



MILITARY INTERSTATE  
CHILDREN'S COMPACT  
COMMISSION

**Legal Memorandum**

**To: Compact Commissioners and Designees**  
**From: Rick Masters, General Counsel**  
**Re: The Compact and National Guard & Reserve Dependents**  
**Date: Published May 12, 2021, Revised February 18, 2022**

The MIC3 Executive Committee has requested a legal memorandum analyzing the extent of the authority and discretion of the MIC3 Commission as well as the responsibility of the member state councils with regard to the advocacy of the U.S. Department of Defense (USDOD) and the Military Child Education Coalition (MCEC) which are encouraging MIC3 state councils to adopt a military school award recognition "Purple Star" program which is not a program developed or required by the Commission.

Notwithstanding the fact that this program is not a requirement or policy of the Commission which the member states are obligated to adopt, in the past, some states have sought funding from the Commission to support the implementation and ongoing activities of their individual state councils. As a consequence, a number of related concerns have been expressed concerning this matter including the following:

- Several commissioners are concerned that they and their councils are being pushed to adopt the program.
- While worthwhile, the question has been raised as to whether the program is beyond the scope of the compact and ability for commissioners to coordinate/fund. Adoption of the program would also require more resources and staff to oversee and implement (depending on the state).
- Only a few state councils have designated limited funding, which covers: compact dues, and perhaps travel costs for council members to attend meetings. A majority of states have not allocated funding for councils or commissioners to implement the compact.
- Overall, there is concern that the USDOD advocacy for MIC3 state councils to adopt this program will reduce focus on the compact's implementation efforts.

- The DOD Representative to the Commission, Chuck Clymer, was made aware of this conflict and has stated the USDOD felt the compact was important and would not want to distract from the compact efforts. He is following up with his leadership and next steps.

Accordingly, the Executive Committee has requested legal guidance on the following questions with regard to the authority and discretion of the Commission and the member state councils.

1. **What is the legal authority of the compact commission?**
2. **Under the legal authority, what are the role and responsibilities of:**
  1. **the compact commission**
  2. **member states**
  3. **the state council**
3. **Does the commission, states and/or state councils have the authority to extend their role and responsibilities?** For example, implement and/or coordinate a non-commission or activity.

**Response:** I believe that all of the above questions ultimately are determined by reviewing the legal authority of the Commission. The Powers and Duties of the Commission are set out in Art. X, A-T of the Compact and are listed as follows:

- A. To provide for dispute resolution among member states;*
- B. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact;*
- C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;*
- D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;*
- E. To establish and maintain offices which shall be located within one or more of the member states;*
- F. To purchase and maintain insurance and bonds;*
- G. To borrow, accept, hire, or contract for services of personnel;*
- H. To establish and appoint committees including but not limited to an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;*
- I. To elect or appoint such officers, attorneys, employees, agents, or consultants and to fix their compensation, define their duties and determine their qualifications to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;*

- J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of them;*
- K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, whether real, personal, or mixed;*
- L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;*
- M. To establish a budget and make expenditures;*
- N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission;*
- O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;*
- P. To coordinate education, training, and public awareness regarding the compact, its implementation, and operation for officials and parents involved in such activity;*
- Q. To establish uniform standards for the reporting, collecting, and exchanging of data;*
- R. To maintain corporate books and records in accordance with the bylaws;*
- S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and*
- T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.*

Nothing in the above provisions specifically requires or authorizes the Commission to develop, support, or fund an activity such as the Purple Star program. However, Art. X, Subsection S. provides that the Commission has the power “To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;”

This is a deliberately broad power which was included to permit the Commission to exercise broad discretion to determine functions which are necessary or appropriate to achieve the compact’s purposes but are too numerous to mention.

It is also a common type of provision in governing documents and an acknowledgement that there are many activities in which an agency such as the Commission may engage and to give the governing body the authority to do so without fear of exceeding their legal authority.

Thus, the Commission is not required to actively support or fund an activity such as the Purple Star Program, it has the discretion to do so based upon factors which include the relevance of such a program to the purposes of the organization as well as the organizational priorities, and both human and economic resources required to develop, implement, and sustain such a program.

In determining the meaning of such a clause, as used in a federal statute, the U.S. Supreme Court has opined that in deciding whether an agency action was “necessary and appropriate”

that the agency had to consider cost in making this determination. See *Michigan v. EPA*, 576 U.S. 743 (2015).

While both the member states and the State Councils certainly have input into matters that relate to the purpose and mission of the MIC3 Commission, it is the Commission which has the ultimate authority to exercise its discretion and it must do so in a manner that does not detract from its primary duties of administering the MIC3 Compact in removing barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents.

As provided in Article IX E. of the compact the MIC3 Executive Committee has the authority and the duty to act on behalf of the Commission with regard to the exercise the discretion afforded to the Commission with regard to the nature and extent of its support for the Purple Star Program, including the consideration of requests by member states for funding to implement such programs.