COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

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Dear Ms. Hudson and Mr. Haugh:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether there presently exists between the Commonwealth of Virginia (the "Commonwealth") and the United States of America (the "United States") concurrent jurisdiction over a portion of Joint Base Langley-Eustis, specifically the portion you designate as the Langley Search Facility[1] and the Langley West Gate (the "Designated Facilities").

Response

It is my opinion that, given the absence of a notice of acceptance filed with the Governor whereby the United States has accepted concurrent jurisdiction over the land on which the Designated Facilities are located, the United States does not hold concurrent legislative jurisdiction over the land on which the Designated Facilities are located.

Background

You state that the United States acquired the land on which the Designated Facilities are located through deed and lease sometime after 1940. In the mid-1970s, this Office, in conjunction with representatives of the United States, compiled an Inventory of Jurisdiction (the "Inventory") that indicates the legislative jurisdiction held by the United States over lands acquired by the United States within the

[1] It is my understanding that the Langley Search Facility referenced in your letter is the large vehicle inspection station located near the West Gate of Langley Air Force Base.

Commonwealth.[2] The Inventory indicates that the legislative jurisdiction held by the United States over Joint Base Langley-Eustis is exclusive jurisdiction in some areas and proprietary jurisdiction in other areas.

In addition, this Office is in possession of a map that illustrates the legislative jurisdiction of the United States at Langley Air Force Base (the "Map"). Like the Inventory, the Map indicates that the United States holds exclusive jurisdiction in some areas and proprietary jurisdiction in other areas. The Map shows the land on which the Designated Facilities are located (land that is just east of the intersection of North Armistead Avenue and Sweeney Boulevard in Hampton, Virginia) and the Map indicates that the United States holds proprietary jurisdiction[3] over the land on which the Designated Facilities are located. I am not aware of any written notice whereby the United States has accepted concurrent legislative jurisdiction over the land on which the Designated Facilities are located.[4]

Applicable Law and Discussion

The federal government may exercise four types of jurisdiction over its property located in the state. Federal jurisdiction may be exclusive, concurrent, proprietary, or partial. As this Office previously has explained,

> "Exclusive" means solely to the exclusion of others. "Concurrent" means that State and local law enforcement authorities enjoy jurisdiction equal to that of their counterparts with the United States. "Proprietary" means the State and local authorities enjoy full authority, with their federal counterparts having none. "Partial" means that the State and local authorities enjoy some authority with the federal officers.[5]

Accordingly, all but proprietary jurisdiction afford the federal government some degree of legislative jurisdiction. As the Court of Appeals of Virginia has noted, "[t]he phrase 'legislative jurisdiction' refers to the 'lawmaking power of a state' and 'the power of a state to apply its laws' to a particular set of facts."[6]

For interests in land acquired after 1940,[7] federal law provides that the United States may accept or secure legislative jurisdiction not previously obtained "by filing a notice of acceptance with the

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[2] 1983-84 Op. Va. Att'y Gen. 205.

[3] "This term applies to those instances where the Federal Government has acquired title to an area in a State but has not acquired any of the State's legislative authority." Philip D. Morrison, *Article: State Property Tax Implications For Military Privatized Family Housing Program*, 56 A.F.L. Rev. 261, 273 (2005).

[4] I am also not aware of any written documentation whereby the United States has accepted exclusive jurisdiction over the land on which the Designated Facilities are located.

[5] 1983-84 Op. Va. Att'y Gen. 205, 206, *accord* 1987-88 Op. Va. Att'y Gen. 476, 476-77.

[6] Campbell v. Commonwealth, 39 Va. App. 180, 188, 571 S.E.2d 906, 910 (2002) (citing Adventure Comm'ns v. Ky. Registry of Election Fin., 191 F.3d 429, 435 (4th Cir. 1999) and Willis L.M. Reese, *Legislative Jurisdiction*, 78 Colum. L. Rev. 1587, 1587-94 (1978)).

[7] *Cf.* Markham v. United States, 215 F.2d 56, 58 (4th Cir. 1954), in which, over the defendant's argument that the United States did not have jurisdiction over land acquired in 1919 because the United States had not accepted jurisdiction pursuant to 40 U.S.C. § 255, held that "[t]he provision of that section creating the presumption against acceptance of jurisdiction was added ... by the amendment of February 1, 1940 to section 355 of the Revised Statutes and applies only to lands thereafter to be acquired." 40 U.S.C. § 255, the predecessor statute to 40 U.S.C. § 3112 enacted in 1940, provided: "Notwithstanding any other provision of law, the obtaining of exclusive

Governor of the State or in another manner prescribed by the laws of the State where the land is situated."[8] If the United States does not so accept jurisdiction, then "[i]t is conclusively presumed that jurisdiction has not been accepted."[9] Although Virginia law provides that for "all lands hereafter acquired by the United States, the Commonwealth hereby cedes to the United States concurrent governmental, judicial, executive and legislative power and jurisdiction[,]"[10] there is no provision that prescribes "another manner" for the United States to *accept* jurisdiction. This potential grant of jurisdiction serves only as an offer to the United States that the federal government may then accept. Because no other manner of acceptance is prescribed under Virginia law, the mere recording of a deed without the affirmative act of acceptance of jurisdiction by the federal government does not legally affect any jurisdictional change.[11] Rather, federal law requires that the United States file a notice of acceptance with the Governor in order to obtain concurrent legislative jurisdiction over land or an interest in land that was acquired in the Commonwealth after 1940.

As previously noted, the land on which the Designated Facilities are located was acquired after 1940. I am not aware of any notice of acceptance filed with the Governor of the Commonwealth of Virginia whereby the United States has accepted concurrent jurisdiction over the land on which the Designated Facilities are located. In the absence of such notice of acceptance, "[i]t is conclusively presumed that jurisdiction has not been accepted."[12] Accordingly, I conclude that the United States does not hold concurrent legislative jurisdiction over such land.

Conclusion

Accordingly, it is my opinion that, given the absence of a notice of acceptance filed with the Governor whereby the United States has accepted concurrent jurisdiction over the land on which the

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jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

[8] 40 U.S.C. § 3112(b).

[9] 40 U.S.C. § 3112(c). In *Adams v. United States*, 319 U.S. 312 (1943), the Supreme Court held, "Since the government had not given the notice required by the 1940 Act, it clearly did not have either 'exclusive or partial' jurisdiction over the camp area." *Id.* at 313. The Court further held that notice of acceptance is required to obtain concurrent jurisdiction. *Id.* at 314-15.

[10] VA. CODE ANN. § 1-400 (2011).

[11] "If the United States acquires an interest in property, it does not automatically acquire jurisdiction over it; it must file a notice with the state stating the extent of jurisdiction it is accepting." United States v. Grant, 318 F. Supp. 2d 1042 (2004); *see also* DeKalb County v. Henry C. Beck Co., 382 F.2d 992, 995 (1967) ("In this case the United States has taken no affirmative action to accept jurisdiction over the land. It has done no more than take title by deed."). Section 1-401 does prescribe a manner for the United States to accept additional jurisdiction beyond concurrent jurisdiction; it requires that the United States shall indicate its acceptance by executing and acknowledging the deed of cession, and by admitting it to record.

[12] 40 U.S.C. § 3112(c).

Designated Facilities are located, the United States does not hold concurrent legislative jurisdiction over the land on which the Designated Facilities are located.[13]

With kindest regards, I am

Very truly yours,

Kenneth T. Cuccinelli, II
Attorney General

[13] I note that federal jurisdiction can be obtained easily under Virginia law by giving written notice of acceptance of the jurisdiction to the Governor and meeting the requirements of §§ 1-400 and/or 1-401; my Office stands ready to assist with any such efforts.