

MAINE STATE LEGISLATURE

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STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04330

May 4, 1978

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Edgar Merrill
Interstate & Education Specialist
Department of Human Services
221 State Street
Augusta, Maine 04333

Re: Jody Marie and Angelia Murray Summey
Residing with: Mrs. Preston Summey, Black Mountain,
North Carolina 28711

Dear Mr. Merrill:

This responds to your request for an opinion regarding the application of the Interstate Compact on the Placement of Children, 22 M.R.S.A. §4191 et. seq., under the following circumstances.

QUESTION PRESENTED:

Does the Interstate Compact apply when a district court judge grants temporary custody of minor children to a non-resident relative who is physically present in Maine at the time of the custody order but who subsequently removes the children from Maine to her out-of-state residence.

ANSWER: No.

OPINION:

The District Court awarded temporary custody to the grandmother and therefore gave her the legal right to determine the residence of the children pending a further order by that court. The grandmother, exercising her legal right as custodian, chose to bring the children into another party state and keep them in her home. Under such circumstances the grandmother, not the court, should be considered as the "sending agency", 22 M.R.S.A. §4192(4), which must comply with the Compact requirements.

However, 22 M.R.S.A. §4198 states that the Interstate Compact does not apply to:

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The sending or bringing of a child into a receiving state by his...grandparent,...and leaving the child with any such relative or non-agency guardian in the receiving state.

Since the children were brought into another party state by a relative qualifying for exemption from the Compact provisions and left in the care of such a relative, the Compact does not apply in this case.

Furthermore, the Compact was not intended to apply in this situation. 22 M.R.S.A. §4193 states:

No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

There is no indication, under the facts presented, that the children were brought into North Carolina by their custodian for the purposes of foster care or adoptive placement.

Sincerely,

Carmen L. Coulombe
Assistant Attorney General

CLC:mmm