



United States Department of the Interior

OFFICE OF THE SOLICITOR

PORTLAND REGION, 1002 N. E. HOLLADAY ST.
P. O. Box 3621, Portland, Oregon 97208

In reply refer to

September 24th 1961

Memorandum

To: Director, National Park Service
Pacific Northwest Region

From: Office of the Regional Solicitor, Portland

Subject: Jurisdiction Regarding Law Enforcement Within Areas
Administered by the National Park Service.

You have asked for our opinion concerning a number of questions dealing with law enforcement within areas being administered by the National Park Service. Your questions relate to whether State laws or Federal laws are applicable within such areas and whether State or Federal law enforcement officials, or both, have authority to enforce such laws.

I. LAWS APPLICABLE DEPENDENT UPON TYPE OF JURISDICTION INVOLVED

To fully answer your inquiries, it is necessary to consider the types of jurisdiction which the Federal Government may possess with regard to lands which are owned or controlled by the United States and are being administered by the National Park Service. There are four types of jurisdiction which the Federal Government may possess with regard to lands owned or controlled by the United States: (1) Exclusive legislative jurisdiction; (2) Concurrent legislative jurisdiction; (3) Partial legislative jurisdiction, and; (4) Proprietary interest only.^{1/}

A. Exclusive Legislative Jurisdiction

If the Federal Government has exclusive legislative jurisdiction over an area being administered by the National Park Service, only Federal laws are applicable within that area, and the State can neither define nor punish crimes within such an area. ^{2/}

^{1/} Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within States, Part II, (1957), hereinafter cited as Report of the Interdepartmental Committee, p. 10-11.

^{2/} Id. at 105-109.

Exclusive legislative jurisdiction is only acquired by the Federal Government where (1) there has been a purchase of land by the United States Government and the State has consented to a transfer of jurisdiction pursuant to Clause 17, Article I, Section 8 of the United States Constitution, or (2) the State has ceded exclusive legislative jurisdiction to the Federal Government, or (3) the Federal Government reserved exclusive jurisdiction over that area at the time the State was admitted into the Union.^{3/} If, in ceding jurisdiction to the Federal Government, the State only reserves the right to serve criminal and civil process in the area, this does not prevent the Federal Government from acquiring exclusive legislative jurisdiction.^{4/}

The laws of the State in which such an area is situated are not applicable and cannot be enforced by State law enforcement officials within the area. However, under the Assimilative Crimes Act, (Title 18, U.S.C., Section 13), the State criminal laws are adopted by reference and become a part of the Federal criminal laws and, as such, are applicable to areas under the exclusive or concurrent jurisdiction of the United States. The Assimilative Crimes Act only adopts State criminal laws as to a particular offense when the Federal Criminal Code has not defined and provided for such an offense, and the Act does not operate so as to adopt any State statutes which may be in conflict with Federal policy as expressed by acts of Congress or by valid administrative regulations.^{5/}

B. Concurrent Legislative Jurisdiction

If the Federal Government and the State Government have concurrent legislative jurisdiction over an area being administered by the National Park Service, the laws of both governments are applicable within such an area and each government may enforce its laws and may try an accused for a violation of its laws without violating the double jeopardy provision of the Fifth Amendment of the United States Constitution.^{6/} Concurrent legislative jurisdiction is acquired by the Federal Government when the State concerned, in transferring jurisdiction to the United States, "has reserved to itself the right to exercise concurrently with the United States, all of the same authority."^{7/}

C. Partial Legislative Jurisdiction

If the United States Government has acquired only partial legis-

^{1/} Id. at 41-45
^{4/} Id. at 118
^{5/} Id. at 126-144
^{6/} Id. at 109-112
^{7/} Id. at 11

lative jurisdiction over an area being administered by the National Park Service, the Federal Government's jurisdiction extends only to those matters which were acquired through the grant from the State, but as to all other matters the State's jurisdiction extends throughout such an area. The Federal Government's jurisdiction as to those matters acquired from the State may be either exclusive or concurrent, depending upon the terms of the grant from the State.

Partial legislative jurisdiction is acquired when " . . . the Federal Government has been granted . . . certain of the State's authority over an area, but the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than the right to serve civil or criminal process in the area. (c.g., the right to tax property)."8/

D. Proprietary Interests Only

If the United States Government has obtained only a proprietary interest in the land within a certain area being administered by the National Park Service, the Federal Government possesses no legislative jurisdiction and such jurisdiction remains with the State. Therefore, the laws of the State in which such an area is located are applicable throughout the area and the State law enforcement officials may enforce State laws within such an area. The Federal Government has no legislative jurisdiction over such an area by virtue of either having expressly reserved jurisdiction at the time the State was admitted to the Union, or by having acquired such jurisdiction from the State.

However, although the United States has only acquired some right or title to the land within such an area, this does not mean that the Federal Government is without power to carry out the functions and the duties assigned to it under the Constitution and statutes of the United States. Article IV, Section 3, Cl. 2, of the United States Constitution grants Congress authority:

" . . . to . . . make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;"

The United States Government has the right to use its real property in such a manner as it may deem necessary to carry out Federal functions. Congress has specifically given the National Park Service authority to regulate the use of National parks, monuments and reservations.^{9/} Moreover, the State's legislative jurisdiction, and the State's authority to enforce State and local laws within such an area, are subject to the Federal supremacy clause of the United States

8/ Id. at 11

9/ Title 16, U.S.C., Sec. 1

Constitution (Article VI, Clause 2) and State laws may not impair or prevent the Federal Government from carrying out its Federal functions.^{10/}

II. PERSONS AUTHORIZED TO MAKE ARRESTS WITHIN AREAS BEING ADMINISTERED BY THE NATIONAL PARK SERVICE

A. Areas Where Federal Government Has Exclusive Legislative Jurisdiction

Title 16, U.S.C., Section 10, entitled "Arrests by Employees of Park Service for violation of laws and regulations" provides in part:

"All persons employed in the National Park Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the national forests and national parks,"

Title 16, U.S.C., Section 10a, entitled "Arrests by employees for violation of regulations made under section 9a" provides:

"The commissioners, superintendents, caretakers, officers, or guards of such national military parks, national parks, battlefield sites, national monuments, and miscellaneous memorials, or any of them, are authorized to make arrests for violations of any of the regulations prescribed pursuant to section 92 of this title, and to bring the offenders before the nearest commissioner, judge, or court of the United States having jurisdiction in the premises. March 2, 1933, c. 180, § 2, 47 Stat. 1420."

The Report of the Interdepartmental Committee, supra at 109, states:

"State and local police have no authority to enter an exclusive Federal area to make investigations, or arrests, for crimes committed in such areas since Federal, not State, offenses are involved. Only Federal law enforcement officials, such as representatives of the Federal Bureau of Investigation and United States Marshals and their deputies could be authorized to investigate such offenses and make arrests in connection with them. The policing of Federal exclusive jurisdiction areas must be accomplished by Federal personnel and an offer of a municipality to police a portion of a road on such an area could not be accepted by the Federal official in charge of the area, as police protection by a municipality

^{10/} Report of the Interdepartmental Committee, supra at 11-12; New Mexico State Game Commission v. Udall, 316 F.2d 1197 (5th Cir. 1969).

through such an area would be inconsistent with Federal exclusive jurisdiction."

Therefore, as to those areas being administered by the National Park Service over which the United States has exclusive legislative jurisdiction, only Federal laws are applicable and only Federal law enforcement officials, such as representatives of the FBI or the U. S. Marshal and the Federal civilian employees of the National Park Service have specific authority to make arrest for violation of Federal laws or regulations.

B. Areas Where the Federal Government Has a Proprietary Interest Only

In those areas administered by the National Park Service in which the United States has only a proprietary interest in the land, the State and local laws extend throughout such areas and only the State and local law enforcement officials have specific authority to make arrests for violation of those laws. The United States Government may not prosecute for crimes committed under State laws. Moreover, Federal civilian employees who may be appointed as guards do not have police powers to arrest for violations of State laws, but possess only the powers of arrest normally possessed by any citizen, unless they have been deputized as a state or local police officer.^{11/}

However, as to those areas being administered by the National Park Service in which the United States has a proprietary interest only, Federal law enforcement officials and Federal civilian employees of the National Park Service have specific authority to make arrests for a violation of Federal laws and regulations relating to the Federal function of administering such National Parks.^{12/}

C. Areas Where the Federal Government and the State Government Have Concurrent Jurisdiction

In those areas administered by the National Park Service where the United States Government and a State Government, each have concurrent criminal jurisdiction, both Federal laws and State laws are applicable. Those persons specifically authorized to enforce Federal laws and regulations, and those persons specifically authorized to enforce state and local laws, may each enforce their respective laws, but neither has any specific authority to enforce the laws or regulations of the other. However, Federal civilian employees may be appointed as State or local police officers, and State or local police officers may be deputized as Deputy U. S. Marshals, thereby obtaining specific authority to enforce the laws of the other government.

^{11/} Report of the Interdepartmental Committee, supra at 114-115.

^{12/} Title 16, U.S.C., Section 10

Moreover, in the case of the National Park Service, it would seem that State or local police officers could be "employed in the National Park Service" and thereby obtain special authority to make arrests for violations of Federal laws and regulations which has been conferred upon all employees of the National Park Service under Title 16, U.S.C., Section 10.

D. Authority of the General Services Administration to Use Local Law Enforcement Agencies to Protect Federal Property

Title 40, U.S.C., Section 318 and 318(b) authorizes the General Services Administration, upon the application of the head of any agency, to utilize the facilities of State or local law enforcement agencies to protect property over which the United States has acquired exclusive or concurrent legislative jurisdiction. The statute is not clear as to whether its provisions are applicable only to Federal property being administered by the General Services Administration or to all property over which the United States has acquired exclusive or concurrent jurisdiction. We think the latter is the proper intent of the statute and that it would be so construed.

II. AUTHORITY OF THE NATIONAL PARK SERVICE TO EMPLOY ADDITIONAL EMPLOYEES TO ENFORCE FEDERAL LAWS AND REGULATIONS DURING AN EMERGENCY LAW ENFORCEMENT PROBLEM

If the National Park Service finds that it needs to supplement the number of persons available to deal with an emergency law enforcement problem, such additional persons should be "employed in the National Park Service" so that they will be specifically authorized to make arrests for violations of the Federal laws and regulations under Title 16, U.S.C., § 10.

We believe that the National Park Service has authority to so employ additional personnel to enforce the Federal laws and regulations during an emergency law enforcement problem. The general provisions of the statute establishing the National Park Service in and of themselves appear to give the National Park Service broad authority to regulate the use of the areas under its administrative jurisdiction. Title 16, U.S.C., Section 1, provides in part:

" . . . The Service [National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (Emphasis added)

In the case of New Mexico State Game Commission v. Udall, 410 F.2d 1197, 1200 (5th Cir. 1959), it was stated:

"Clearly the Secretary has broad authority to promote and regulate the national parks to conserve the scenery and wildlife therein 'in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.' 16 U.S.C., Sec. 1. Anything detrimental to this purpose is detrimental to the park."

In our opinion, the broad authority conferred upon the National Park Service by this statute is sufficient to include authority to employ additional employees on a temporary basis to render special services to deal with and relieve an emergency law enforcement problem within an area being administered by the National Park Service.

IV. REIMBURSEMENT FOR NON-FEDERAL PROPERTY DAMAGED WHILE BEING USED TO RELIEVE AN EMERGENCY LAW ENFORCEMENT PROBLEM

Title 16, U.S.C., Section 17(f) entitled "Property of employee lost, damaged or destroyed while in use on official business; reimbursement of employee" provides:

"The Secretary of the Interior in his administration of the National Park Service is authorized to reimburse employees and other owners of horses, vehicles, and other equipment lost, damaged, or destroyed while in the custody of such employee or the Department of the Interior, under authorization, contract, or loan for necessary fire fighting, trail, or other official business, such reimbursement to be made from any available funds in the appropriation to which the hire of such equipment would be properly chargeable. May 26, 1930, c. 324, § 7, 46 Stat. 382." (Emphasis added)

This provision authorizes the National Park Service to reimburse individuals, a city, county or state, or other owners of equipment which was lost, damaged or destroyed while being used for official business (i.e., to relieve an emergency law enforcement problem) under an "authorization, contract or loan." This would authorize reimbursement for such matters as damage to vehicles, uniforms or other equipment which was brought into a National Park or Monument for the official purpose of being used to relieve an emergency law enforcement problem.

V. CONTRACTUAL ARRANGEMENT SUGGESTED FOR USE OF ADDITIONAL EMPLOYEES AND EQUIPMENT DURING AN EMERGENCY

To assure that those persons rendering special services dealing with an emergency law enforcement situation are deemed to be "employed in the

National Park Service" and that their equipment was hired for official business and use by the National Park Service, we suggest that the National Park Service enter into a contractual arrangement with the local or state law enforcement agencies setting forth generally the special services and equipment which should be provided in the case of an emergency law enforcement problem and the procedures for obtaining such assistance. While any such contract would have to be quite general in its terms, nevertheless, by reducing such an arrangement to writing, it would assist both parties in understanding the problems that might arise under such an arrangement and enable the parties to come to an agreeable arrangement for dealing with such problems.

VI USE OF STATE MILITIA TO ENFORCE LAWS

The organized State Militia or the State National Guard constitute the military forces of a State. In most states, the statutes specifically provide that in the event of a riot, breach of the peace, or other emergency situation, or imminent danger thereof, the Governors of the States have the power to order the use of the State Militia as additional police power to maintain law and order and to protect life and property.^{13/} For example, Section 399.065(1) of the Oregon Revised Statutes provides in part:

"399.065 Ordering Organized Militia into Active State Service; Martial Law. (1) The Governor shall have the power, in case of invasion, disaster, insurrection, riot, breach of the peace, or imminent danger thereof, to order into active service of the state for such period, to such extent and in such manner as he may deem necessary all or any part of the organized militia" (Emphasis added)

Where the organized militia is used to maintain law and order, the Governor may also declare the county or city in which the troops are serving to be under martial law, if in the judgment of the Governor the maintenance of law and order will thereby be promoted.^{14/} The members of the State Militia while being used for such purposes are law enforcement officials of the State. It has been held that until a State Militia unit has been ordered into active Federal Service, the members thereof remain a component part of the State Militia and not the Federal Armed Forces, and hence, they are not Federal employees. Satcher v. United States, 101 F.Supp. 919. (W.D. South Carolina, 1952). Therefore, a State Militia under the direction of a Governor would only have authority to enforce State laws within areas where the Federal Government possessed concurrent or proprietary jurisdiction

^{13/} Washington, RCW 35.05.050; Idaho, Idaho Code 46-601; Oregon, ORS 399.065.

^{14/} Washington, RCW 35.05.050; Idaho, Idaho Code 46.603; Oregon, ORS 399.065(2).

and would have no authority to enforce Federal laws within such an area. Similarly, a State Militia would have no authority within an area under the exclusive legislative jurisdiction of the Federal Government.

To obtain the assistance of a State Militia, a request should be made to the Governor of the State with a complete explanation as to the need to use the Militia to maintain law and order.

VII. USE OF UNITED STATES ARMED FORCES TO ENFORCE LAW

A State Militia may be called into Federal Service and become a part of the Federal Armed Forces. Title 10, U.S.C., 3500, entitled "Army National Guard in Federal Service: Call" provides as follows:

" . . . Whenever . . .

"(1) the United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

"(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States, or

"(3) the President is unable with the regular forces to execute the laws of the United States; the President may call into Federal service members and units of the Army National Guard of any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States, the Territories, Puerto Rico, and the Canal Zone, and, in the District of Columbia, through the commanding general of the National Guard of the District of Columbia. Aug. 10, 1956, c. 1041, 70A Stat. 199."

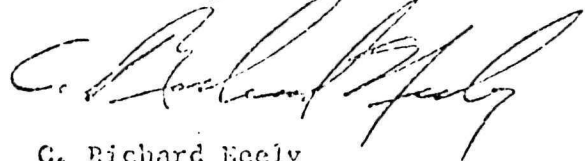
A State Militia upon being ordered into Federal service or the Armed Forces of the United States would have authority to enforce Federal laws and regulations within an area where such laws are applicable.

To obtain the assistance of the Armed Forces of the United States, including the federalization of a State Militia, a request should be made to the United States Attorney for the area in which such special law enforcement assistance is needed and a full and complete explanation of the need to use such Federal Armed Forces to maintain law and order should be given. The U. S. Attorney's Office will contact the Justice Department in Washington, D. C., who in turn will request the

President to provide such assistance. Such requests should be coordinated through this office.

We have attached as an appendix to this memorandum, a summary of the types of Federal jurisdiction which are applicable to the various areas being administered by the National Park Service in the Pacific Northwest Region, excluding Alaska.

For the Regional Solicitor

A handwritten signature in dark ink, appearing to read 'C. Richard Keely', written in a cursive style.

C. Richard Keely
Assistant Regional Solicitor