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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 79-519
of	:	<u>July 20, 1979</u>
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SUBJECT: REIMBURSEMENT OF EXPENSES—Civil Code section 4605 authorizes state reimbursement for expenses incurred by the district attorney in retaining Canadian counsel to compel an individual to comply with a California custody order.

The Honorable Michael D. Bradbury, District Attorney of Ventura County, has requested an opinion of the following question:

Does Civil Code section 4605 authorize state reimbursement for expenses incurred by the district attorney in retaining Canadian counsel to compel an individual to comply with a California custody order, where the individual has been charged in California with the offense of concealing a child in violation of a custody decree and where criminal extradition of the individual appears futile?

CONCLUSION

Civil Code section 4605 authorizes state reimbursement for expenses incurred by the district attorney in retaining Canadian counsel to compel an individual to comply with

a California custody order, where the individual has been charged in California with the offense of concealing a child in violation of a custody decree (Pen. Code § 278.5), and where criminal extradition of the individual appears futile.

ANALYSIS

The following facts have been provided. The district attorney's office has filed a felony complaint against an individual charging him with concealing a child in violation of a custody decree (Pen. Code § 278.5). The individual has been located by Canadian law enforcement authorities in Canada. The district attorney's office commenced action to bring about an international extradition of the individual who remains in Canada in possession of the child. Contact by the district attorney's office with the International Relations Section of the United States Department of Justice revealed there was no reasonable possibility of successfully extraditing the individual because it is the "official policy" of the United States Department of State not to forward requests for extradition in criminal matters arising from civil marital disputes to foreign governments. The district attorney's office was informed by officials in the Canadian Department of Justice that there is a strong possibility if a civil action is filed in a Canadian court that the court would recognize and effectuate the California custody decree. The district attorney's office could then obtain the child's return pursuant to the civil order of the Canadian court.

Chapter 1399, Statutes of 1976, amended sections in, and added sections to, various codes to deal with problems of child custody and abduction during and after dissolution of marriage. (8 Pacific L.J. 315-318.) Penal Code section 278.5 and Civil Code sections 4604 and 4605 were added by Chapter 1399 to provide for the enforcement of a custody decree where a child is taken or detained in violation of its provisions. (Stats. 1976, ch. 1399, pp. 6312-6313, 6316, §§ 3, 4, 11.)

Penal Code section 278.5 states:

"(a) Every person who in violation of a custody decree takes, retains after the expiration of a visitation period, or conceals the child from his legal custodian, and every person who has custody of a child pursuant to an order, judgment or decree of any court which grants another person rights to custody or visitation of such child, and who detains or conceals such child with the intent to deprive the other person of such right to custody or visitation shall be punished by imprisonment in the state prison for a period of not more than one year and one day or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars (\$1,000), or both.

“(b) *A child who has been detained or concealed in violation of subdivision (a) shall be returned to the person having lawful charge of the child. Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Such costs shall be assessed against any defendant convicted of a violation of this section.*” (Emphasis added.)

Civil Code section 4604¹ states in relevant part:

“(b) In any case where a custody decree has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the decree, *the district attorney shall take all actions necessary to locate the person who violated the decree and the child and to assist in the enforcement of the custody decree or other order of the court.*

“(c) In performing the functions described in subdivisions (a) and (b), the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings.” (Emphasis added.)

Section 4605 states:

“(a) When the district attorney incurs expenses pursuant to Section 4604, including expenses incurred in a sister state, payment of such expenses may be advanced by the county subject to reimbursement by the state, and shall be audited by the State Controller and paid by the State Treasury according to law.

“(b) The court in which the custody proceeding is pending or which has continuing jurisdiction, shall, if appropriate, allocate liability for the reimbursement of actual expenses incurred by the district attorney to either or both parties to the proceedings and such allocation shall constitute a judgment for the state for the funds advanced pursuant to this section. The county shall take reasonable action to enforce such liability and shall transmit all recovered funds to the state.”

The retaining of Canadian counsel to enforce the California custody decree in Canada appears to be the only procedure available to the district attorney to effect the return of the child. It is the type of action contemplated by Penal Code section 278.5, subdivision (b) and section 4604, subdivision (b). Section 4604, subdivision (b), states the district

¹ Unless otherwise indicated all section references are to the Civil Code.

attorney shall take *all actions necessary* to assist in enforcing a custody decree. Penal Code section 278.5, subdivision (b), requires a child detained in violation of subdivision (a), to be returned to the person having lawful charge of the child. Retaining of Canadian counsel appears necessary under the facts in order to enforce the California decree and thereby obtain the return of the child to the parent in California to whom custody was awarded by the California decree.

Section 4605 expressly authorizes reimbursement for such expenses. It provides the district attorney may seek reimbursement when he “incurs expenses . . . *including* expenses incurred in a sister state, . . .” (Emphasis added.) The wording “including” is ordinarily a word of enlargement, not one of limitation and things mentioned as included are thus enumerated as examples rather than as the only matters included. (*People v. Western Airlines Inc.* (1954) 42 Cal. 2d 621, 639; *Paramount Gen. Hosp. Co. v. National Medical Enterprises, Inc.* (1974) 42 Cal. App. 3d 496, 501.)

Furthermore, as a general rule, statutes on the same subject matter must be construed together in light of each other so as to ascertain the legislative intent and harmonize the statutes. (*Tripp. v. Swoap* (1976) 17 Cal. 3d 671, 679–680; *Jacobs v. State Bd. of Optometry* (1978) 81 Cal. App. 3d 1022, 1031.) Construing Civil Code sections 4605 in harmony with the district attorney’s broad authorization and duty under section 4604 and Penal Code section 278.5 to take all necessary action, and the language of Penal Code section 278.5 stating that any expense incurred in returning the child shall be reimbursed, we conclude that section 4605 was intended to authorize state reimbursement for all such expenses including the retention of Canadian counsel to enforce the California custody decree in Canadian Courts.

We have been informed by the Department of Finance that there are currently no funds appropriated to provide reimbursement pursuant to Section 4604. Thus, payment of any claims made pursuant to that section will have to await appropriate funding action from the Legislature.
