GENERAL LEGAL QUESTIONS

CONGRESSIONAL CONSENT

It is the view of the Association that Congressional Consent to the Juvenile Compact is unnecessary under the doctrine of Virginia v. Tennessee, 148 U.S. 503. This decision was followed with regard to the Compact in Chin v. Wyman, et al., #8418-1963, Supreme Court, Westchester Country, New York, December 31, 1963. (See the Court Cases section in this manual.)

Despite the fact that consent is not necessary, bills frequently have been introduced to give consent. Language in these bills often would have hindered the operation of the Compact. Before supporting any Juvenile Compact consent bill, Administrators should write to the Secretariat to see if the bill conforms with the view of the Association.

CONFIDENTIALITY OF RECORDS

Information which is required to be kept confidential under the laws of the sending state cannot be given any wider distribution to personnel of other states than would be possible for similar officials of the sending state. Since the receiving state acts as agent of the sending state, its officials become officers of the sending state for purposes of conducting cooperative supervision. In the absence of specific statutory provisions, the sending state may furnish to receiving state officers the same information which it may give to its own officers in similar circumstances. On the other hand, the receiving state officers in handling Compact cases are likely to be bound by receiving state confidentiality statutes rather than by those of the sending state. Any differences in such statutes as between a particular sending and receiving state might raise questions of policy or law. The release, however, of any juvenile record should be made only by the state or court of jurisdiction.

CONFLICT WITH STATE LAWS

By ratifying a Compact a state assumes certain contractual obligations. A state statute which prevents the fulfillment of these obligations is considered invalid and unenforceable as to Compact cases.[1] In fact, the Supreme Court has ruled that obligations assumed under a Compact cannot be avoided even to accommodate a construction of a state constitution by a state officer.[2] There have not been any Juvenile Compact court cases in which the point of conflict

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[1] Green v. Biddle, 8 Wheat 1 (1823); State v. Hoofman, 9 Md. 28 (1856); President, Managers, C. v. Trenton City Bridge Co., 13 N.J. eq. 46 (1860); State v. Faudre, 54 W.V. 122 (1903); Cf. Coffee v. Groover, 123 U.S. 1 (1887). See Union Fishermen's Cooperative Packing Co. v. Shoemaker, 98 Or. 659, 193 p. 476 (1920).
[2] State ex rel. Dyer v. Sims, 341 U.S. 522 (1951).

with other laws has been tested. However, the Attorney General of Ohio has ruled on conflicting provisions of an Ohio statute regarding importation of children. The Opinion views the Compact as special legislation to which conflicting general statutes do not apply. (See the Attorneys General Opinions section in this manual.)

- Age and Offense

  By adopting the uniform Interstate Compact on Juveniles (the ICJ), the legislature authorized juvenile probation departments to extend their services to any case properly referred to them through the ICJ, regardless of the age of the individual so referred or the nature of the adjudicating offense. Once the state accepts supervision of an out-of-state delinquent juvenile under article VII of the ICJ, juvenile probation officers are required to provide the mandated services. Attorney General of Texas, Opinion No. DM-147. (See the Attorneys General Opinions section in this manual.)

- Substitution of Compact Procedures for Internal Procedures

  The procedural law set forth in the Compact is superior to state law for purposes of the Compact so the usual state procedures do not apply when they are in conflict. It is also reasonable to assume that many state procedural requirements will not apply even though they run parallel to the Compact procedure instead of conflicting with it. The Compact is said to be a self-contained procedural device in that it sets up basic legal machinery and, by Article XII, delegates to the Compact Administrators the authority to promulgate the rules, regulations and forms necessary to implement that machinery. It appears that all procedural requirements should be considered fulfilled if the Compact's basic provisions and the requirements regarding Compact rules, regulations and forms are met. Thus, the forms which are ordinarily used when a juvenile is sent across state lines informally should not be necessary.

ICJ ADMINISTRATORS

- State Authority

  Article VII not only determines when a state must accept supervision under the ICJ, but also provides for a state's voluntary acceptance of supervision in other cases. In the latter cases, the "state", and not the individual probation department, decides whether or not to accept supervision. We conclude that juvenile probation departments must extend their services to any case referred to them through the ICJ. We emphasize that once the state accepts supervision, where such acceptance would not be mandatory under the ICJ, juvenile probation officers are required to provide services under the compact.

Attorney General of Texas, Opinion No. DM-147. (See the Attorneys General Opinions section in this manual.)

- Power of Administrators Over Courts and Officials

  A question was raised at the Eighth Annual Meeting regarding the Compact Administrator's authority to compel courts to follow the terms of the Compact and the rules and regulations promulgated by the Compact Administrators. The Association's counsel said the proper legal remedy would be mandamus, but he pointed out that legal proceedings might not be practical. He suggested that greater efforts should be made to inform courts about Compact procedures, and he also called attention to the possibility of enacting statutes placing responsibility for the channeling of Compact cases in the hands of the Compact Administrators.

LIABILITY OF COMPACT OFFICERS

In 1960, the Attorney General of California ruled that responsibility and liability of California officials for juveniles being supervised for other states is substantially the same as their liability for California juveniles. The Opinion also states that the tort liability for California juveniles being transported from other states by California is substantially the same as their liability for juveniles who are injured while in the custody of the California Youth Authority. (See the Attorneys General section in this manual.)

OFFENSES COMMITTED WHILE JUVENILE IS OUT OF STATE

- Right to Custody

  If, at the time the home state seeks return of a delinquent or non delinquent runaway or Compact supervisee, he is suspected of having committed a crime or act of delinquency in the state in which he is being supervised or has been found as a runaway, the home state may not remove him without the consent of such state. Articles IVa, Va, and VIIa of the Compact.

- Jurisdiction Over Out-of-State Offenses

  If a juvenile has run away from his home state, but then has committed a serious act of delinquency in the asylum state, the probability is that only the court of the asylum state can deal adequately with his case. This matter was discussed at the 1961 Annual Meeting and the Association's Legal Counsel pointed out the difficulty involved in finding a jurisdictional ground for an adequate home state commitment order. The only offense the juvenile has committed at home is the act of running away. Constitutionally a state cannot punish an individual for offenses against another state. While a juvenile proceeding is not considered to be punitive, an institutionalization order based

primarily on an out-of-state act would be questionable. Such an order would have to be based on second-hand knowledge, and the juvenile would be deprived of the opportunity of bringing forward persons who might demonstrate his innocence. A court might well find a civil rights issue in such a commitment despite the traditionally inferior constitutional status of juveniles. The best procedure appears to be for the court where the offense was committed to make an adjudication of delinquency. Then if it is best for him to be in his home state, he can be sent home on supervision under Article VII. It also may be possible to send him home under the Out-of-State Confinement Amendment. See the Operations section of this manual for discussions regarding the Out-of-State Confinement Amendment and Article X.

- Detainers

An informal opinion from the Office of the Attorney General of Pennsylvania holds that persons committed as juveniles to Pennsylvania institutions do not come within the terms of the Agreement on Detainers. The Agreement permits a prisoner of one state to be brought to trial on pending charges in another state at the request of the prisoner or a prosecutor who has filed a detainer against him. The Opinion states that this arrangement is not available in juvenile cases because of the "language of the Agreement, which throughout refers to adult type proceedings."[3]

RIGHTS OF JUVENILES

Traditionally, the constitutional rights of juveniles have been considered to be inferior to those of adults. However, some more recent court decisions indicate that the courts may be more protective of juveniles in this regard in the future. The Compact was drafted with this factor in mind. It provides the juvenile with many basic safeguards, but since it is civil and protective in nature it avoids the need for bail and permits a certain amount of informality with regard to many of the procedural requirements of due process. For a further discussion of this subject, see the Court Cases section of this manual, Rights of Juveniles.

- Due Process

Bail - It has been held that juvenile absconders who are being held pending return under the Compact are not entitled to bail. Smallwood v. Hindle, District Court of Iowa, Black Hawk County, October 11, 1964.

Hearings - Article VII of this Compact provides that the decision of the sending states to retake an interstate supervisee shall be conclusive upon

[3] Informal Opinion of June 21, 1962. F. P. Lowley, Jr., Deputy Attorney General to K. E. Taylor, Bureau of Correction, Pennsylvania.

and not reviewable within the receiving state. Thus, any hearing which is held must be confined to such issues as the authority of the officials to act for the sending state and the identity of the juvenile. Claims that parole has expired, that the juvenile was unfairly designated as a juvenile delinquent or other matters regarding the jurisdiction of the sending state should be determined by the sending state's courts. While there are no court decisions on this language under the Juvenile Compact, this view has been upheld many times under the Interstate Compact for the Supervision of Parolees and Probationers. It is recommended that attention be given to Morrissey v. Brewer in determining hearsay practices.

The situation with regard to delinquent and non-delinquent runaways is less clear since Articles IV and V do not contain the language described above. Theoretically the same view should apply since the Compact was designed to assure each state of a method of retaking its juveniles. It would seem that the asylum state should confine itself to decisions as to whether the requisition if in order and the provisions of the Compact have been followed. Under this view, the juvenile's claim that return is not in his best interest should be tested in the home state where those who have custody are present and the court's staff can verify the facts in the case most easily. There is one court decision opposing this view with respect to non-delinquent runaways. The Supreme Court of Westchester County, New York, has ruled that Article IV of the Compact would be unconstitutional if the Compact were not liberally construed to mean that juvenile runaways are entitled to a hearing in which they may prove that a return to custody will endanger their physical or moral welfare. The decision holds that the Compact does not deprive the New York Court of its traditional jurisdiction as parens patriae of children found in the state despite the domicile of their parents. It also holds that the children have a right to invoke that jurisdiction by habeas corpus if taken into custody or by a petition to the court to do what is best for the welfare of the children. Chin v. Wyman, et al. (See the Court Cases section of this manual.)

Temporary Confinement - The Supreme Court of Westchester County, New York, has ruled that due process is not abridged by temporary confinement under Article IV of the Compact pending inquiry into the facts. Chin v. Wyman, et al. (See the Court Cases section of this manual.)

- Equal Protection

The Supreme Court of Westchester County, New York, has ruled that the Compact does not violate the Equal Protection Clause of the Fourteenth Amendment and that there does not appear to be any unreasonable classification in the Compact. Chin v. Wyman, et al., Supreme Court, Westchester County, New York. (See the Court Cases section of this manual.)

- Privileges and Immunities

  The Compact does not violate the Fourteenth Amendment to the Constitution by depriving juveniles of privileges and immunities if they were properly subjected to the restraint of the Compact. Chin v. Wyman, et al., New York Supreme Court, Westchester County, New York. (See the Court Cases section of this manual.)

  Temporary Confinement. Article IV of the Compact does not violate the Privileges and Immunities Clause of the Fourteenth Amendment by providing for temporary confinement pending hearing. Chin v. Wyman, et al., supra. (See the Court Cases section of this manual.)

RIGHT OF OFFICIALS TO MAINTAIN CUSTODY WHILE TRANSPORTING JUVENILES THROUGH NON-MEMBER STATES

All states, the District of Columbia, the Virgin Islands and Guam are members of ICJ. Articles IV, V and VII of the Compact specifically provide that an officer may transport a juvenile through any party state without interruptions.

U.S. Supreme Court

DYER v. SIMS, 341 U.S. 22 (1951)
341 U.S. 22

WEST VIRGINIA EX REL. DYER ET AL. v. SIMS, STATE AUDITOR.
CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA.
No. 147.

Argued December 5, 1950.
Decided April 9, 1951.

With the consent of Congress under the Compact Clause of the Federal Constitution, West Virginia and seven other States entered into a Compact to control pollution in the Ohio River system. They created a Commission consisting of representatives of each of the eight States and the United States, and agreed to delegate certain powers to it and to appropriate funds for its administrative expenses. The West Virginia Legislature approved the Compact and appropriated funds to defray West Virginia's share of the expenses. In a mandamus proceeding to compel the State Auditor to issue a warrant for payment of these expenses, the State Supreme Court denied relief. It found that the state legislation constituted an unlawful delegation of legislative power and violated the debt limitation provision of Art. X, 4 of the State Constitution. Held:

1. This Court has final power to pass upon the meaning and validity of compacts between states. P. 28.

2. An agreement entered into between states by those who alone have political authority to speak for a state cannot be nullified unilaterally, or given final meaning by any organ of one of the contracting states. P. 28.

3. This Court is free to examine determinations of law by state courts where an interstate compact brings in issue the rights of other states and the United States. Kentucky v. Indiana, 281 U.S. 163 ; Hinderlider v. La Plata Co., 304 U.S. 92 . Pp. 28-30.

4. The fact that the questions as to the Compact are before this Court on a writ of certiorari rather than by way of an original action brought by a state does not affect the power of this Court to decide those questions. P. 30.

5. West Virginia had authority under her Constitution to enter into a Compact which involves only such delegation of power to an interstate agency as the Ohio River Compact presents. Pp. 30-32. [341 U.S. 22, 23]

6. The obligation of the State under the Compact is not in conflict with the debt limitation provision of Art. X, 4 of the State Constitution. P. 32.

134 W. Va. ___, 58 S. E. 2d 766, reversed.
In a mandamus proceeding, the Supreme Court of Appeals of West Virginia held that state legislation authorizing the State's participation in a Compact with other States violated the State Constitution. 134 W. Va. ___, 58 S. E. 2d 766. This Court granted certiorari. 340 U.S. 807. Reversed and remanded, p. 32.

John B. Hollister argued the cause for petitioners. With him on the brief were William C. Marland, Attorney General of West Virginia, Thomas J. Gillooly, Assistant Attorney General, and Leonard A. Weakley.

Charles C. Wise, Jr. argued the cause and filed a brief for respondent.

Briefs of amici curiae supporting petitioners were filed on behalf of the United States by Solicitor General Perlman, Oscar H. Davis, Alanson W. Willcox and Gladys A. Harrison; on behalf of the States of Illinois by Ivan A. Elliott, Attorney General, and Lucien S. Field and William C. Wines, Assistant Attorneys General, Indiana by J. Emmett McManamon, Attorney General, Kentucky by A. E. Funk, Attorney General, and Squire N. Williams, Jr., Assistant Attorney General, New York by Nathaniel L. Goldstein, Attorney General, Ohio by Herbert S. Duffy, Attorney General, William C. Bryant, Chief Counsel to the Attorney General, and W. H. Annat and Hugh A. Sherer, Assistant Attorneys General, and Pennsylvania by Charles J. Margiotti, then Attorney General, M. Vashti Burr, Deputy Attorney General, and Harry F. Stambaugh; and on behalf of the State of Pennsylvania by Charles J. Margiotti, then Attorney General, M. Vashti Burr, Deputy Attorney General, and Harry F. Stambaugh. [341 U.S. 22, 24]

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

After extended negotiations eight States entered into a Compact to control pollution in the Ohio River system. See Ohio River Valley Water Sanitation Compact, 54 Stat. 752. Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia and West Virginia recognized that they were faced with one of the problems of government that are defined by natural rather than political boundaries. Accordingly, they pledged themselves to cooperate in maintaining waters in the Ohio River basin in a sanitary condition through the administrative mechanism of the Ohio River Valley Water Sanitation Commission, consisting of three members from each State and three representing the United States.

The heart of the Compact is Article VI. This provides that sewage discharged into boundary streams or streams flowing from one State into another "shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five per cent (45%) of the total suspended solids; provided that, in order to protect the public health or to preserve the waters for other legitimate purposes, . . . in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, due notice and hearing." Industrial wastes are to be treated "to such degree as may be determined to be necessary by the Commission after investigation, due notice and hearing." Sewage and industrial wastes discharged into streams located wholly within one State are to be treated "to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate state stream immediately above the confluence." [341 U.S. 22, 25]

Article IX provides that the Commission may, after notice and hearing, issue orders for compliance enforceable in the State and federal courts. It further provides: "No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory States; and no such order upon a municipality, corporation, person or entity in any State shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state."

By Article X the States also agree "to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory States . . .."

The present controversy arose because of conflicting views between officials of West Virginia regarding the responsibility of West Virginia under the Compact.

The Legislature of that State ratified and approved the Compact on March 11, 1939. W. Va. Acts 1939, c. 38. Congress gave its consent on July 11, 1940, 54 Stat. 752, and upon adoption by all the signatory States the Compact was formally executed by the Governor of West Virginia on