	<b>Interstate Commission for Juveniles</b>	<b>Opinion Number</b>  <b>3-2009</b>	<b>Page Number:</b>  <b>1</b>
<b>ICJ Advisory Opinion</b> <b>Issued by:</b> <b>Chief Legal Counsel: Richard L Masters</b>			
<b>State Requesting Opinion:</b> Idaho		<b>Dated:</b> August 31, 2009	
<b>Description:</b> Whether a county violation of the Compact constitutes a state violation of the Compact that would result in potential liability of the County and/or State			

### **Background & History:**

The State of Idaho has requested an advisory opinion regarding the whether a county violation of the Interstate Compact for Juveniles constitutes a state violation that would result in potential liability of the County and/or State of Idaho.:

### **Issue:**


Dear Commissioner Ehlers:

After receipt of your request for legal guidance and subsequent telephone discussions, I am submitting the following points for your consideration which you or other Idaho officials charged with administration of the Interstate Compact for Juveniles ('ICJ'), including county probation officials, may have relative to the ICJ Commission's authority and objectives with respect to the above matter. More specifically, you have asked whether the failure or refusal of an Idaho county official to properly process the lawful transfer of supervision of a juvenile from Idaho to another state and the failure or refusal of the same Idaho county, in another case, to supervise a juvenile whose supervision was properly transferred to Idaho from another state constitutes a violation(s) of the ICJ which would result in potential liability of the County and/or State of Idaho.

### **Analysis and Conclusions:**

This is a question which has been raised in other states as to the extent to which a state which is a signatory to an interstate compact is legally liable for the failure of a county to comply with the provisions of the compact or its authorized rules. The Interstate Compact for Juveniles is very specific with respect to compliance with the provisions of the compact and the rules as well as the right to enforce the compact against states which are not in compliance.

Article VII of the compact provides that among the powers and duties of the commission is "*to enforce compliance with the compact provisions, interstate commission rules and bylaws, using any or all means set forth in Article XI of this compact,*" which section authorizes, but is not limited to, the use of legal action "*to enforce compliance with the provisions of this compact, its duly promulgated rules and by-laws against any compacting state in default.*" Article XIII (B.) provides that "*all lawful actions of the*


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*interstate commission, including all rules and bylaws promulgated by the interstate commission are binding upon the compacting states. In the event that legal action is necessary to enforce the compact provisions against a state in violation, Article XI, C. provides that “the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.”*

As in most states counties are specifically classified and recognized as political subdivisions of the State of Idaho. *See for example Bonneville County v. Ysursa, 129 P.3d 1213 (Id. 2005); also Sanchez v. State Department of Corrections, 141 P.3d 1108 (Id. 2006)* which unequivocally recognize that a county is a political subdivision of the State. As a consequence the above ICJ provisions and authority apply equally and coextensively to all Idaho counties as political subdivisions.

Thus, the failure of a county to comply with the provisions of the ICJ and its duly authorized rules is tantamount to a violation by the State of Idaho and a default in its obligations under the compact and authorized rules. Based on the above provisions, the ICJ Commission and its authorized committees, including the Executive Committee and the Compliance Committee have the authority to address whether or not the State of Idaho has violated its obligations or responsibilities as the result of the failure or refusal of one of its counties to properly process the supervision of a juvenile to another state or to properly supervise a transferred juvenile from another state, and if so, what action should be taken against the State, by the ICJ Commission, as a consequence of such violation.

Moreover, it is also important to keep in mind that there are other liability concerns which are separate and apart from liability to other member states for violation of the compact. For example, should the juveniles who are not being supervised as required by the compact commit crimes, during the period in which they are required to be supervised, which result in damage, injury, or death; such conduct could result in personal liability for damages to a victim of such crime, or members of the victim’s family. *(See for example Sterling v. Bloom, 723 P.2d 755) (ID 1986) (probation officer could be held personally liable for damages resulting from injuries to the plaintiff occurring while the probationer was under the control of the Idaho Board of Corrections) Hertog v. City of Seattle, 979 R2d 400 (Wash. 1998) (probation officers*

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*have a duty to third persons, such as a rape victim, to control the conduct of probationers to protect them from reasonably foreseeable harm).*