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Uniform State Legislation through Interstate Compacts

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UNIFORM STATE LEGISLATION THROUGH INTERSTATE COMPACTS*

At the Forty-sixth Annual Conference of the National Conference of Commissioners on Uniform State Laws, held in Boston, August 17-22, 1936, the conference adopted an amendment to its constitution, recommended by the executive committee, whereby the objectives of the conference have been enlarged to include model acts on "(a) subjects suitable for interstate compacts, and (b) subjects in which uniformity will make more effective the exercise of state powers and promote interstate cooperation." This amendment therefore means that in the future the National Conference of Commissioners on Uniform State Laws will consider model laws to become valid by interstate cooperation under the sanction and approval of Congress. The enlarged scope of the work of the Conference will mean the exercise of powers and prerogatives conferred jointly upon the several states and the Congress by virtue of Article 1, Section 10, of the Constitution of the United States, which reads as follows:

"No state shall, without the consent of Congress . . . enter into any agreement or compact with another state."

During the presidential campaign just closed, one of the chief issues consisted in the enlarged demands upon Congress for remedial legislation in times of economic stress. The charge was frequently made that the President, through his advocacy and approval of such measures as the National Industrial Recovery Act, the Agricultural Adjustment Act, and others, had undertaken to destroy the fundamental conception of the American government, and the question was raised as to whether or not further amendment of the Constitution of the United States was necessary in order to car-

*Since writing the foregoing, the Federal Trade Commission, on January 4, recommended the creation of a federal board to promote compacts between contigious states for milk control, with a view to prevent unfair trade practices found to exist in some instances.

ry through measures for the relief of labor and industry and in order to avoid the awful consequences of depressive business conditions.

The National Conference of Commissioners on Uniform State Laws, avowedly with no political design, enlarged the scope of its work to consider model acts whereby the several states in the Union, through concerted action and with the approval of Congress, may attain some of the objectives which the Federal Government itself, under the limitations of the Constitution, could not have accomplished. For example, upon the question of laws relating to hours, conditions, and compensation of labor, a group of New England states, facing similar problems of supply and demand, may wish to establish uniform laws that would have no application in other sections of the country. The Federal Government, limited as it is by the Constitution, is powerless to act in matters which strictly affect intrastate business and cannot provide the needed legislation; but the several states affected by these conditions can provide the necessary legislation and by compact between themselves, with the approval of Congress, can mutually enforce such laws.

This new undertaking on the part of the National Conference of Commissioners on Uniform State Laws enters the experimental field, and may furnish a new "out" in the controversy over whether measures for social and economic relief must be provided by the Federal Government or by the several states themselves by independent and unrelated legislative action. This new venture by state compacts means the application of an old principle for a new purpose.

An examination of congressional enactments reveals that the employment of interstate compacts, with congressional approval, has been resorted to since the very early days of the Republic. One of the first joint resolutions of Congress was drafted May 12, 1820,[1] which ratified an agreement be-

[1] 3 STAT. 609, V.

tween Kentucky and Tennessee to adjust and establish a boundary line between the two states. Similar acts have been passed affecting New York and New Jersey,[2] Missouri and Arkansas,[3] Massachusetts and Rhode Island,[4] Virginia and West Virginia,[5] New York and Vermont,[6] New York and Connecticut,[7] Connecticut and Rhode Island,[8] New York and Pennsylvania,[9] and other states. Concurrent legislation, affecting fisheries, has been the subject of interstate compacts under congressional legislation, notably the case of Delaware and New Jersey.[10] The question of criminal jurisdiction upon the Mississippi River was the object of a compact between Mississippi and Arkansas by the Act of January 26, 1909.[11] The conservation of forests and water supply by the several states was provided for in an Act of March 1, 1911.[12] Minnesota, North and South Dakota, entered into an agreement for the control of floods on boundary waters and tributaries, sanctioned by Congress on August 8, 1917.[13] Fish in the Columbia River were protected by compact between Oregon and Washington under the Act of April 8, 1918.[14] On July 11, 1919,[15] New York and New Jersey entered into a compact with Congressional approval providing for the construction of the Hudson River tunnel. The Boulder Canyon Project, the result of a compact between the states affected thereby, was sanctioned by the Act of August 19, 1921.[16] The development of the Port of New York Au-

2 4 STAT. 708-711.
3 9 STAT. 211, c. 10.
4 11 STAT. 382, c. 28.
5 14 STAT. 350, No. 12.
6 21 STAT. 72, c. 49.
7 21 STAT. 351-352.
8 25 STAT. 552, c. 1094.
9 26 STAT. 329-333.
10 34 STAT. 858-861.
11 35 STAT. 1161, No. 5.
12 36 STAT. 961, c. 186, 1.
13 40 STAT. 266, 5.
14 40 STAT. 515, c. 47.
15 40 STAT. 158, c. 11.
16 42 STAT. 171, c. 72.

thority was made possible through a joint resolution of Congress August 23, 1921.[17] Even exemption of municipal water works from taxation was made possible through a compact between Kansas and Missouri, approved by joint resolution of Congress.[18] The apportionment[19] of water supply of the Columbia River was made possible by a similar exercise of power contained in the Constitution of the United States. The construction of a bridge over the Menominee River was made possible through the joint action of Wisconsin and Michigan, with the approval of Congress.[20] Numerous other compacts have been entered into between different states with the aid of Congress, whereby similar legislation has been sanctioned.

In this connection notice may be taken of the half-way cases in which the United States has negotiated with individual states. Thus, by the Act of March 21, 1934,[21] Congress provided for a commissioner to act in conjunction with a commissioner on the part of Virginia and a third selected by these two in determining the District of Columbia-Virginia boundary, the recommendations of the commissioners to be subject to ratification by Congress and Virginia.

According to a memorandum on interstate compacts, prepared by the legislative reference service of the Library of Congress, furnished by the Law Librarian, John Vance, a still different situation occurred in the case of Virginia and Kentucky. By an Act of December 18, 1789, Virginia authorized the erection of the District of Kentucky into a new state. That Act provided that "all private rights and interests of lands within the said district, derived from the laws of Virginia, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state." This Compact was ratified

17 42 STAT. 174-180.
18 43 STAT. 1058.
19 43 STAT. 1268, c. 534.
20 45 STAT. 300-303.
21 48 STAT. 453, c. 72.

by the convention which framed the Constitution of Kentucky and was incorporated into that Constitution. The Act of Congress for the admission of Kentucky [22] contained no express reference to the subject; and in *Green v. Biddle* [23] it was argued that the Compact was invalid because made without the consent of Congress, contrary to the provision of Article 1, Section 10, of the Federal Constitution. But the Supreme Court, after observing that the Constitution "makes no provision respecting the mode or form in which the consent of Congress is to be signified" and that the question in such cases is, "Has Congress, by some positive act, in relation to such agreement, signified the consent of that body to its validity?" found in the *preamble* to the Act of 1791, with its reference to the Act of Virginia of 1789 and the Convention in Kentucky, sufficient indication, under the circumstances, of an assent to the terms of separation set out in the Virginia proposal, including the "Compact" in question.

As late as June 8, 1936, a compact between fourteen states was approved by Congress to conserve and regulate the flow of and purify the waters of rivers and streams whose drainage basins were within two or more of the states of Maine, New Hampshire, New York, Vermont, and other states.[24]

In *State of Virginia v. State of Tennessee* [25] the Supreme Court of the United States was called upon to establish by judicial decree the true boundary line between the states of Virginia and Tennessee. The states themselves had undertaken to establish and fix these boundaries by legislative action and the question involved was whether or not the action of the two states required congressional approval. In undertaking to distinguish between "compact" and "agreement" the Court held that the mere selection of parties to run and designate the boundary line between two states, or

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22 1 STAT. 189 (Feb. 4, 1791).

23 8 Wheat. 1 (1823).

24 Pub. Res. 104, H. J. Res. 377, 74th Cong., 2nd Sess., 80 CONG. REC. 9228 (1936).

25 148 U. S. 503 (1893).

to designate what line should be run, of itself imports no agreement to accept the line run by them, and such action of itself does not come within the prohibition of the Federal Constitution. The Supreme Court said:

> "It is a legislative declaration which the state and individuals affected by the recognized boundary line may invoke against the state as an admission, but not as a compact or agreement."

However,

> "If the boundary established is so run as to cut off an important and valuable portion of a state, the political power of the state enlarged would be affected by the settlement of the boundary; and to an agreement for the running of such a boundary or rather for its adoption afterwards, the consent of congress may well be required."

In other words, the approval of Congress under Article I, Section 10, of the Constitution, is required if the political power of any state or of the Federal Government is involved. As definitive of this power of states and Congress by joint action, the Supreme Court has held that the wishes of Congress may as well be given after the states have acted, as before, and in *State of Virginia v. State of Tennessee* said that "the consent of Congress could not have preceded the execution of the compact, for until the line was run it could not be known where it would lie and whether or not it would receive the approval of the states." The Court, in this case, further held that the approval of Congress to a compact might be fairly *implied* through its subsequent legislation and proceedings.

The Supreme Court has clearly set forth that compacts or agreements between states affecting the political power of the United States require congressional approval.[26]

In order for congressional approval to be required, the compact or agreement must encroach upon or interfere with the supremacy of the United States.[27] A compact made by two states in the manner permitted or prescribed by the

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[26] Wharton v. Wise, 153 U. S. 155 (1894).

[27] Wharton v. Wise, *op. cit. supra* note 26.

Federal Constitution is a law and is binding on the citizens of both states.[28]

Such an agreement is within the constitutional prohibition of the impairment of the obligation of contracts.[29] Congress has the power to enforce any interstate compact to which it has assented.[30]

To what extent, if any, the several states will avail themselves of model laws, which the National Conference of Commissioners on Uniform State Laws will provide, cannot be anticipated. The far-flung operations of commerce and industry have provoked repeated demands for federal legislation and even amendments to the Federal Constitution may be required to validate such legislation. It may be considered that if legislation amongst groups of states to relieve conditions adversely affecting them and not the country at large will supply the needs of these modern times without amendment of the basic law of the land, resort will be made to interstate compacts and the National Conference of Commissioners on Uniform State Laws may become increasingly important and influential in framing needed legislation.

At the moment a new experimental use of an old constitutional provision is imminent and the country at large watches with interest this experiment in the legislative field.

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28 Poole v. The Lessee of Fleeger, 11 Pet. 185 (1837).
29 Greene v. Biddle, *op. cit. supra* note 23.
30 Commonwealth of Virginia v. State of West Virginia, 246 U. S. 565 (1918).