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INTERSTATE AGREEMENTS

By JO M. FERGUSON*

The 1950 Session of the General Assembly was unusually active in the field of interstate agreements. It not only approached the subject through a general statute recognizing the Governor's authority to conduct the "foreign relations" of the Commonwealth, but it specifically approved an interstate compact in the field of education, and authorized "cooperation" with agencies of other states in the field of water pollution.

The only formal compact specifically submitted to the Legislature for its approval was the compact establishing the South's Regional Educational Program, to which assent was given in Chapter 252 of the 1950 Acts of the General Assembly.¹ As the resolution of approval states, Kentucky had been one of the original states sponsoring the development of the compact, which grew out of a motion adopted at the Southern Governor's Conference in Asheville, North Carolina in 1947. However, the 1948 session of the General Assembly adjourned before the compact, dated February 8, 1948, was submitted to it, and in consequence, the program was already actively under way before Kentucky was able to take part in it.

It would be difficult to over-emphasize the importance of the compact, which not only presents a number of interesting legal problems,² but opens an entirely new field of interstate cooperation.

The compact provides that the States signatory thereto "form a geographical district which, for the purposes of this compact, shall constitute an area for regional education supported by public funds." Thus, for the first time, a school district is created which is larger than any State, and a number of new questions arise under the equal protection clause of the fourteenth amendment to the Federal Constitution.

The compact establishes a Board of Control for Southern Regional Education, consisting of the Governor of each State, *ex officio*, and three additional members appointed by him for terms of four years, after the necessary initial staggering of expiration dates. The only

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¹ Ky. REV. STAT. sec. 164.530.

See Caldwell, *Legal Aspects of Regional Plan for Higher Education*, 6 Higher Education 103; also, *The Legal Basis for a Southern University-Interstate Agreement without Congressional Assent*, by the author of this paper, 38 Ky. L. J. 347 (1950).

qualification of the Governor's right of appointment is the requirement that one of the three appointive members shall be selected from the field of education. This requirement was more than met by the initial membership from Kentucky, which consists of the Lieutenant Governor, the Superintendent of Public Instruction, and the President of the University of Kentucky. Under the Kentucky statute, the appointment of some representative of the University to membership on the Board is a practical necessity. A companion act to the resolution which ratified the compact designates the Board of Trustees of the University of Kentucky as the agency of the Commonwealth "charged with the responsibility and vested with all necessary authority to carry out the obligations, participate in the planning and negotiations, and administer the rights, benefits, and privileges" devolving on the Commonwealth and its citizens under the compact.³

The Board has broad powers to establish its own by-laws, and it may recommend to the States the acquisition or establishment and operation of schools and institutions for such educational purposes as it may deem to be proper. Title to such institutions, when established, is to be vested in the Board. In addition, the Board has the power to enter into agreements with any of the States and with educational institutions⁴ to provide facilities for graduate, professional, and technical education.

The Board, as a matter of policy has chosen not to establish its own schools, but to proceed under the contract method. Agreements have been made with existing institutions under which the latter agree to accept specified numbers of students from each of the States contracting with the Board for the particular program involved. The Board pays the institution a specified sum in addition to the tuition fee which is paid by the student. No scholarship is involved, from the student's standpoint, but the State gains the right to send a certain number of students to an established graduate or professional school at a cost which is extremely modest when compared to the cost of erecting and operating a school of its own. The school gains by receiving a fee based upon the actual cost of training the student.

³ KY. REV. STAT. sec. 164.540, enacted as Chapter 255 of the 1950 Acts of the General Assembly.

⁴ Agreements with educational institutions are not limited to publicly supported institutions, and the present contracts are divided about equally between public and private institutions. The compact therefore provides what would appear to be a perfectly proper legal method for bolstering the financially hard-pressed private colleges of the South, especially in the expensive fields of graduate and professional training. In the development of regional centers also, a committee of the Daytona Beach Work-Conference on Graduate Education has recommended that the Board should "lend courage to the possibility of growth in smaller or less well-developed institutions" (Minutes, Meeting of Executive Committee of the Board of Control, Daytona Beach, Fla., Sept. 11, 1950, p. 3).

In the first year of operation, 1949-50, the only fields entered were medicine, dentistry, and veterinary medicine. The Board has now approved the extension of the program to social work, nursing, and graduate studies. However, Kentucky will be unable to take part in any of these programs before the next session of the Legislature, unless funds can be made available from the Governor's emergency fund, or some other source. The amount of \$14,000 appropriated by the 1950 General Assembly covered administrative costs only⁵

However, the work of the Board, through its staff, is not limited to the administration of its institutional contracts. Its possibilities for usefulness are almost endless. It is giving much attention to the voluntary specialization of offerings in the various Southern schools. Thus, when the studies and surveys now going on in the cooperating Southern colleges are completed, "centers of excellence" may be established, so that in the different areas of the South, or in the South as a whole, at least one good school may be developed in each field of study. The State in which the center is located will have the primary responsibility for developing and supporting it, but at least duplication of effort by neighboring States will be avoided, and once the center is developed, the contract method may be used to help support it.

Other possible methods being explored by the Board through which institutions of the South can jointly serve the region's needs include joint use of research facilities, movement of students, exchange of faculty members, joint research projects, and use of supplementary facilities, such as those of the Tennessee Valley Authority. The Board may well serve to attract the interest of philanthropic organizations or individuals concerned with educational work. Higher education in the South has been sadly neglected by philanthropists in the past.

It would be beyond the scope of this paper to discuss in detail the advantages of this compact, but if it does no more than to keep at home some of the South's ablest students, it will have accomplished immeasurable benefit to the region.⁶ Nor will the benefits be confined to the South alone. The survival or revival of Southern culture is of very great value to the entire United States.⁷

⁵ 1950 Acts of the General Assembly of Kentucky, Chapter 252, Sec. 3.

⁶ On this point, it seems to us that the situation of the South vis-a-vis the North, is exactly the same as that of the outlying sections of the United Kingdom in relation to England. Of them, T. S. Eliot says, in his *NOTES TOWARDS THE DEFINITION OF CULTURE*, p. 45: "The 'flight of the wild geese' is perhaps a symbol of the harm that England has done to Ireland—more serious, from this point of view, than the massacres of Cromwell, or any of the grievances which the Irish most gladly recall. It may be, too, that England has done more harm to Wales and Scotland by gently attracting their upper classes to certain public schools, than by the wrongs voiced by their respective nationalists."

As heretofore stated, the General Assembly also concerned itself with interstate cooperation in the field of water or stream pollution. Perhaps spurred on by the fact that a Kentucky official had become chairman of the Ohio River Valley Water Sanitation Commission, operating under a compact approved⁸ some years ago, the Legislature established an intrastate agency for the same purpose,⁹ and empowered it "to provide for cooperation with agencies of other States or of the Federal Government" in conserving the waters of the Commonwealth.¹⁰

The General Assembly also enacted a general statute authorizing the departments and agencies of the Commonwealth to enter into agreements with departments and agencies of the Commonwealth to enter into agreements with departments of other state governments, with the approval of the Governor.¹¹ The authority is limited to agreements "for the accomplishment of purposes which are authorized by law to be accomplished in this State by the department or agency entering into the agreement," and there is a further limitation of expenditures under any such agreement to \$10,000 for any one agreement by a single department or agency in any one year.

The immediate purpose of the Act, though it was not specifically referred to, was to permit the conclusion of an agreement with the State of Illinois under which Kentucky undertook to maintain the bridge over the Ohio River near Cairo, Illinois, in return for the promise of the latter state to reimburse Kentucky for one-half of her expenditures. The authority of the Commonwealth to enter into such an agreement under the provisions of KRS 180.300 had been questioned because the Cairo bridge was a gift to the Commonwealth, and had not been "purchased or leased" jointly with another State, which was the exact situation contemplated by the statute.

The most interesting parts of this Act, from a constitutional standpoint, are the title and the preamble, in which the Legislature recognized that the Governor of the Commonwealth, as Chief Magistrate, possessed certain inherent powers in the conduct of relations with other States, so that he was the proper official to be charged with the conduct of the interstate relations of the Commonwealth.¹²

⁷ For a discussion of this point of view, see again T. S. Eliot, *NOTES TOWARDS THE DEFINITION OF CULTURE*, pp. 54 et seq.

⁸ KY. REV. STAT. sec. 220.550.

⁹ KY. REV. STAT. secs. 220.580 to 220.990; enacted as Chapter 69 of the 1950 Acts of the General Assembly of Kentucky.

¹⁰ KY. REV. STAT. secs. 220.590 and 220.620.

¹¹ KY. REV. STAT. sec. 12.240; enacted as Chapter 213 of the 1950 Acts of the General Assembly of Kentucky.

¹² 1950 Acts of the General Assembly of Kentucky, Chap. 213.