



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS



April 25, 1991

FILE NO. 91-017

FEDERAL RELATIONS:  
Jurisdiction of Education  
Programs at Rock Island  
Arsenal

Mr. Richard D. Wagner  
Executive Director  
Board of Higher Education  
500 Reisch Building  
4 West Old Capitol Square  
Springfield, Illinois 62701

Dear Mr. Wagner:

I have your letter wherein you inquire whether the offering of a degree program at Rock Island Arsenal by an Iowa institution of higher education is subject to the approval of the Illinois Board of Higher Education. For the reasons hereinafter stated, it is my opinion that programs offered at Rock Island Arsenal are not within the jurisdiction of the Board of Higher Education.

Any new post-secondary education institutions in the State of Illinois are required to be certified by the Board of

Higher Education (Ill. Rev. Stat. 1989, ch. 144, par. 122) and must obtain authorization from the Board to award degrees in new programs. (Ill. Rev. Stat. 1989, ch. 144, par. 234.) You have stated that St. Ambrose University, an Iowa institution, intends to offer a degree program at the Rock Island Arsenal by agreement with the commanding officer at the Arsenal, who has taken the position that the program need not be approved by the Board of Higher Education.

Jurisdiction over the island of Rock Island, along with smaller, contiguous islands, was ceded to the United States by an Act of the General Assembly effective April 1, 1867, and entitled "AN ACT ceding to the United States of America jurisdiction over certain lands in the county of Rock Island, state of Illinois." (Laws 1867, p. 175) Section 1 of the Act provides:

"Be it enacted by the People of the State of Illinois, represented in the General Assembly,  
That jurisdiction over the island of Rock Island and the small islands contiguous thereto, known as Benham's, Wilson's and Winnebago Islands, and their shores, taken and assigned by the United States for the establishment of an arsenal and armory, be and is hereby ceded to the said United States: Provided, that the commanding officer shall, on application of a competent state officer, allow the execution of all civil and criminal process issued under authority of the state of Illinois on said islands in the same way and manner as if jurisdiction had not been ceded, as aforesaid.

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(Emphasis in original)

This Act apparently has not been codified in the Revised Statutes, but that fact does not alter its validity. (Spangler v. Jacoby (1853) 14 Ill 296.) There appears to have been no attempt in the interim to repeal or modify the Act of cession, and, in any case, such a unilateral action by the State, without the consent of Congress, would be totally ineffective. United States v. Unzeuta (1930), 281 U.S. 138, 50 S.Ct. 284, 74 L.Ed 761.

The Supreme Court stated in United States v. Unzeuta (1930), 281 U.S. 138, 142:

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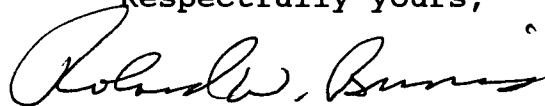
When the United States acquires title to lands, which are purchased by the consent of the legislature of the State within which they are situated 'for the erection of forts, magazines, arsenals, dockyards and other needful buildings,' (Const. Art. I, sec. 8) the Federal jurisdiction is exclusive of all State authority. With reference to land otherwise acquired, this Court said in Fort Leavenworth Railroad Company v. Lowe 114 U.S. 525, 539, 541, that a different rule applies, that is, that the land and the buildings erected thereon for the uses of the national government will be free from any such interference and jurisdiction of the State as would impair their effective use for the purposes for which the property was acquired. When, in such cases, a State cedes jurisdiction to the United States, the State may impose conditions which are not inconsistent with the carrying out of the purpose of the acquisition. [Citations omitted.] The terms of the cession, to the extent that they may lawfully be prescribed, determine the extent of the Federal jurisdiction.

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In the case of Rock Island Arsenal, the State has clearly ceded exclusive jurisdiction to the United States, retaining only the right to the execution of civil and criminal process within the ceded territory. Thus, the State did not reserve the right to control or certify any educational programs which the Federal government or its authorized officers might deem to be appropriate and consistent with the purposes of the United States. Therefore, it is my opinion that the Illinois Board of Higher Education has no jurisdiction to certify or approve a degree program offered at Rock Island Arsenal.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL