



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 5, 1977

ATTORNEY GENERAL OPINION NO. 77- 326

Mr. Robert R. Hiller, Jr.
Staff Attorney
Department of Social and
Rehabilitation Services
520 East William
Post Office Box 1620
Wichita, Kansas 67201

Re: Minors and Children--Placement--Interstate Compact

Synopsis: A natural mother who resides out of the State of Kansas and sends her child into Kansas to the custody of a couple, not related to the natural mother, as prospective adoptive parents of such child constitutes a "sending agency" as defined in Article II (a) of the Interstate Compact on the Placement of Children, K.S.A. 1976 Supp. 38-1201 et seq., and the sending of a child into the state under such circumstances is not exempted by the compact under Article VIII(a).

* * *

Dear Mr. Hiller:

You inquire concerning the Interstate Compact on the Placement of Children, found at K.S.A. 1976 Supp. 38-1201 et seq. Specifically, you inquire concerning application of the compact to an out-of-state mother who brings her child into this state and leaves the child in the care of a prospective adoptive couple, who are not relatives of the natural mother.

Your inquiry raises two questions, first, whether the natural mother is a "sending agency" as defined by Article II(b) of the compact, and whether this placement is exempted from the compact by Article VIII(a).

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The term "sending agency" is defined by Article II(a) to mean

"a party state, officer or employee thereof, a subdivision of a party state, officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state." [Emphasis supplied.]

The term is obviously defined with the greatest breadth and inclusiveness, to include virtually any party, public or private, natural person or legal entity, which sends, brings or causes to be brought or sent any child to another state for placement. The breadth of the definition must be considered in the light of legislative policy declared at K.S.A. 1976 Supp. 38-1201 thus:

"It shall therefore be the policy of this state, in adopting the interstate compact on the placement of children, to cooperate fully with other states in providing that no children shall be sent or brought into any other party state 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 interstate compact." [Emphasis supplied.]

The conditions for placement are outlined in Article III of the compact. The "sending agency" shall furnish the "appropriate authorities in the receiving state written notice" of the intention to send a child into this state, and must furnish the information set out in that section in the notification. The recipient of the notice is authorized and entitled to request and receive "such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact." The child then may not be brought into this state until the appropriate public authorities have notified the "sending agency, in writing . . . that the proposed placement does not appear to be contrary to the interests of the child." On their face, these conditions apply equally to placements by natural persons and placements by public and private agencies.

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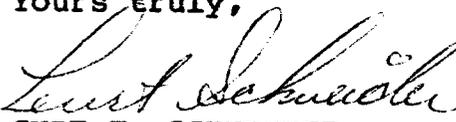
In the face of the declared legislative policy, the inclusive definition of the term "sending agency," and the general applicability of the conditions in Article III to all placements, it is my opinion that the term "sending agency" includes the natural mother in the hypothetical factual circumstance described above.

Article VIII provides in pertinent part thus:

"This compact shall not apply to: (1) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state."

The question arises as to who constitutes a "nonagency guardian," and whether the prospective adoptive parents in the instance cited above would constitute such guardians. In my judgment, a "nonagency guardian" is any person, other than a state agency or officer, who constitutes a guardian as defined by K.S.A. 1976 Supp. 59-3002(2), i.e., any "person who has been appointed by a court of competent jurisdiction to exercise control over the person of an incapacitated person or of a minor." This view is consistent, in my judgment, with the stated purposes and objectives of the compact. The state's interest in the care and welfare of the child is already served when the child is sent into the state into the custody of a person who has been found qualified and has been appointed by a court to exercise control over the person of a minor. Thus, in my judgment, the sending of a child by an out-of-state natural mother into this state to the care of a couple as prospective adoptive parents, who are not relatives of the child, is a sending which is subject to the conditions and restrictions imposed by the compact.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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