

Welcome to the MIC3 Webinar Series



MIC3 Military Interstate
Children's Compact Commission



October 9, 2014

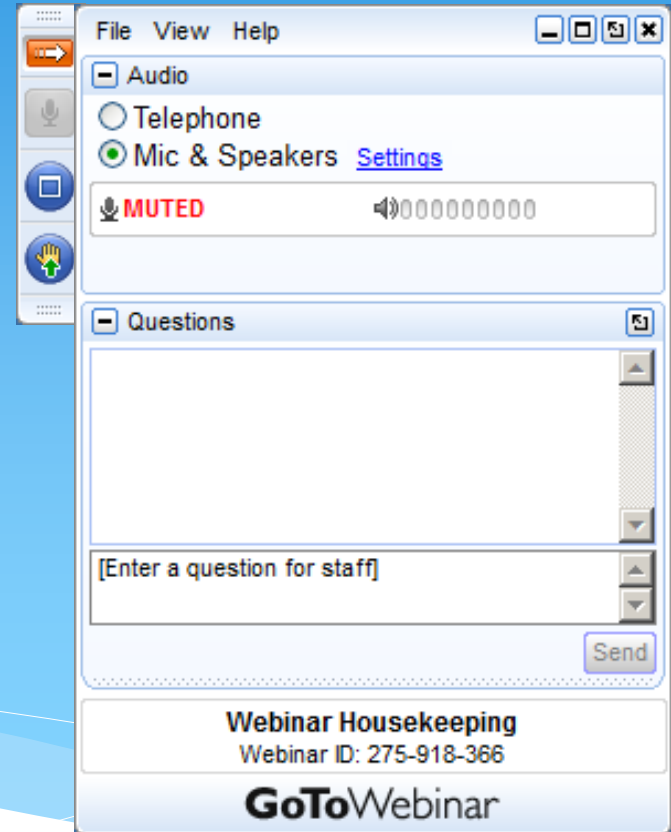
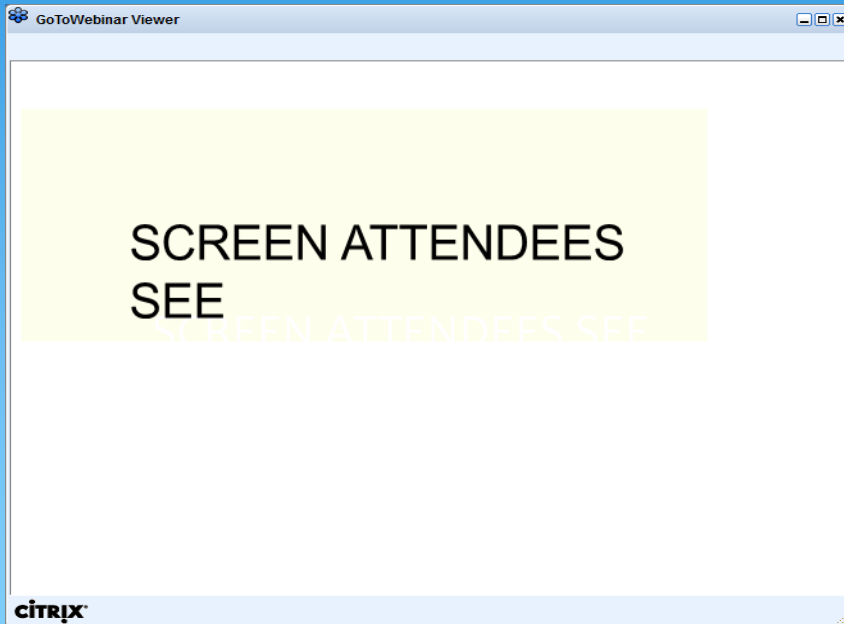
MIC3 Webinar Part IV:

LEGAL FOUNDATION OF THE INTERSTATE COMPACT

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MIC₃ ATTENDEE WEBINAR INFORMATION



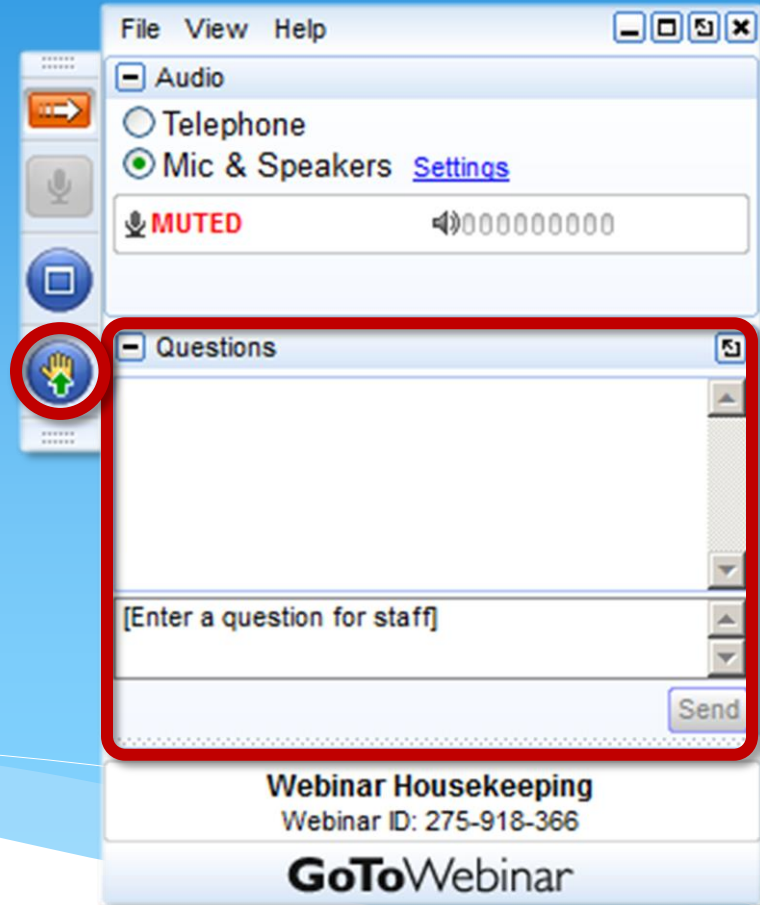
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Your Participation

Submit your text questions and comments using the Questions Panel

Please raise your hand to be unmuted for verbal questions.

Note: Today's presentation is being recorded.



Interstate Compacts

- * Agreements between states authorized under Article I, Section 10, Clause 3 of the U.S. Constitution – the “Compact Clause”
- * “No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State . . . “
- * The U.S. Supreme Court has consistently held that Congressional consent is only required for compacts that tend to increase the political power of the states in a manner that encroaches upon or interferes with the just supremacy of the United States.
[U.S. Steel Corp. v. Multi-state Tax Commission, 434 U.S. 452 (1978)]

Compacts

- * Approximately 200 compacts formed since the founding of the U.S.
 - * About 38 are inactive
 - * On average, each state is a member of 23 compacts

- * Creation of the Port Authority of New York and New Jersey in 1921 signaled a new era in regulatory compacts.



Uses of Interstate Compacts

- * Long history of compacts pre-dates the Constitution
- * Flexibility evident in variety of forms and uses:
 - * Scope: bi-state, regional, national
 - * Creation: negotiated
 - * Purpose: fixed agreements, advisory boards, regulatory entities
 - * Issues: transportation, environment, taxation, education, health, emergency management, corrections and public safety

Uses of Compacts cont.

- * Many well known compacts:
 - * NY-NJ Port Auth. Compact of 1921
 - * Colorado River Compact (1929)
 - * Interstate Compact on the Placement of Children (1960)
 - * Washington Metropolitan Transit Authority Compact (1966)
- * Increasingly common, broader in scope, more frequent use for regulatory purposes.

3 Primary Purposes

- * Resolve boundary disputes;
- * Institutionalize and manage interstate issues pertaining to allocation of natural resources;
- * Create on-going administrative agencies that have jurisdiction over a wide variety of concerns:
 - * State Transportation
 - * Taxation
 - * Environmental matters
 - * Regulation
 - * Education
 - * Corrections
 - * Public Safety

Common Law Contract Principles

- * An offer to enter the agreement is expressed by statutory language enacted by the first state to join the compact and each subsequent jurisdiction accepts this offer by enacting statutory language, which is substantially similar to that enacted by the offering jurisdiction;
- * Once enacted by two or more states, a compact, like any other contractual agreement, is protected from impairment by the states under Article I, Section 10, Clause 1 of the U.S. Constitution;

Common Law Contract Principles

- * Although a state cannot be bound by a compact to which it has not consented, once enacted a compact takes precedence over conflicting statutes of the state;
- * A state cannot unilaterally nullify, revoke, or amend one of its compacts if the compact does not so provide.

Congressional Consent Requirement

Art. I, Sec. 10 (Compact Clause) prohibits states from entering into compacts without the consent of Congress.

* Originally applied to all compacts – now only to those that:

- alter the political balance within the federal system; or
- affect a power delegated to the federal government

-- *Virginia v. Tennessee*, 148 U.S. 503 (1893)

May be express or implied; may be given before or after the compact is created.

Implications of Congressional Consent

- * Transformative effect: equivalent of federal law under the “law of the union doctrine.” *Delaware River Comm’n v. Colburn*, 310 U.S. 419, 439 (1940); *Cuyler v. Adams*, 449 U.S. 433 (1981); *Texas v. New Mexico*, 482 U.S. 124 (1987).
- * Relevant for jurisdictional and interpretative purposes, but also gives compact the weight of substantive federal law.
- * Compacts enforceable under the Supremacy Clause and the Contract Clause.
- * But they remain subject to control of party states, who may amend or repeal them.

Absence of Consent

- * Where not required, the absence of consent does not mean a compact is unenforceable – it remains a contract between the states.
- * Article I, Sec. 10, Cl. 1 “No state shall . . . pass any . . . Law impairing the Obligation of Contracts” (U.S. Constitution, 1789)
- * Enforcement is ultimately achieved in the Supreme Court under its original jurisdiction.

Rulemaking Power

- * Commission rules must be adopted in a manner that is substantially similar to the process of the Model State Administrative Procedures Act.
- * Once adopted, the rules have the force and effect of statutory law and supersede any inconsistent state laws.
- * Majority of state legislatures can reject a proposed rule.

A state legislature's ability to delegate regulatory authority to an administrative agency is "*one of the axioms of modern government*"

-- Justice Felix Frankfurter

Extends to the creation of interstate commissions by compact

-- *West Virginia ex rel. Dyer v. Sims*,
341 U.S. 22 (1951)

Enforcement Power

- * Commission has authority to enforce the compact and its rules upon the states by:
 - * Requiring remedial training
 - * Requiring mediation/arbitration of dispute
 - * Imposing monetary fines on a state
 - * Seeking relief in federal court, most likely by obtaining an injunction to curtail state action or compel compliance

Compact Statute

- Each State has passed similar legislation becoming Signatories to the Interstate Compact.
- Each Commissioner should become very familiar with the language of their State Statute/Code.

Interstate Compact in Law

- * The Interstate Compact is adopted as law by the State Legislature.
- * Certain parts may vary from state to state, but the bulk of the Interstate Compact is the same.

Compact Content

Articles of Focus

- * **Article IV – Enrollment**

- * Educational Records, Immunizations, Entrance Age (Kindergarten)

- * **Article V – Placement and Attendance**

- * Course/Program Placement, Special Education, Placement Flexibility, Absences

- * **Article VI – Eligibility**

- * Enrollment, Extra-curricular participation

- * **Article VII – Graduation**

- * From Receiving State, From Sending State, Exit Exams

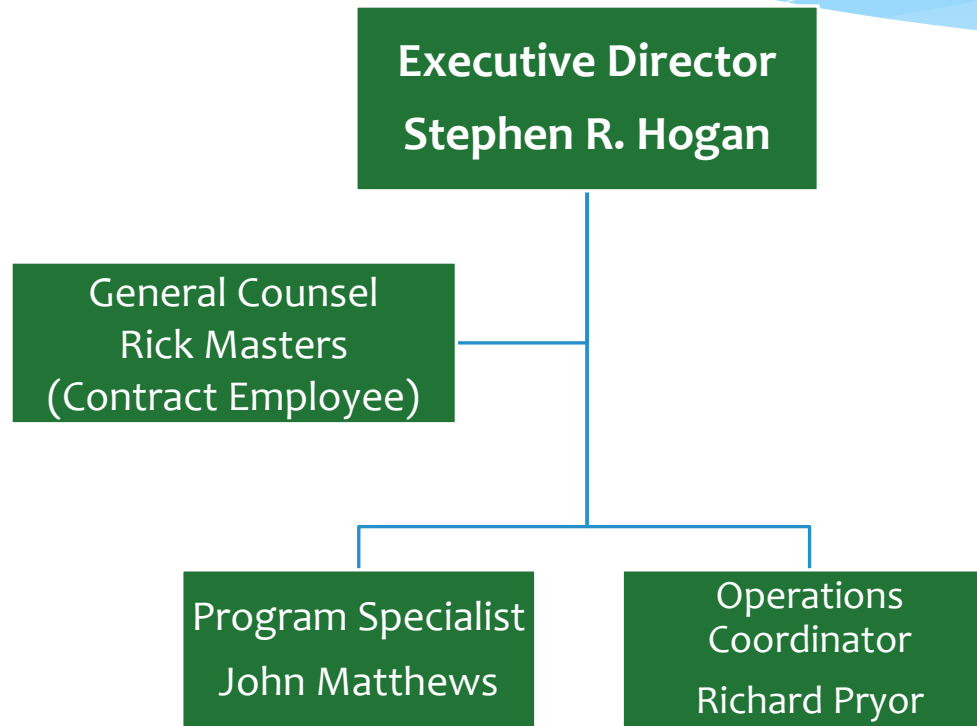
- * **Article VIII – State Coordination**



Governance

- * State coordination is governed by Article VIII of the Interstate Compact.
- * Each State has:
 - State Commissioner
 - State Council
 - Military Family Education Liaison

MIC3 Organization



Services Provided

#1 Priority is to serve the Commission

- * Assist Commission and the Committees in carrying out respective missions/goals
- * Logistical support
 - * Teleconference/Web conferences
 - * On-site Meetings/Trainings



Role of National Office

- * Secretary/Clearinghouse to the Commission

- * Documents
- * Meeting Minutes
- * Commission Business

- * Resource Center

- * Technical & Training Assistance
- * Publications
- * Website
- * Directory of States Compact Offices
- * Legal Assistance/Opinions





**INTERSTATE COMPACT
ON
EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN**

LIABILITY

Types of Public Acts

Generally two categories:

- * **Discretionary:** acts in which the public employee has the freedom to exercise good judgment and care in carrying out an act. These acts are not mandatory in the sense of imposing an affirmative duty.
- * **Ministerial:** acts that a public employee is required by law to fulfill. Most often these acts are defined by “shall”; they impose a mandatory duty without regard to discretion.

MIC 3 Does Not Confer a Private Right of Action by a Student or Parent

- * Without explicit language in the compact an intent to confer an individual right of action is not presumed. *Doe v. Pa. Bd. Of Prob. & Parole*, 513 F.3d 95 (2008).
- * Art. IX J of the compact clarifies that the compact "shall not be construed to create a private right of action against the Interstate Commission or any member state."
- * Art. XI D.1 limits liability of MIC 3 commissioners, agents, & employees to that of other state officials, employees, and agents.

Civil Rights Liability Limited

- * *Doe v. Pennsylvania Board of Probation and Parole*, 513 F.3d 95 (3rd Cir. 2008) An interstate compact doesn't create a federally enforceable right under 42 U.S.C. §1983 for those subject to its provisions (individual military student or family).
- * *M.F. v. State of New York*, 640 F.3rd 491 (2nd Cir. 2011) (adopts the *Doe* rationale in the 2nd Cir.)



QUESTIONS?

Contact

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Presenters



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