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February 4, 2020

Honorable Jeff Jones
Representative, District 167
501-H Coverdell Legislative Office Bldg.
Atlanta, GA 30334

RE: Sub to SB 317 (LC 28 9555S)

Dear Representative Jones:

At your request, I have reviewed the provisions of the Senate Government Oversight Committee substitute to SB 317 (LC 28 9555S) regarding the abolition of county police agencies. The provisions of the substitute to SB 317 would establish procedures and limitations regarding the abolition of county police agencies in counties that have established such police agencies. The bill provides that a county may abolish the county police agency by a resolution of the governing authority of the county conditioned upon approval of the voters in a referendum or by a local Act of the General Assembly conditioned upon approval of the voters in a referendum.

As you know, Chapter 8 of Title 36 provides that a county governing authority may establish a county police agency if the county governing authority obtains approval from the voters of the county for the creation of such county police department. The chapter designates how such a referendum shall be called and conducted and provides for the appointment and terms of the members of the county police agency, bonds, compensation, powers, and regulation of the county police agency. Pursuant to Code Section 36-8-2, the county governing authority may abolish the county police agency at any time.

While the legislative power of the state is vested in the General Assembly (Art. III, Sec. I, Par. I) and the General Assembly has the power to make all laws not inconsistent with the state and federal constitutions that it deems necessary and proper for the welfare of the state (Art. III, Sec. VI, Par. I), under the county home rule provisions of the state constitution, the "governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto." Art. IX, Sec. II, Par. I(a). While there are limitations on this home rule power under Art. IX, Sec. II, Par. I(c), none of those limitations appear to be applicable to the creation, maintenance, modification, or abolition of a county police agency. In fact, police protection is one of the supplementary powers of counties under Art. IX, Sec. II, Par. III(a)(1). Therefore, a county may act on this topic by home rule.

Under county home rule, the General Assembly generally cannot pass any local law to repeal, modify, or supersede any action taken by county governing authority under county home rule. Art. IX, Sec. II, Par. I(a). However, the General Assembly may by general law take action on this topic. Art. IX, Sec. II, Par. I(a). An example of the exercise of this authority would be the requirements imposed by the General Assembly under general law contained in Code Section 36-8-1(b) that require the county commissioners to obtain the approval of the creation of a county police agency by the voters in a referendum before such action can become effective.

If a county governing authority has established a county police agency, then the General Assembly has no authority to change such a decision by a local law. However, the General Assembly does have the power to provide by general law for new or additional procedures for the creation, maintenance, modification, or abolition of a county police agency. The State Constitution in Art. IX, Sec. II, Par. III(c) states that nothing contained in Paragraph III of the Constitution "shall operate to prohibit the General Assembly from enacting general laws relative to the subject matters listed in ... [the supplementary powers listing] ... or to prohibit the General Assembly by general law from regulating, restricting, or limiting the exercise of the powers listed therein", with the caveat that the General Assembly "may not withdraw any such powers." Therefore, the General Assembly is authorized to impose such restrictions and limitations as it chooses regarding the manner in which counties exercise their control over county police agencies so long as it does not withdraw the power from the counties. In enacting such procedures, the General Assembly can provide different methods of abolishing a county police agency and impose requirements for such actions.

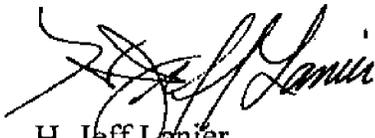
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The Senate Government Oversight Committee substitute (LC 28 9555S) is a general law which establishes procedures by which a county can abolish its county police agency. One of the procedures is the adoption by the governing authority of the county of a resolution to abolish the county police agency conditioned upon the approval of the voters of the county in a referendum. Such a procedure appears to be a legitimate exercise of the powers of the General Assembly to enact by general law regulations, restrictions, or limitations on the powers of the county governing authority to abolish a county police agency.

The problem that may arise is found in the second procedure provided for abolishing a county police agency which is for the General Assembly to pass a local Act to permit the voters of a county to vote in a referendum whether to abolish a county police agency. While one could argue that the use of the local Act is merely one of the two procedures established and authorized by general law and is merely a mechanism to allow the voters of the county to act on the question, an equally compelling argument could be made that the methodology runs afoul of Art. IX, Sec. II, Par. III(d) of the Constitution. That provision states that the "General Assembly shall act upon the ...[supplementary powers topics] ... only by general law." By utilizing a local Act as a part of the procedure for the abolition of the county police agency in the general law, a court could find that such procedure is tantamount to the General Assembly acting by other than general law on the issue of police protection for the county. If so, the court would find such provision to be violative of that constitutional provision. As such, we advise caution in proceeding under this bill.

I trust that this has been responsive to your inquiry. If you have further questions, please let me know.

Sincerely,



H. Jeff Lanier
Deputy Legislative Counsel

Approved for release: 