

## **INTERSTATE COMPACTS**

### **State Solutions to State Problems**

by John Mountjoy

States are enjoying ever increasing opportunities to work cooperatively to address interstate issues. The last two decades have seen resurgence in the development of new interstate compacts and the revision of existing, though outdated, compacts. As a tool reserved exclusively for the states, interstate compacts can provide states the means to address state problems with state solutions, avoiding federal intervention and preemption.

Interstate compacts are one of the most powerful, durable, and adaptive tools for promoting and ensuring cooperative action among the states. As one of the oldest mechanisms available for states to work together, their use predates the founding of the nation. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure and solution for collaborative and dynamic action among the states.

The very nature of an interstate compact makes it the ideal tool to meet the demand for cooperative state action, to develop and enforce stringent standards and provide an adaptive structure for states that can evolve to meet new and changing demands over time. A distinctly American invention, interstate compacts promote multi-state problem solving in the face of complex public policy and Federal intervention.

#### **Interstate Compacts: General Purposes**

Interstate compacts are contracts between states that carry the force and effect of statutory law. They are a tool for state governments to address regional or national policy concerns. Compacts are not a solution per se, but rather they allow a state to enter into a contract with other states to perform a certain action, observe a certain standard or to cooperate in a critical policy area. The law and use of interstate compacts is not particularly complex. Like any contract, the language of a compact needs to be identical in intent and context, if not identical in exact verbiage between the states.<sup>1</sup> Generally speaking, interstate compacts:

- Establish a formal, legal relationship among states to address common problems or promote a common agenda.
- Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.
- Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.
- Create economies of scale to reduce administrative and other costs.
- Respond to national priorities in consultation or in partnership with the federal government.
- Retain state sovereignty in matters traditionally reserved for the states.
- Settle interstate disputes.<sup>1</sup>

#### **Interstate Compacts: History**

Historically, compacts have been enacted for a variety of reasons, though they were seldom used until the 20th Century. Between 1783 and 1920, states approved 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II. Their purposes range from implementing common laws to exchanging information about common problems. They apply to a range of subject areas from conservation and resource management to civil defense, education, emergency management, energy law enforcement, probation and parole, transportation, and taxes.<sup>2</sup>

Article I, Section 10, Clause 3 of the U.S. Constitution laid the legal foundation for interstate compacts: "No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay." Compacts actually preceded the Constitution, having been used in colonial times to resolve boundary disputes between colonies.

Most interstate compacts cover rudimentary functions, such as regulating boundaries and water rights, and have less than 15 signatories. For example, the Waterfront Commission Compact between New Jersey and New York regulates the practices in handling waterfront cargo in the Port of New York. Illinois and Missouri cooperatively plan the development of St. Louis through the Bi-State Development Agency Compact. Some compacts authorize the establishment of multistate regulatory bodies. The first and most

famous of these is the New York Port Authority, which arose from a 1921 compact between New Jersey and New York. Other agreements are simply intended to establish uniform regulations without creating new agencies.<sup>3</sup>

Prior to the 1920s, interstate compacts were typically bi-state agreements, addressing boundary disputes and territorial claims. In fact, only 36 interstate compacts were formed between 1783 and 1920. It is only in this century that interstate compacts have risen to such prominence and power among the states. States regularly developed and entered into interstate compacts until the late 1970s. Then, in the early 1980s, the use of interstate compacts and the formation of new compacts came to an utter stand still.

In recent years, compacts have grown in scope and number. Today, most are designed for regional or national participation. Examples include the *Emergency Management Assistance Compact* (adopted in 46 states and two territories; designed to enable cooperative emergency response efforts, such as 9/11), the *Interstate Compact for the Supervision of Adult Offenders* (adopted in 33 states since January 2000; designed to update and replace a similar 1937 compact), and the *Interstate Compact for Education* (adopted in 46 states; designed to serve as an information center, forum and advocate for the states on education issues). Other recent compact developments include the Interstate Compact on Industrialized/Modular Buildings and the Interstate Insurance Receivership Compact.

### Compact Case Law

In our federalist society, certain powers are delegated to each level of government. As such, interstate compacts are a tool reserved to the states and approved by Congress. The U.S. Supreme Court — the most widely used enforcement tool for interstate compacts — has affirmed this fact on the rare occasions that compacts have been legally challenged. Of the cases dealing with interstate compacts and compact law, four cases stand out: *Virginia v. Tennessee*, 148 U.S. 503 (1893); *Virginia v. West Virginia*, 246 U.S. 565 (1918); *State ex rel. Dyer v. Sims*, 341 U.S. 22 (1951); and *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959).

*Virginia v. Tennessee* is important for its holding that Congressional consent to a compact may be validly given by implication as well as express action. Congress, by action of forming judicial districts and taking other actions that recognized the Virginia-Tennessee border had, in fact, recognized the boundary compact. Of major significance is the fact that this case established that only certain types of compacts needed Congressional consent, i.e. those that affected the power delegated to the national government or which might affect the “political balance” of the federal system.<sup>4</sup>

*Virginia v. West Virginia* is the lengthiest litigation directly involving compacts and compact law. Following West Virginia’s split from the Commonwealth of Virginia, West Virginia failed to pay its portion of Virginia’s debt as assumed by the compact. The relevance of this case stems from the U.S. Supreme Court’s statement that it would enforce the compact although specific enforcement measures were not described in the compact.<sup>4</sup>

*State ex rel. Dyer v. Sims* recognized that a compact was a contract. Although this concept had been established by previous cases, this more modern interpretation has served to strengthen the principle and contributed to its wider understanding.<sup>4</sup>

*Petty v. Tennessee-Missouri Bridge Commission* held that the interpretation of compact language should be in accordance with the rules of federal substantive law.<sup>4</sup>

Of further note are *Cuyler vs. Adams*, 449 U.S. 433 (1981) and *U.S. Steel Corporation vs. Multistate Tax Commission*, 434 U.S. 452 (1978). The Court reinforced the role of interstate compacts in the relationships between states, as a tool to be used by the states and approved by Congress.

### Compacts on the New Frontier

The devolution of the federal system of government over the last two decades has created opportunities for state cooperation that didn’t exist prior. While states are still challenged by the federal government on wide range of issues, notably transportation, education and health/human services, states have begun a fresh examination of problem solving: one that is driven by the states and ultimately, one that results in solutions developed by the states and among the states.

Not only are new compacts and revised compacts under development, but the way in which states are working to structure these new multi-state agreements has changed. Prior to World War 2, interstate compacts primarily dealt with state boundaries or the sharing of common waterways. Modern compacts differ greatly, tackling broader public policy issues and forging state partnerships for problem solving and cooperation. Interstate compacts provide states the perfect vehicle to address regional and national issues that are affecting their jurisdictions.

While the theory and purpose behind interstate compacts has changed little over the last 226 years, modern compacts differ greatly, tackling broader public policy issues and forging state partnerships for problem solving and cooperation. What also differs is the way in which compacts are structured; seeking out new and innovative ways to enforce compact requirements, develop administrative oversight mechanisms, establish a compact framework that can evolve over time in a changing world, develop self-funding mechanisms for the states and work of the compact and increase the information sharing among the states on a given issue.

1. Enforcement provisions can be specified in the compact language ranging from alternative dispute resolution mechanisms to fines and costs assessment, suspension and termination of membership in the compact and judicial enforcement including claims for injunctive relief, damages and declaratory judgment actions with the prevailing party to recover court costs and attorney fees.
2. A centralized national commission comprised of one voting member/commissioner from each state can oversee the day-to-day activities of the compact, adopt uniform compliance standards and requirements and promulgate rules that all states must follow as determined by the member states. The Commission can also enforce compliance among the member states and resolve disputes among the member states as well as coordinate training, education, and public awareness of the compact and its mechanisms.
3. Rule-making authority and appropriate rule making procedures can be laid down by the compact and implemented by the national commission. Modern interstate compacts are being developed not as stopgap measures, but rather as long-term solutions that can evolve over time, maintaining the ability to change with the needs of the states. If a compact is designed with an appropriate and strong framework, the rules and regulations can be adopted and changed as needed without significantly affecting the relationship among the member states.
4. Development and use of a national integrated information sharing systems can allow states to rapidly gather critical information. Technology and the Internet now make the sharing of information seamless and immediate. The growth of transportation and the shrinking of travel time globally have made several information mechanisms within existing compacts unable to cope with increased loads.
5. A mandatory funding mechanism for the compact to support essential compact operations (full-time staff, data collection, training/education, public awareness, compliance and enforcement) can be developed taking advantage of the economies-of-scale present when several states work cooperatively to solve similar problems and issues.

As public policy issues become more complex and affect more states in our boundary-less world, new interstate compacts could prove to be the answer to several multi-state, regional and national policy problems. States should further utilize interstate compacts to address new problems and create new methods of interstate cooperation. If not, federal preemption in certain policy areas is a distinct possibility.

## Endnotes

<sup>1</sup> Michael H. McCabe, "Interstate Compacts: Background and History" *The Council of State Governments*, 1997

<sup>2</sup> The Council of State Governments, "Interstate Compacts & Agencies" *The Council of State Governments*, 1983

<sup>3</sup> William Voit and Gary Nitting, "Interstate Compacts & Agencies" *The Council of State Governments*, 1998

<sup>4</sup> Frederick L. Zimmerman and Mitch Wendell, "The Law and Use of Interstate Compacts" *The Council of State Governments*, 1976

## Bio

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