cited in said memorandum, your attention is invited to the following Opinions of the Attorney General of Ohio, as cited in Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, Jurisdiction Over Federal Areas Within the States (June 1957): Op. A. G., Ohio, No. 3704 (1941), p. 319; Op. A. G., Ohio, No. 2890 (1940), p. 923; Op. A. G., Ohio, No. 1320 (1937), p. 2255; Op. A. G., Ohio, No. 3042 (1925), p. 783.

If further information regarding this matter is required, please contact this office.

Sincerely yours,

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As stated


JOHN E. SOFTCHECK
Counsel, Proc Law Div
Legal Office