

	<p>Number: 1-2025</p>
<p>Advisory Opinion issued by: Cherise Imai, Executive Director Samantha Nance, General Counsel</p>	<p>Dated: December 10, 2024 Approved: January 16, 2025</p>
<p>Requestor: State of Tennessee</p>	
<p>Description: Does a conflict of interest arise when an ex-officio member serves on the Finance Committee?</p>	

I. Background

Pursuant to Article X, Section C. of the Interstate Compact on Educational Opportunity for Military Children (hereinafter 'Compact') the Commissioner from the State of Tennessee has submitted a request for an advisory opinion concerning clarification of an issue pertaining to the Compact and Conflict of Interest guidance.

II. Issue

The Commissioner from Tennessee has requested a legal advisory opinion concerning whether ex-officio members of the Commission are authorized or otherwise permitted to serve on the Finance Committee due to concerns regarding a conflict of interest.

III. Applicable Compact Provisions, Rules, or Law

A. ARTICLE IX of the Compact, in pertinent part, provides as follows:

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

...

C. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and other interstate compacts affecting the education of children of military members.

B. Article X of the Compact, in pertinent part, provides as follows:

The Interstate Commission shall have the following powers:

...

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; **and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.**

...

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(emphasis added).

C. Article XI of the Compact provides, in pertinent part:

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;
2. Establishing an executive committee, and such other committees as may be necessary;
3. **Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;**
4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;
6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.
7. Providing "start up" rules for initial administration of the compact

(emphasis added).

D. All member states' laws conflicting with the Compact are superseded to the extent of the conflict. Compact, Article XVIII, Par. A.2.

E. All lawful actions of the Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states. Article XVIII, Par. B.1.

F. The Commission will include ex-officio, non-voting representatives who are members of interested organizations. Military-oriented, military family, education-oriented, and parent and teacher organizations are welcome to petition the Commission for inclusion as an ex-officio member. Commission members may also petition on behalf of a group for ex-officio membership. All petitions must be approved by a simple majority vote of the Commission membership. Bylaws, Art. II, Sec. 3.

G. "Applications will be reviewed by the Executive and Communications & Outreach Committees to ensure organization alignment and a conflict of interest does not exist." 2-2023 MIC3 Ex-Officio Organization Application Process, Sec. II, Cl. C.

H. The Commission may establish such other committees as it deems necessary to carry out its objectives, which shall include, but not be limited to Finance, Rules, Compliance, Training, Communications and Outreach, and Leadership Nomination. **The composition, procedures, duties, budget and tenure of such committees shall be determined by the Commission.** Bylaws, Art. VII, Sec. 2. (emphasis added).

- I. A Conflict of Interest is a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary personal interest economic or otherwise. Concerns over conflicts of interest should be brought to the attention of the Chair of the Commission for consideration by the Executive Committee. The Executive Committee will determine if any of the provisions of the Commission's policy on Conflicts of Interest have been violated and decide the appropriate action, if any. Policy 2-2019, Section IV; Section VII.
- J. 4-2019 Ex-officio Representative Role and Conduct, Section IV provides, in pertinent part:
 - A. *Each Ex-officio representative may only serve on one committee as assigned by the Chair of the Commission, or as provided by the by-laws.*
 - B. *No Ex-officio shall serve on the Leadership Nomination Committee or any subsequent committee that is dedicated to identifying MIC3 leaders and monitoring the election of MIC3 officers.*
 - C. *Ex-officio representatives may not be included in the Committee Chair's count when determining the number of committee representatives needed for a quorum.*
 - D. *Ex-officio representatives serving on a committee shall have the right to participate in debates and discussions before the Commission or their assigned committee.*
 - E. *Ex-officio representatives are expected to refrain from participating in debate upon a matter that the Ex-officio has a direct or indirect financial or other personal interest, resulting in a personal benefit that conflicts with the conduct of his or her duties.*
 1. *Should an Ex-officio representative believe a conflict of interest exists, they should announce to the committee or the Commission that they are recusing themselves from the debate.*
 - F. *The Ex-officio representative must sign the MIC3 Conflict of Interest Disclosure Form unless their organization has a similar Conflict of Interest Policy and Conflict of Interest Disclosure Form signed by the Ex-officio. In this event, the Ex-officio shall furnish a copy of this form to the Commission.*
 1. *The U.S. Department of Defense Ex-officio member serving as the liaison to MIC3 shall be exempt from signing such Conflict of Interest form, however, they remain subject to the regulations and policies of the U.S. Department of Defense.*

IV. Review and Analysis

Compacts are created when two or more states adopt materially identical statutes which set forth the terms of the underlying agreement between them. Other states may join the Compact by enacting materially identical compact statutes. Once the required number of states has adopted such laws, the "contract" among them is valid and becomes effective as provided. The compact represents an agreement between the States to share their sovereign power, and as such its rules supersede any conflicting state statute and/or policy. The legislative authority set forth in the Compact, therefore, provides the authority for the Commission to promulgate further Rules, Bylaws, and Policies to carry out all manner of issues arising under the Compact. Such lawful actions of the Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states. Article XVIII, Par. B.1. While a compact without Congressional consent does not supersede federal law, it does supersede other state law to the extent of any conflict. Compact, Article XVIII, Par. A.2. Thus, the source of law governing conflicts of interest in the context of Commission participation—to the extent not specifically set forth in the Compact statute—are those relevant Rules, Bylaws and Policies duly adopted by the Commission itself.

As set forth hereinabove, the Compact not only authorizes but directs that the Commission's membership include ex-officio, nonvoting representatives who are members of interested organizations. In carrying out this statutory mandate, organizations may petition to be admitted as an ex-officio member, at which time the Executive Committee and the Communications & Outreach Committees review such petitions to ensure organization alignment and to confirm that a conflict of interest does not exist. 2-2023 MIC3 Ex-Officio Organization Application Process, Sec. II, Cl. C. Once submitted to the Commission for approval, such organizations are approved by the Commission by majority vote. Bylaws, Art. II, Sec. 3.

Further, the Compact statutorily empowers the Commission to form committees and adopt bylaws to carry out the functions of the Compact and the business of the Commission. Pursuant to this authority, the Commission has adopted bylaws affirming the admission of ex-officio, nonvoting members, establishing committees, and otherwise establishing policies and procedures for the implementation of execution of the foregoing.

In carrying out these statutory directives, the Commission has admitted ex-officio members and formed committees, including but not limited to the Finance Committee. They have also adopted a Conflict of Interest Policy and a Policy governing Ex-officio Representative Role and Conduct.

Based upon all the foregoing sources of authority, Committee members (whether ex-officio or not) are expected to announce their recusal and refrain from debate if there is a conflict of interest as defined in the policies. It is noted that both the Compact itself and the Rules promulgated thereunder are silent as to the specific issue of ex-officio participation in committees, other than to otherwise empower the Commission to adopt bylaws and policies to govern same. At this juncture, the Commission has adopted such Bylaws and Policies, but neither the Bylaws nor the Policies prohibit ex-officio participation on the Finance Committee.¹ Other than the prohibition on ex-officio representatives serving on the Leadership Nomination Committee, neither the Compact, Rules, Bylaws or Policies provide a blanket prohibition on participation in a particular Committee.

Thus, under the foregoing Compact authority, participation of an ex-officio member on the Finance Committee is not an inherent Conflict of Interest, so long as the representative otherwise adheres to policies 2-2019 and 4-2019 regarding conflict disclosure and recusal.

Specific concerns regarding a particular conflict issue should be referred to the Executive Committee for determination. Policy 2-2019, Section VII.

Finally, it is emphasized that this analysis is limited to Commission participation based upon the controlling authority related directly to the Compact. To the extent that any Commissioner is otherwise subject to a conflict of interest law or policy that is a creation of a separate employer or state statute not otherwise inconsistent with the authority set forth herein, such authority may be equally applicable to such Commissioner.²

V. Conclusion

In summary, based on the relevant provisions of the Compact, referenced authorities and analysis, the foregoing provisions of the compact and relevant law do not implicate applicable conflict of interest policies and procedures or applicable Kentucky law.

¹ It is noted that the Commission has previously considered the conceptual issue of the ex-officio role on Committee work and prohibited ex-officio participation on the Leadership Nomination Committee in Policy 4-2019; however, the Commission has refrained from instituting any such prohibition on the other committees of the Commission.

² By way of example only, if a Commissioner's regular employment is with a state, local, or municipal agency in addition to their role as a Commissioner, such Commissioner may also be required to adhere to their employer, locality, municipality and/or state's laws and policies regarding conflicts related to governmental employees and/or public officials. However, such hypothetical and varied analyses are outside of the scope of this advisory.