

March 2, 2010 Interstate Compact on Educational Opportunity for Military Children

January 6, 2010

Honorable Nathan P. Cote
State Representative
P.O. Box 537
Organ, NM 88052

Re: Opinion Request--Interstate Compact on Educational Opportunity for Military Children

Dear Representative Cote:

You have requested our advice whether the adoption of the Interstate Compact on Educational Opportunities for Military Children ("Compact") would conflict with New Mexico law. As discussed in more detail below, we have examined the Compact and do not believe that any irreconcilable conflict exists.

The Council of State Governments, in cooperation with the U.S. Department of Defense, has drafted the Compact to address educational problems, such as eligibility, enrollment, placement and graduation, that children of military families confront when transferring to new schools when their parents are assigned to a new military base location. This Compact would facilitate timely enrollment, the student placement process, eligibility for participation in academic and extracurricular activities and on-time graduation. The Compact also provides for a central governing entity, a method of financing the created governing entity, and enforcement and compliance mechanisms.

Eleven states have thus far joined the Compact by legislatively enacting the Compact. The Compact is effective at this point, because the minimum number of ten states have joined. New Mexico has not yet enacted the Compact.¹

We address some of the more significant provisions of the Compact:

(1) State Council. Article 8 of the Compact requires a member state to either use an existing body or board or create a state council, whose purpose would be to coordinate compact compliance among governmental agencies, local education agencies and military installations.

The state council would also appoint a military family education liaison to assist military families in implementing the compact. A state council, if created, must include among its membership a "representative of the legislative branch." The term "representative" likely means a member of the legislature. Under Article IV,

Section 28 of the State Constitution, a member of the legislature may not also occupy a “civil office” in the state, which includes positions on boards of state agencies. See N.M. Att’y Gen. Op. 83-11 (1983) (member of the legislature could not be appointed to Podiatry Board, because the office of board member is a “civil office” for purposes of Article IV, Section 28). Article IV, Section 28 is not an insurmountable barrier because the Compact provides, at Article 18 (E), for invalidation of any provision of the Compact that exceeds the state’s constitutional limits imposed on any member state. Therefore, the Compact would not necessarily require the appointment of a member of the legislature to the state council, were it created.

(2) Method of Financing. Article 14 provides for the financing of the Interstate Commission under the Compact. The commission may levy and collect annual assessments from each member state to cover the cost of operation and activities of the commission. The assessment amount is based on a formula determined by the commission.

In State ex rel. Dyer v. Sims, 341 U.S. 22 (1951), the United States Supreme Court refused to allow West Virginia to withdraw from its interstate water pollution compact despite West Virginia’s argument that its compact was invalid as creating unconstitutional debt as it required West Virginia to make a continuing appropriation for its share of salaries and administrative expenses of that commission. Thus, the New Mexico Legislature should be aware that it may likely be required under this Compact, for the duration of the state’s membership, to make annual appropriations to finance its share of the administrative cost based on the commission’s formula.²

However, the State is not irrevocably bound to continue participating in this Compact. It may withdraw by repealing the compact statute pursuant to Article 16, although any repeal is not effective until a year later, and the State remains responsible for all assessments and liabilities through the effective date of withdrawal, including those obligations that extend beyond the effective date of withdrawal.

It is the prerogative and responsibility of the State Legislature under Article IV, Section 30 of the State Constitution to appropriate money from the treasury. Any deficiency in necessary appropriations could result in litigation, although the Compact does contain a provision at Article 18, invalidating any provision that exceeds the State’s constitutional limits imposed on any member state. Any continuing appropriations obligations, however, are circumscribed by the ability to withdraw should the State choose to do so.

(3) Public School Code. The Compact, if enacted, will be law. See In re Alexis O., 959 A.2d 176, 180 (N.H. 2008 (interstate compacts are agreements that have characteristics of contractual agreements and statutory law). Article 18 of the Compact provides that a member state’s laws, if in conflict with the Compact, are superseded to the extent of the conflict, such as enrollment, grade age, graduation requirements and acceptance of exit exams. See Article 4 (D) and Article 7.

(4) Immunizations. A potential conflict respecting deadlines for student immunizations might arise were the commission to adopt rules regarding immunizations that would conflict with state law or rules. The Compact itself does not present a conflict in this regard. Under Article 4 (C) of the Compact, compacting states “shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission for students to obtain any immunizations required by the receiving state.” The Article further provides that “[f]or a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission.” Apart from the possibility of conflicting rules, Article 4 is not contrary to current state law and regulations provided a student has commenced the immunization process when he or she enrolls. See NMSA 1978, § 24-5-2 (1977) (it is unlawful for any student to enroll in public school unless he has been immunized, as required under the rules of the health services division of the health and environment department; provided, however, that if a child has begun the process of immunization he may enroll and attend school as long as the process is being accomplished in the prescribed manner); Department of Health Rule 7.5.3.7 (F) NMAC (person enrolling in schools who has begun the process of immunizations shall have one month following enrollment to complete the required immunizations); Public Education Department Rule 6.12.2.8 (B) NMAC (no student shall be enrolled in the public schools unless the student can present evidence of commencement or completion of immunization in accordance with the immunization schedule and rules and regulations of the public health division); Public Education Department Rule 6.12.2.8 (A) (6) (persons enrolling in schools who have begun the process of immunization shall have one month following the date of enrollment to complete the required immunizations or having continued the process of the required series).

Your request to us was for a formal Attorney General Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ANDREA R. BUZZARD
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General