THE INTERSECTION OF COMPACTS & STATE LAW

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Compacts Generally

Interstate compacts are formal agreements between the states that have the characteristics of both statutory law and contractual agreements. They are enacted by state legislatures adopting reciprocal laws that substantively mirror one another. Since compacts are a statute in each of the jurisdictions which are party to it, the entire body of legal principles applicable to the interpretation of statutes is also applicable to the interpretation of compacts. In addition, compacts are considered contracts because of the manner in which they are enacted. There is an offer (the presentation of a reciprocal law to the state legislatures), acceptance (the actual enactment of the law) and consideration (the settlement of a dispute or creation of a regulatory scheme). This means that the substantive law of contracts is also applicable to compacts.

Compacts without Congressional Consent

Compacts have standing as both binding state law and a contract between the party states such that no one state can unilaterally act in conflict with the terms of the compact. Any state law in contradiction or conflict with the compact is unconstitutional, absent reserve of power to the party states in the compact itself. The terms of the compact take precedence over state law even to the extent that a compact can trump a state constitutional provision (*McComb v. Wambaugh*, 934 F.2nd 474, 479 (3d Cir. 1991 ; *Wash. Metro Area Transit Auth. v. One Parcel of Land*, 706 F.2d 1312, 1319 (4th Cir. 1983)). The contractual nature of a compact controls over unilateral action by a state; no state being allowed to adopt any laws "impairing the obligation of contracts" *(U.S. Const., Art. I, Sec. 10, Clause 1).* However, unlike its congressionally sanctioned counterpart, a compact without the consent of Congress does not "express federal law" and as a result "must be construed as state law." As a result, a compact without congressional consent is inherently subject to conflicting interpretations by the courts of the states which are signatories to the compact. *See, McComb, supra.* Unlike a compact sanctioned by Congress, neither interpretation nor enforcement is subject to the uniform effect of the Supremacy Clause of the U.S. Constitution and is not limited to the review of the federal judiciary. The fact that interpretation of a compact raises a federal question makes proceedings in federal courts as well as state courts possible. Where states retain authority to unilaterally alter a reciprocal agreement, the agreement will generally not rise to the level of a compact enforceable as a contract between states *(Northeast Bancorp v. Bd. of Governors of Fed. Reserve Sys*., 472 U.S. 159, 175 (1985).

Compacts and Congressional Consent

Although the Compact Clause of the U.S. Constitution (*U.S. Const., Art. 1, Sec. 10, Clause 3*) appears to require congressional consent in every case ("No State shall, without the consent of Congress…enter into agreement or compact with another State or with a foreign power…") the Supreme Court has determined that the clause is activated only by those agreements that would alter the balance of political power between the states and the federal government or intrude on a power reserved to Congress (*Virginia v. Tennessee*, 148 U.S. 503 (1893)). Therefore, where an

interstate agreement accomplishes nothing more than what the states are otherwise empowered to do unilaterally, the compact does not intrude on federal interests requiring congressional consent. Once congressional consent is granted and appropriate, the nature of the compact changes. It no longer stands as an agreement between the states but is transformed into the "law of the United States" under the law of the union doctrine (*Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Congressional consent "transforms the States' agreement into federal law under the Compact Clause." Congressional consent, therefore, places the interpretation and enforcement of a congressional approved compact squarely within the purview of the federal judiciary (*League to Save Lake Tahoe V. Tahoe Reg'l Planning Agency*, 507 F.2d 517 (9th Cir. 1974); *See also, West Virginia ex rel, Dyer v. Sims*, 341 U.S. 22, 28 (1951) holding that, "A state cannot be its own ultimate judge in a controversy with a sister state). To determine the nature and scope of obligations as between states whether they arise through the legislative means of compact of the "federal common law" governing interstate controversies, is the function and duty of the Supreme Court of the Nation." This is not to suggest that every dispute arising under an interstate compact must be litigated in the federal courts. Under the Supremacy Clause, state courts have the same obligation to give force and effect to the provisions of a compact as do the federal courts. It is, however, ultimately, the United States Supreme Court that retains the final word on the interpretation and application of congressionally approved compacts given their federalized nature (*Delaware River Comm'n v. Colburn*, 310 U.S. 419, 427 (1940). Based on the compact clause of the federal constitution and the referenced case precedents, the practical effect of congressional consent is that once granted to an interstate compact, it enjoys the status of federal law (*See, Cuyler, supra*.). The administrative rules adopted by the governing body of such a compact function as laws of the United States applicable to the member states under the terms of the Compact and through the operation of the Supremacy Clause (*See, Carchman v. Nash, 473 U.S. 716, 719 (1985)).* Thus obligations imposed by a congressionally sanctioned compact and a duly authorized interstate authority are enforceable on the states and both the compact provisions and any rules and regulations authorized under the compact supercede substantive state laws which are conflicting (*See, West Virginia ex rel Dyer, supra).*