

10.3 Federal Enclaves

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10.3 Federal Enclaves

Although North Carolina ordinarily has territorial jurisdiction over crimes committed within its borders, in some instances federal law displaces state jurisdiction—namely, when crimes are committed within federal enclaves. As with any defect in territorial jurisdiction, the defendant may make a pretrial motion to dismiss on the ground that the federal government has exclusive jurisdiction over the offense.

A. Definition

A “federal enclave” is a building or geographical area within a state that is under the control of a branch of the federal government and over which the United States government has declared jurisdiction. For example, military installations, federal courthouses, and post offices may be federal enclaves. *See State v. Smith*, 328 N.C. 161 (1991) (Camp Lejeune Marine Corps Base is federal enclave); *State v. Evangelista*, 319 N.C. 152 (1987) (Amtrak passenger car *not* federal enclave because Amtrak is not federal agency or establishment). The federal government has exclusive jurisdiction to prosecute offenses that occur in federal enclaves. *See United States v. Unzeuta*, 281 U.S. 138 (1930); *Smith*, 328 N.C. at 165 (State had no jurisdiction over offenses committed at Camp Lejeune).

So-called “Indian Country” (or territory governed by Native Americans) is not included within the ambit of federal enclaves and is governed by a separate set of complicated jurisdictional rules, the subject of which is beyond the scope of this manual. For more information, see ROBERT L. FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 20 n.70 (UNC School of Government, 5th ed. 2016) [hereinafter FARB]. *See also* Shea Denning, [Criminal Jurisdiction on the Qualla Boundary](#), N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (July 10, 2019).

B. Establishment of Federal Enclaves

On federally controlled lands, there are three broad categories of jurisdiction. First, the federal government may have exclusive jurisdiction, meaning that it has the sole power to prosecute crimes committed on federal lands. Second, federal and state governments may have concurrent jurisdiction, meaning that either government has the authority to prosecute crimes on federal lands. Third, the federal government may retain a proprietary interest only, meaning that the State generally prosecutes crimes committed on federal lands. *See FARB* at 20–23.

The method by which the federal government acquired the land determines the type of jurisdiction. For example, the state may grant land to the federal government. In this instance, the terms of the grant will determine whether the state retains jurisdiction on the ceded land. *See* FARB at 20 n.70. The federal government also may acquire state land by buying or condemning it without the state's consent. When this occurs, the state retains jurisdiction to enforce its laws on the land. *Id.* Last, the federal government may purchase state land or buildings with the consent of the state legislature pursuant to Article I, Section 8, Clause 17 of the United States Constitution. *See also* G.S. 104-7 (giving consent pursuant to federal constitution to acquisition of land by federal government for certain purposes); *State v. De Berry*, 224 N.C. 834 (1945) (noting constitutional basis for federal government's authority to assume control of physical locations).

When the federal government purchases state lands with the consent of the state legislature, the date of acquisition is key to determining whether the state retains jurisdiction to prosecute crimes. For property acquired before 1887, the type of jurisdiction depends on the language of the legislative act giving consent to the federal government to acquire the land. For property acquired between 1887 and 1905, the federal government has exclusive jurisdiction. For property acquired between 1905 and 1907, concurrent federal and state jurisdiction exists. For property acquired between 1907 and 1940, the federal government once again has exclusive jurisdiction. *See* FARB at 20 n.70. During the time periods before 1940 in which the federal government has exclusive jurisdiction, such jurisdiction automatically attached on acquisition of the land.

After 1940 and before May 27, 2005, when the federal government acquired land with the consent of the state legislature, the federal government did not automatically obtain jurisdiction (exclusive or concurrent) over criminal cases. Instead, the United States government must have affirmatively asserted jurisdiction over the site. *See* 40 U.S.C. 3112 (formerly 40 U.S.C. 255; amended in 1940 to require assertion of jurisdiction by U.S. government); *State v. Smith*, 328 N.C. 161 (1991) (State could not prosecute defendant for murders committed at Camp Lejeune military reservation where federal government purchased the land in 1941 and accepted jurisdiction); *State v. Burell*, 256 N.C. 288 (1962) (state court retains jurisdiction over offenses committed at Cherry Point Marine Air Corps Station where U.S. government had not followed statutory procedures to acquire jurisdiction); *State v. Graham*, 47 N.C. App. 303 (1980) (State has exclusive jurisdiction over offense occurring in post office; although federal government operated post office, record did not reveal that it had accepted exclusive jurisdiction).

In 2005, the North Carolina General Assembly amended G.S. 104-7 to give the State concurrent power to enforce its criminal law on lands purchased or otherwise obtained by the United States. This provision appears to apply prospectively to lands obtained by the United States on or after May 27, 2005. *See* FARB at 20 n.70. (G.S. 104-7 was further amended in 2009 to provide that North Carolina's consent is not given to the United States for the acquisition of land for an outlying landing field in a county with no existing military base at which aircraft squadrons are stationed; exclusive jurisdiction over such land acquired by the United States is not ceded to the United States for any purpose.)

Generally speaking, the question of whether jurisdiction has been accepted is one of federal law. If the federal government has exclusive jurisdiction over crimes committed on federal lands, North Carolina is powerless to exercise concurrent jurisdiction. *See State v. Smith*, 328 N.C. 161, 169 (1991) (“Bound as we are by the federal court’s interpretation of this federal question, we must hold that the Superior Court, Onslow County does not have jurisdiction to try the defendant.”).