

OP. NO. 03-034

**BOUNDARIES, JURISDICTION AND EMBLEMS: JURISDICTION
OVER LANDS ACQUIRED BY THE UNITED STATES.**

**WELFARE (SOCIAL SERVICES): CHILD ABUSE AND
NEGLECT.**

**COURTS NOT OF RECORD: JUVENILE AND DOMESTIC
RELATIONS DISTRICT COURTS.**

Virginia courts have jurisdiction to issue and enforce orders pursuant to Juvenile and Domestic Relations District Law for child-protective services cases arising within boundaries of United States Naval Weapons Station. York-Poquoson Department of Social Services is obligated to provide child welfare services within the Naval Weapons Station, including removal and protective orders. Department and local courts shall apply Virginia's current abuse and neglect law. Local courts may order social workers to enter Naval Weapons Station to perform home studies and conduct investigations regarding allegations of abuse, neglect, or delinquency. Any enforcement measures, however, must comply with security requirements of Naval Weapons Station.

Mr. James E. Barnett
County Attorney for York County
March 3, 2004

Issues Presented

You inquire concerning the obligation of the York-Poquoson Department of Social Services to provide child-protective services within the United States Naval Weapons Station, a federal enclave located partly in York County. Specifically, you inquire (1) whether Virginia courts have jurisdiction to issue and enforce orders pursuant to Chapter 11 of Title 16.1 and Title 63.2 for child-protective services cases arising within the boundaries of the Naval Weapons Station; (2) whether the York-Poquoson Department of Social Services is obligated to provide child welfare services, including removal and protective orders, within the Naval Weapons Station; (3) whether state courts should apply current child-protective services statutes or those statutes in effect at the time the Commonwealth deeded the Naval Weapons Station property to

the United States; and (4) whether state courts may order social workers to enter onto the Naval Weapons Station to perform home studies and conduct investigations regarding allegations of child abuse and neglect.

Response

It is my opinion that (1) Virginia courts have jurisdiction to issue and enforce orders pursuant to Chapter 11 of Title 16.1 and Title 63.2 for child-protective services cases arising within the boundaries of the United States Naval Weapons Station; (2) the York-Poquoson Department of Social Services is obligated to provide child welfare services within the Naval Weapons Station, including removal and protective orders; (3) the York-Poquoson Department of Social Services and local courts shall apply current abuse and neglect statutes; and (4) local courts may order social workers to enter the Naval Weapons Station to perform home studies and conduct investigations regarding allegations of abuse, neglect, or delinquency. Any enforcement measures, however, must comply with the security requirements of the Naval Weapons Station.

Background

The United States Naval Weapons Station occupies 10,624 acres in the counties of York and James City and the city of Newport News.¹ The site of the Naval Weapons Station was established in 1918.² On April 1, 1953, the United States and the Commonwealth entered into a Deed of Cession transferring to the Naval Weapons Station an additional 500.90 acres,³ over which the United States has exclusive jurisdiction.⁴ The Deed of Cession includes land in York County.

You relate that Attorneys General in other states have issued opinions concerning whether local child-protective services agencies⁵ have jurisdiction to enter and investigate child abuse and neglect cases on military bases. The Attorneys General of South Carolina, Kansas, and Oklahoma have issued opinions concluding that "state child abuse laws are applicable in areas of exclusive federal jurisdiction."⁶ In an unofficial opinion, however, the Attorney General of Georgia has stated that a juvenile court has no jurisdiction over juveniles who allegedly have committed delinquent acts on military bases.⁷ This Office previously has determined that the United States has exclusive jurisdiction over all property comprising the Naval Weapons Station.⁸ You also include a letter from the Department of the Navy supporting the position that local departments of social services and juvenile and domestic relations

district courts have jurisdiction to investigate and issue orders pertaining to child abuse and neglect of children in Navy housing areas.⁹

Applicable Law and Discussion

Article I, Section 8, Clause 17 of the Constitution of the United States provides that Congress is empowered

[t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings.

Traditionally, the federal government exercises exclusive jurisdiction over persons residing within a federal enclave.¹⁰ The field of domestic relations, including the adjudication of custody of an abused and neglected child, however, is under the purview of the states.¹¹ It is understood that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States."¹² The Supreme Court of the United States has stated:

The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim.^[13]

This reasoning does not conflict with exclusive federal jurisdiction over a federal enclave, since a state may exercise its power over federal areas within its boundaries, provided there is no interference with jurisdiction asserted by the United States.

This reasoning is similar to that adopted in a 1963 Supreme Court case invalidating California's milk price-fixing regulations as applied to purchases of milk for military consumption or for resale at federal commissaries.¹⁴ The Court reasoned that the state regulations conflicted with federal statutes and regulations governing the

procurement, with appropriated funds, of goods for the Armed Services.¹⁵ The Court did not rule out, however, that state law might apply in those areas under exclusive jurisdiction:

Yet if there were price control of milk at the time of the acquisition [by cession] and the same basic scheme has been in effect since that time, we fail to see why the current one, albeit in the form of different regulations, would not reach those purchases and sales of milk on the federal enclave made from nonappropriated funds. Congress could provide otherwise and has done so as respects purchases and sales of milk from appropriated funds. But since there is no conflicting federal policy concerning purchases and sales from nonappropriated funds, we conclude that the current price controls over milk are applicable to these sales, provided the basic state law authorizing such control has been in effect since the times of these various acquisitions.^[16]

Thus, state law may apply in those areas under exclusive federal jurisdiction, if there is no conflicting federal policy, and the state law in question is the same "basic state law" that was in effect when the property was ceded to the federal government.

Although courts have held that issues involving domestic relations fall under the purview of the states,¹⁷ Congress has enacted several laws addressing child abuse and neglect and domestic relations. For example, § 620 of the Social Security Act authorizes grants to the states for "establishing, extending, and strengthening child welfare services."¹⁸ The Act defines "child welfare services" as "public social services which are directed toward the accomplishment of ... protecting and promoting the welfare of all children" and "preventing ... the neglect, abuse, exploitation, or delinquency of children."¹⁹ To qualify for funds allotted under the Social Security Act, a state must demonstrate that it has "a plan for child welfare services which has been developed jointly by the Secretary [of Health and Human Services] and the State agency."²⁰ Similarly, § 5106a of the Child Abuse Prevention and Treatment Act provides grants to states that develop child abuse and neglect prevention and treatment programs. To qualify, a state must have a plan for child welfare services that includes

(i) provisions or procedures for the reporting of known and suspected instances of child abuse and neglect;

....

(iv) procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports; [and]

....

(vi) procedures for immediate steps to be taken to ensure and protect the safety of the abused or neglected child and of any other child under the same care who may also be in danger of abuse or neglect and ensuring their placement in a safe environment[.]^[21]

In addition, the Adoption and Safe Families Act of 1997 places many requirements on a state welfare agency regarding adoption and the placement of children in foster care.²² All branches of the Armed Forces have implemented the Family Advocacy Program to provide a "continuous effort to reduce and eliminate child and spouse abuse."²³ The Family Advocacy Program assists with counseling, prevention, and victim safety, but does not have investigative or enforcement authority.²⁴ Moreover, the Department of the Navy and the Family Advocacy Program actively seek child-protective services from the York-Poquoson Department of Social Services.

Chapter 15 of Title 63.2 governs child abuse and neglect in Virginia.²⁵ Section 16.1-241(A)(1) grants juvenile courts exclusive original jurisdiction over "[t]he custody, visitation, support, control or disposition of a child" "alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested."

Section 63.2-1505 requires that local departments of social services investigate allegations of child abuse and neglect, which requires investigations by local departments of social services into allegations of abuse and neglect. Federal law requires states to provide basic child welfare services to qualify for funds to combat abuse and neglect. The purpose of Virginia's child welfare laws is to protect children against abuse and neglect.²⁶ Moreover, the Department of Defense requires local Family Advocacy Program offices to notify the local public child-protective services agencies in cases of child abuse and neglect.²⁷ Thus, it appears that federal

law does not conflict with Virginia law governing child abuse and neglect. Rather, "[a]ccommodation and cooperation are their aim."²⁸

Prior to enforcing state law in areas with exclusive federal jurisdiction, the basic statutory scheme must have been in effect when the property was transferred to the federal government.²⁹ A review of the state law in place at the time the property was ceded from the state to the federal government demonstrates that the same "basic scheme" remains in place. The same "basic scheme" does not require that the same statutes were in effect at the time of cession, but, rather, that the "basic scheme" determines the reach of state authority.³⁰ At the time of the land transfer, the state possessed the authority under Chapter 12 of Title 63 to take custody and to make and enter orders for the protection of neglected children.³¹ Chapter 12 of Title 63 also granted juvenile courts exclusive original jurisdiction over child neglect matters.³² This power has since been recodified at Chapter 11 of Title 16.1.³³ As noted previously, Virginia's laws governing child abuse and neglect are codified at Chapter 15 of Title 63.2.³⁴ The paramount goal of these laws has been the welfare of children,³⁵ and the same holds true today.³⁶ Although these laws have changed over the years, the basic scheme of investigating, protecting, and taking custody of abused and neglected children remains firmly in place. Therefore, given that the basic statutory scheme was in place at cession and that federal law leaves child protection and safety to the state, it is my opinion that the York-Poquoson Department of Social Services is obligated to provide child welfare services within the boundaries of the Naval Weapons Station.

Finally, you ask whether state courts may order social workers to enter the Naval Weapons Station to perform home studies and conduct investigations of allegations of child abuse and neglect. I conclude that the courts may do so. Having determined that state law regulates and enforces child protection within the Naval Weapons Station, the state courts must be able to use the tools necessary to provide such enforcement.³⁷ Such enforcement measures, however, must necessarily comply with the basic security requirements of the Naval Weapons Station.

Conclusion

Accordingly, it is my opinion that (1) Virginia courts have jurisdiction to issue and enforce orders pursuant to Chapter 11 of Title 16.1 and Title 63.2 for child-protective services cases arising within the boundaries of the United States Naval Weapons Station; (2) the York-Poquoson Department of Social Services is obligated to

provide child welfare services within the Naval Weapons Station, including removal and protective orders; (3) the York-Poquoson Department of Social Services and local courts shall apply current abuse and neglect statutes; and (4) local courts may order social workers to enter the Naval Weapons Station to perform home studies and conduct investigations regarding allegations of abuse, neglect, or delinquency.³⁸ Any enforcement measures, however, must comply with the security requirements of the Naval Weapons Station.

¹ See U.S. Env'tl. Prot. Agency, Mid-Atlantic Hazardous Site Cleanup, Current Site Information, Naval Weapons Station – Yorktown, Site Description, at <http://www.epa.gov/reg3hwmd/super/VA/naval-yorktown/pad.htm> (last visited Feb. 17, 2004); Naval Weapons Station (NAVWPNSTA), Yorktown, Virginia, at <http://www.globalsecurity.org/military/facility/yorktown.htm> (last visited Feb. 17, 2004).

² See *id.*; see also 1918 Va. Acts ch. 382, at 568 (providing authority to cede to United States exclusive jurisdiction over certain lands acquired for public purposes within State of Virginia).

³ You provide with your request a partial copy of the "Deed of Cession" dated April 1, 1953. The certificate of recordation for the Deed of Cession is not attached. Therefore, I may not comment on the site of the recordation of the instrument. The Deed of Cession references the U.S. Naval Mine Depot, Yorktown, Virginia. The Naval Weapons Station originally was commissioned as the U.S. Mine Depot, Yorktown, on July 1, 1918, and on August 7, 1958, was redesignated as the U.S. Naval Weapons Station, Yorktown. See Naval Weapons Station (NAVWPNSTA) Website, *supra* note 1.

⁴ See also Va. Code Ann. § 7.1-21 (Michie Repl. Vol. 1999) (authorizing Commonwealth to cede additional jurisdiction over lands to United States)). The Deed of Cession, however, provides that the Commonwealth reserves jurisdiction and power concurrent with the United States in the 500.90 acres ceded to the United States "to serve civil and criminal process, issuing under the authority of the Commonwealth, by the proper officers of the Commonwealth or its political subdivisions, upon any person amenable to the same within the limits of the ... described land." See also § 7.1-18.1(C) (Michie Repl. Vol. 1999).

⁵In Virginia, each local department of social services is the public agency responsible for establishing child-protective services and identifying, receiving, and responding to "complaints and reports of alleged child abuse or neglect for children under 18 years of age." Va. Code Ann. § 63.2-100 (LexisNexis Supp. 2003) (defining "child-protective services"); § 63.2-1503 (LexisNexis Repl. Vol. 2002).

⁶1986 S.C. AG LEXIS 183 (concluding that deputy sheriff has authority to act pursuant to Child Protection Act as to situations of abuse and neglect occurring on military reservations) (citing 1981 Kan. AG LEXIS 277; 1978 Okla. AG LEXIS 103).

⁷1994 Ga. AG LEXIS 35.

⁸1975-1976 Op. Va. Att'y Gen. 184, 184-85.

⁹See letter from Kevin M. Allison, Counsel for the Naval Support Activity, Office of the General Counsel, Department of the Navy, Norfolk, Virginia, to the Honorable Jerry W. Kilgore, Attorney General of Virginia, at 4 (Apr. 10, 2003).

¹⁰See *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361 (1964).

¹¹*Reno v. Flores*, 507 U.S. 292, 310 (1993) (noting that states possess "special proficiency" in field of domestic relations, including child custody).

¹²*In re Burrus*, 136 U.S. 586, 593-94 (1890), *quoted in* *Boggs v. Boggs*, 520 U.S. 833, 848 (1997).

¹³*Howard v. Comm'rs of Sinking Fund*, 344 U.S. 624, 627 (1953).

¹⁴*Paul v. United States*, 371 U.S. 245 (1963).

¹⁵*Id.*

¹⁶*Id.* at 269.

¹⁷*Ohio ex rel. Popovici v. Agler*, 280 U.S. 379 (1930); *Doe v. Doe*, 660 F.2d 101 (4th Cir. 1981).

¹⁸42 U.S.C.A. § 620(a) (West 2003); *see also* § 621 (West 2003) ("Allotments to States"); *see also In re Terry Y.*, 101 Cal. App. 3d 178, 183, 161 Cal. Rptr. 452, 454-55 (1980).

¹⁹42 U.S.C.A. § 625(a)(1)(A)-(B) (West 2003).

²⁰42 U.S.C.A. § 622(a) (West 2003).

²¹42 U.S.C.A. § 5106a(b)(2)(A) (West 2003); *see also id.* § 622 (setting forth requirements for developing state plans for child welfare services).

²²Act of Nov. 19, 1997, Pub. L. No. 105-89, 1997 U.S.C.C.A.N. (111 Stat.) 2115.

²³NAS Corpus Christi, FFSC Family Advocacy Prevention and Education, at <https://nascc.cnatra.navy.mil/ffscAdvocacy.htm> (last visited Feb. 17, 2004) (quoting OPNAVINST 1752.2A, at 1, *infra* note 24).

²⁴See Department of the Navy, Office of the Chief of Naval Operations, OPNAVINST 1752.2A (July 17, 1996), at http://neds.nebt.daps.mil/Directives/1752_2a.pdf (last visited Feb. 17, 2004).

²⁵Sections 63.2-1500 to 63.2-1529 (LexisNexis Repl. Vol. 2002 & Supp. 2003).

²⁶2002 Va. Acts ch. 747, at 1108, 1197 (setting forth policy of Commonwealth regarding child abuse and neglect in § 63.2-1500, not set out in Virginia Code).

²⁷Department of Defense Directive No. 6400.1, at 6, June 23, 1992, at http://www.dtic.mil/whs/directives/corres/pdf/d64001_062392/d64001p.pdf (last visited Feb. 17, 2004).

²⁸*Howard*, 344 U.S. at 627.

²⁹*Paul*, 371 U.S. at 269.

³⁰*Id.* at 268-69.

³¹See Commw. of Va., Div. of Purchases & Printing, Reorganization of the Code of Virginia (1948) (setting forth § 63-260, effective July 1, 1948).

³²See *id.* (setting forth § 63-259, effective July 1, 1948).

³³ See Va. Code Ann. §§ 16.1-226 to 16.1-361 (LexisNexis Repl. Vol. 2003) (Juvenile and Domestic Relations District Court Law).

³⁴ See *supra* note 25.

³⁵ *Turner v. Children's Home Soc. of Va., Inc.*, 158 Va. 406, 412-13, 163 S.E. 399, 401 (1932).

³⁶ See *supra* note 26 and accompanying text; see also § 16.1-227 (stating intention of Juvenile and Domestic Relations District Court Law "that in all proceedings the welfare of the child ... [is] the paramount concern[] of the Commonwealth").

³⁷ "The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government." *Howard*, 344 U.S. at 627. Where, as is the case here, the federal government intends state action, it concedes to the state the power to enforce such action.

³⁸ Please note, however, that in the interest of national security, child-protective services investigators should work closely with the Navy's Family Advocacy Program to gain access to the Naval Weapons Station. In the case of Navy housing at the Naval Weapons Station, however, such buildings are not in restricted areas.

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