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Office of Legislative Counsel
General Assembly of Georgia

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Good afternoon, Representative Oliver:

This letter is in response to your questions regarding the authority of the Division of Family and Children Services (DFCS) within the Department of Human Services (DHS) to employ law enforcement officers to perform certain duties.

Based on a preliminary review, we can find no statutory authority expressly indicating that DFCS would possess the power to directly employ and exercise control over law enforcement officers in conducting activities entailing actual or potential use of police authority and vested police powers, such as executing exigency warrants for IP addresses, social media handles, and electronic devices; pinging cellphones; and conducting forensic interviews. However, please note that, DFCS could potentially derive such powers from other sources of which we were not able to identify.

Under Title 49, DHS's powers with respect to children and youth includes an investigative duty to inquire into complaints of child abuse or abandonment reports (O.C.G.A. § 49-5-8), and a limited power held by the Commissioner of DHS to obtain inspection warrants to conduct a search or inspection of property pursuant to residential child care licensing law (O.C.G.A. § 49-2-21). Otherwise, we have found no express statutory authorization for DFCS to exercise police powers under Title 49. Moreover, throughout the Code, references to DFCS and law enforcement generally employ language describing DFCS as assisting, collaborating with, or bringing problems to the attention of law enforcement, as opposed to directing or controlling law enforcement activities.

Although, under Title 35, law enforcement officers may accept off-duty employment entailing actual or potential use of police authority and vested police powers, which could arguably apply to DFCS, any such off-duty employment remains under the authority of the Commissioner of Department of Public Safety (Commissioner). (See

O.C.G.A. §§ 35-2-15, 49-5-4; 49-5-16; Ga. R. & Regs. 570-9-.02). Off-duty employment is only permitted if:

- (1) It is not expressly prohibited as unacceptable off-duty employment;
- (2) It is not inconsistent, incompatible, or in conflict with any activities of the Department of Public Safety, as determined by the Commissioner; and
- (3) It is expressly approved by the Commissioner. (Ga. R. & Regs. 570-9-.02, 570-9-.05, 570-9-.09).

Furthermore, off-duty employment may be revoked by the Commissioner at any time. (Ga. R. & Regs. 570-9-.02). Additionally, an off-duty employer "may make general assignment of duties but, has no authority to control law enforcement activities of sworn members." (Ga. R. & Regs. 570-9-.09).

We did find, however, that, under Code Section 35-8-2(7), the term "law enforcement unit" is defined very broadly to include "any agency, organ, or department of this state. . . whose primary functions include. . . the preservation of public order, the protection of life and property, or the prevention, detection or investigation of crime." Code Section 35-8-2(8) similarly defines the term "peace officer" very broadly. Arguably, this language could potentially be used as a basis for supporting certain law enforcement activities by DFCS.

Please note that this review is purely based on the limited information that we have been provided and without review of any actions actually taken by DFCS or a full understanding of all of DFCS' sources of power.

Hopefully, this information is helpful. If I can be of any further assistance, please let me know.

Best Regards,

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Approved: BH