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<p align="center">ICJ Advisory Opinion</p> <p align="center">Issued by: Executive Director: Ashley H. Lippert Chief Legal Counsel: Richard L. Masters</p>		
Description: ICJ Appropriate Appointing Authority	Dated: June 24, 2009	

Issues:

What qualifications are required by the Interstate Compact for Juveniles in order for a commissioner, or designee to be eligible to represent and vote on behalf of each member State on the Interstate Commission for Juveniles.

What qualifications are required by the Interstate Compact for Juveniles for another authorized representative of a compact state if a commissioner has decided that it is necessary to delegate the authority to vote and to otherwise exercise the authority of the commissioner from that state for a specified meeting.


Applicable Law:

Article III, Section B. of the Interstate Compact for Juveniles provides that:

“The Interstate Commission “shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The Commissioner shall be the compact administrator, deputy Compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.”

Article III, Section G. of the Interstate Compact for Juveniles provides in relevant part:

“Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting.”

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Analysis:

With respect to the first question, one of the axioms of statutory construction is that if the meaning of the statutory provision in question is clear from the language used in the statute then that meaning shall prevail without recourse to other possible sources. [See *Burns v. Alcala*, 420 U.S. 575 (1975)] The above referenced language of the ICJ provides that in order to be qualified to cast a vote on behalf of a member state and to participate, on that State’s behalf, in the business and affairs of the Interstate Commission, that such commissioner shall be “appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder.”


While the terms “appropriate appointing authority” are not defined in the Compact, there is implicit in such terminology the assumption that states have provided authority to appoint a representative of each state to represent its interest in interstate agreements dealing with the proper supervision of juveniles. In some states this responsibility may be vested in the Executive branch (See for example TX, FL); while other states may vest such authority in the Judicial Branch (See for example WVA,); and still others divide such authority between the Executive Branch (parole) and the Judicial Branch (probation) (See for example IL, IN, MA).

Where it is unclear under state law what constitutes the ‘appropriate appointing authority,’ recourse can be made to other indicia of the intention of this language such as various sources surrounding the drafting and adoption of the ICJ which indicate that it was anticipated that where such an ambiguity exists in a particular state as to the ‘appropriate appointing authority’ that such authority may be properly exercised by the Executive branch. [See *Watt v. Alaska*, 451 U.S. 259 (1981)].

For example the main page on the CSG website that has the map of the new ICJ’s progress, under Primary Changes to the original Juvenile Compact (1955), second bullet, states, in part:

“Gubernatorial appointments of representatives for all member states on a national governing commission.”

Similarly, the ICJ Resource Guide which was prepared as an interpretive guide to the provisions

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of the new ICJ as it was being considered by the state legislatures included as a response to the hypothetical question,

Question: “Who will be my state’s commissioner?”

Answer: “The commissioner will be that person appointed by the State Council or the governor under Article III (B), subject to qualifications determined by each state.”

With respect to the second question, the ICJ also contemplates that there may be specific meetings which a commissioner who has been appointed by the ‘appropriate appointing authority’ and customarily represents a State at ICJ meetings may be unable to attend. Under Article III, G a separate procedure is provided by which the commissioner of a State who is unable to attend a particular ICJ meeting may appoint another authorized representative to vote and otherwise take part in such meeting in place of the commissioner. Under Art. III, Section G. the commissioner may make such a temporary appointment in consultation with the state council.

Conclusion:

Using this analysis, the determination of whether an appointment of a commissioner is bona fide under the above referenced provisions of the Interstate Compact will depend upon establishing whether adequate documentation has been furnished to establish the ‘appropriate appointing authority’ has acted with respect to the appointment of the commissioner for that state. This can be demonstrated by such items as a gubernatorial executive order or letter of appointment, a statutory provision which clearly delegates such authority to another state official and proof that the official to who receives such delegated power has in fact issued an appointment letter to the proponent seeking recognition as a commissioner.

The above described procedure for the general appointment of a commissioner to act on behalf of a compact state under Article III, Section B. is a distinctly different process than the process which the compact provides in Article III, Section G. for the temporary appointment of another authorized representative to represent and vote on behalf of a state at a specific ICJ meeting in the absence of the commissioner. This temporary appointment for a specific meeting does not require the action by the ‘appropriate appointing authority’ and under the compact may be accomplished by action of the commissioner in consultation with the state council.