January 18, 2006

The Honorable Robert Junk
Pike County Prosecuting Attorney
Courthouse, First Floor
100 East 2nd Street, Suite 100
Waverly, Ohio 45690

SYLLABUS: 2006-002

Pursuant to R.C. 3111.80-.81, an administrative child support order issued by an administrative officer of a child support enforcement agency may, regardless of the marital status and living arrangements of a child's parents, establish the amount of child support an emancipated woman who is the biological mother of a child is required to pay when the child resides with a third party who is the legal custodian of the child.

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OPINION NO. 2006-002

The Honorable Robert Junk
Pike County Prosecuting Attorney
Courthouse, First Floor
100 East 2nd Street, Suite 100
Waverly, Ohio 45690

Dear Prosecutor Junk:

You have requested an opinion whether a child support enforcement agency (CSEA) may issue an administrative child support order that establishes the amount of child support an emancipated woman who is the biological mother of a child is required to pay when the child resides with a third party who is the legal custodian of the child. For the reasons that follow, a CSEA has this authority pursuant to R.C. 3111.80-.81.

In Ohio each county is required to have a CSEA. R.C. 3125.10; 12 Ohio Admin. Code 5101:1-31-90(C). Pursuant to R.C. 3111.53(A), a CSEA may "employ an administrative officer, contract with another entity to provide an administrative officer, or contract with an individual to serve as an administrative officer to issue administrative orders determining the existence or nonexistence of a parent and child relationship,[1] requiring the payment of child support, or both." (Footnote added.) *Accord* 12 Ohio Admin. Code 5101:1-32-01.

The authority of a CSEA's administrative officer to issue an administrative child support order when a child resides with a third party who is the legal custodian of the child is set forth in

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[1] As used in R.C. 3111.01-.85, the "parent and child relationship" is the "legal relationship that exists between a child and the child's natural or adoptive parents and upon which those sections and any other provision of the Revised Code confer or impose rights, privileges, duties, and obligations." R.C. 3111.01(A). The parent and child relationship includes the mother and child relationship and the father and child relationship, R.C. 3111.01(A), and extends equally to all children and all parents, regardless of the marital status of the parents, R.C. 3111.01(B). *See generally* R.C. 3111.02 (establishment of the parent and child relationship); R.C. 3111.95(A) ("[i]f a married woman is the subject of a non-spousal artificial insemination and if her husband consented to the artificial insemination, the husband shall be treated in law and regarded as the natural father of a child conceived as a result of the artificial insemination, and a child so conceived shall be treated in law and regarded as the natural child of the husband").

the statutes and administrative rules that describe the process for requesting and establishing administrative child support orders.[2] The instances in which a CSEA's administrative officer may establish an administrative child support order are as follows:

> (D) The CSEA with administrative responsibility shall establish a support order for a child who receives medical assistance under [R.C. Chapter 5111][3] or Ohio works first assistance under [R.C. Chapter 5107].[4]

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[2] The occasions in which an administrative officer of a child support enforcement agency (CSEA) may issue an administrative child support order when a child resides with a third party are varied. For instance, such an occasion may arise when a request for an administrative child support order is made under R.C. 3111.29 or R.C. 3111.78, or when an administrative child support order is required under R.C. 3111.46 and R.C. 3111.80. Moreover, whether the child or child's personal representative, the child's mother or her personal representative, a man alleged or alleging himself to be the child's father, the alleged father's personal representative, the custodian or other guardian of the child, the person with whom the child resides, or a CSEA may initiate a particular administrative proceeding to obtain an administrative child support order is dependent upon the language of the various statutes under which such orders may be obtained and the facts of the situation in question. *See* R.C. 3111.04(A); R.C. 3111.29; R.C. 3111.38; R.C. 3111.78.

There are thus many circumstances in which a person or entity may obtain an administrative child support order when a child resides with a third party. In this opinion we do not address the standing of a particular person or entity to initiate an administrative proceeding to obtain such an order in a particular situation. Rather, we have assumed, for the purpose of this opinion, that the administrative proceeding for obtaining the order was properly initiated by a person or entity having standing to bring the action.

[3] *See generally* R.C. 5101.59(A) (the application for or acceptance of public assistance constitutes an automatic assignment to the Ohio Department of Job and Family Services (ODJFS) of any rights an applicant, recipient, or participant has to medical support); 12 Ohio Admin. Code 5101:1-29-35(A) (a CSEA "shall secure and enforce medical support, as appropriate, for all IV-D cases. Medical support services shall be provided for all [Ohio works first], IV-E and medicaid cases receiving Title XIX medical benefits"); 14 Ohio Admin. Code 5101:12-10-31.2(A) (the application for or acceptance of Medicaid constitutes an automatic assignment to ODJFS of medical expense reimbursement payments, pursuant to R.C. 5101.571-.59). *See generally also* R.C. 5101.59(B) ("[r]efusal by the applicant, recipient, or participant to cooperate in obtaining medical support and payments for self or any other member of the assistance group renders the applicant, recipient, or participant ineligible for public assistance, unless cooperation is waived by [ODJFS]"); 12 Ohio Admin. Code 5101:1-29-13(B)(3) ("Medicaid applicants and participants must cooperate in the process of securing medical support payments"); rule 5101:12-10-31.2(C) (unless an exception exists, a minor child's caretaker who

> (E) The CSEA shall establish a support order, in accordance with [R.C. 3111.78],[5] when a man is presumed to be the father of a child under [R.C. 3111.03] upon the request of a parent, guardian, or legal custodian of a child, the person with whom the child resides, or the CSEA of the county in which the child, parent, guardian, or legal custodian of the child resides.
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> Should the party requesting the support order ask the CSEA to issue an administrative support order, the CSEA shall proceed in accordance with rules 5101:12-45-05.1 through 5101:12-45-05.4 of the Administrative Code. Should the party requesting the support order not specifically ask the CSEA to issue an administrative support order, the CSEA may establish an administrative support order or may file an action with the court to establish a support order.
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> (F) The CSEA shall establish a support order, in accordance with [R.C. 3111.29],[6] when an acknowledgement of paternity has become final under

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is a member of that child's Medicaid assistance group is required to cooperate with the CSEA in establishing a health insurance order).

[4] *See generally* R.C. 5107.20 ("[p]articipation in Ohio works first constitutes an assignment to [ODJFS] of any rights members of an assistance group have to support from any other person, excluding medical support assigned pursuant to [R.C. 5101.59]"); 12 Ohio Admin. Code 5101:1-3-10(A) (same); rule 5101:1-29-13(A) ("[c]hild support services must be made available to individuals receiving Ohio works first (OWF), medicaid-only and IV-E benefits, as well as individuals not receiving any of these benefits, upon completion of an JFS 07076, 'Non-PA Application,' or as described in paragraph (C) of this rule. Each [CSEA] must have procedures in place to assure that all individuals will receive the services required"). *See generally also* R.C. 5107.22 (the caretaker of a minor child shall cooperate, if the caretaker is a member of the child's assistance group, in establishing a support order for the child); rule 5101:1-3-10(C) (same); rule 5101:1-29-13(B)(3) (same); 14 Ohio Admin. Code 5101:12-10-31.1(A) (same).

[5] R.C. 3111.78 provides, in part, as follows:

> A parent, guardian, or legal custodian of a child, the person with whom the child resides, or the [CSEA] of the county in which the child, parent, guardian, or legal custodian of the child resides may do the following to require a man to pay support and provide for the health care needs of the child if the man is presumed to be the natural father of the child under [R.C. 3111.03]:
>
> …
>
> (B) Ask an administrative officer of a [CSEA] to issue an administrative order pursuant to [R.C. 3111.81.]

[6] R.C. 3111.29 states that, "[o]nce an acknowledgement of paternity becomes final under [R.C. 3111.25], the mother or other custodian or guardian of the child … may request that an

> [R.C. 3111.24] upon request of the mother or other custodian or guardian of the child.
>
> Should the party requesting the support order ask the CSEA to issue an administrative support order, the CSEA shall proceed in accordance with rules 5101:12-45-05.1 to 5101:12-45-05.4 of the Administrative Code. Should the party requesting the support order not specifically ask the CSEA to issue an administrative support order, the CSEA shall file an action with the court to establish a support order.
>
> (G) When an administrative officer issues an administrative order determining the existence of a parent and child relationship under [R.C. 3111.46],[7] the administrative officer shall, in accordance with [R.C. 3111.80], schedule an administrative support hearing in accordance with rule 5101:12-45-05.1 of the Administrative Code. (Footnotes added.)

[2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-05, at p. 305. *See generally* 14 Ohio Admin. Code 5101:12-10-30.1(A) (a CSEA "has administrative responsibility for a case when it has an obligation to act in response to a request for services. The CSEA with administrative responsibility shall take all of the following actions, as necessary: … Establishment of child support and medical health insurance support orders"); [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-70-05.3(E)(3), at p. 335 (in interstate cases a responding CSEA is responsible for establishing a support order pursuant to rule 5101:12-45-05).

In accordance with rule 5101:12-45-05, a CSEA's administrative officer may be required to establish an administrative child support order under R.C. 3111.29, R.C. 3111.46, or R.C. 3111.78 when a child resides with a third party who is the legal custodian of the child.[8] When an

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administrative officer of a [CSEA] issue an administrative order for the payment of child support pursuant to [R.C. 3111.81]."

[7] R.C. 3111.46 states, in part:

> On receipt of the genetic test results, the administrative officer shall do one of the following:
>
> (A) If the results of the genetic testing show a ninety-nine per cent or greater probability that the alleged father is the natural father of the child, the administrative officer of the agency shall issue an administrative order that the alleged father is the father of the child who is the subject of the proceeding.

[8] Because a CSEA is required to provide child support and medical support services to persons who receive medical assistance under R.C. Chapter 5111 or Ohio works first assistance under R.C. Chapter 5107, *see* notes three and four, *supra*, a CSEA's administrative officer may be required to issue an administrative child support order under R.C. 3111.29, R.C. 3111.46, or

administrative officer is required to establish such an order, the officer is required to do the following before issuing the order:

> If a request for issuance of an administrative support order is made under [R.C. 3111.29] or [R.C. 3111.78] or an administrative officer issues an administrative order determining the existence of a parent and child relationship under [R.C. 3111.46], the administrative officer shall schedule an administrative hearing *to determine, in accordance with [R.C. Chapters 3119 and 3121], the amount of child support any parent is required to pay, the method of payment of child support, and the method of providing for the child's health care*.
>
> The administrative officer shall send the mother and the father of the child notice of the date, time, place, and purpose of the administrative hearing. (Emphasis added.)

R.C. 3111.80; *accord* [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-05.1(A)-(B), at p. 306; *see* [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-40-20.2(E), at p. 304.

At the conclusion of an administrative hearing under R.C. 3111.80, an administrative officer may do the following:

> After the hearing under [R.C. 3111.80] is completed, the administrative officer may *issue an administrative order for the payment of support and provision for the child's health care*. The order shall do all of the following:
>
> (A) *Require periodic payments of support* that may vary in amount, except that, if it is in the best interest of the child, the administrative officer may order the purchase of an annuity in lieu of periodic payments of support if the purchase agreement provides that any remaining principal will be transferred to the ownership and control of the child on the child's attainment of the age of majority;
>
> (B) *Require the parents to provide for the health care needs of the child* in accordance with [R.C. 3119.29-.56];
>
> (C) Include a notice that contains the information described in [R.C. 3111.84] informing the mother and the father of the right to object to the order by bringing an action for the payment of support and provision of the child's health care under [R.C. 2151.231] and the effect of a failure to timely bring the action. (Emphasis added.)

R.C. 3111.81; *accord* [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-05.3, at p. 307; *see* R.C. 3119.30; [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-10(G), at p. 309. *See generally* 12 Ohio Admin. Code 5101:1-29-35.1(B) (in any action or proceeding in

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R.C. 3111.78 when establishing the support order required by [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-05(D), at p. 305.

which a child support order is issued "the CSEA, with respect to administrative child support orders, shall determine the person responsible for the health care of the children subject to the child support order").

Pursuant to R.C. 3111.80 and R.C. 3111.81, therefore, an administrative officer of a CSEA has the authority to issue an administrative child support order that requires a parent to pay for the support of a child, provide for the health care needs of the child, or both when a child resides with a third party who is the legal custodian of the child. *See generally* R.C. 3119.07(C) ("[i]f neither parent of a child who is the subject of a child support order is the residential parent and legal custodian of the child and the child resides with a third party who is the legal custodian of the child, the court shall issue a child support order requiring each parent to pay that parent's child support obligation pursuant to the child support order"); 13 Ohio Admin. Code 5101:2-47-08(B) (a CSEA must "assist the Title IV-E agency in securing support payments from the parents on behalf of the child"). Although the term parent is not statutorily defined for purposes of these statutes, in common parlance this term means "[t]he lawful father or mother of someone." *Black's Law Dictionary* 1137 (7th ed. 1999); *accord The Random House Dictionary of the English Language* 1410 (2nd ed. 1987). *See generally* R.C. 1.42 (any term left undefined by statute that has not acquired a particular meaning or technical definition differing from its dictionary definition is to be accorded its common, everyday meaning). Thus, pursuant to R.C. 3111.80-.81, an administrative child support order issued by an administrative officer of a CSEA may establish the amount of child support an emancipated woman who is the biological mother of a child is required to pay when the child resides with a third party who is the legal custodian of the child.

You explain in your letter that it could be argued that an administrative child support order issued by an administrative officer of a CSEA pursuant to R.C. 3111.80-.81 may only establish the amount of child support the father of a child is required to pay. You base this assertion on the fact that an administrative hearing that occurs because of a request made under R.C. 3111.29 or R.C. 3111.78 or an administrative order issued under R.C. 3111.46 is conducted to establish the amount of child support a father is required to pay.

R.C. 3111.29 states that, once an acknowledgement of paternity becomes final under R.C. 3111.25, the mother or other custodian or guardian of a child may initiate proceedings to obtain a support order that requires "the father to pay an amount for the support of the child." Similarly, under R.C. 3111.78, a parent, guardian, or legal custodian of a child, the person with whom the child resides, or the CSEA of the county in which the child, parent, guardian, or legal custodian of the child resides may ask an administrative officer of a CSEA to issue an administrative support order "to require a man to pay support and provide for the health care needs of the child if the man is presumed to be the natural father of the child under [R.C. 3111.03.]" The final statute, R.C. 3111.46, states that, if the results of a genetic testing show a ninety-nine percent or greater probability that an alleged father is the natural father of a child, an administrative officer must "issue an administrative order that the alleged father is the father of the child." After an administrative officer issues an administrative order determining the existence of a parent and

child relationship under R.C. 3111.46, an administrative hearing must be conducted to determine the amount of child support the father must pay. R.C. 3111.80; *accord* rule 5101:12-40-20.2(E).

Although an administrative hearing that occurs because of a request made under R.C. 3111.29 or R.C. 3111.78 or an administrative order issued under R.C. 3111.46 is conducted to establish the amount of child support a father is required to pay, this fact does not foreclose an administrative officer from establishing the amount of child support an emancipated woman who is the biological mother of a child is required to pay when the child resides with a third party who is the legal custodian of the child. First, as explained above, the plain language of R.C. 3111.80 and R.C. 3111.81 authorizes an administrative officer of a CSEA to issue an administrative child support order that requires *any parent*, including a mother, to pay for the support of a child, provide for the health care needs of the child, or both when a request for the issuance of an administrative child support order is made under R.C. 3111.29 or R.C. 3111.78 or an administrative order is issued under R.C. 3111.46. Thus, while R.C. 3111.29, R.C. 3111.46, and R.C. 3111.78 establish the events necessary to initiate an administrative hearing for child support, R.C. 3111.80-.81 govern the establishment of the support order. *See generally Tuscarawas Cty. CSEA v. Sanders*, 2003-Ohio-5624, 2003 Ohio App. LEXIS 5004, at ¶15 (Tuscarawas County 2003) ("[w]hile 3111.78 and 2151.231 purport to give the non-custodial caretaker legal standing, the support order must be determined in accordance with chapters 3119 and 3121 of the Revised Code").

Pursuant to R.C. 3111.80, an administrative officer determines, in accordance with R.C. Chapters 3119 and 3121, "the amount of child support any parent is required to pay, the method of payment of child support, and the method of providing for the child's health care." *See* [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-05.2(D), at p. 307; rule 5101:12-45-10(A). In order to do this, an administrative officer is required to send the mother and father notice of the date, time, place, and purpose of the administrative hearing.[9] R.C. 3111.80; rule 5101:12-45-05.1(B). At the hearing, the officer must allow each parent to present evidence proving or disproving verifications and allegations of earnings, income, wages, or assets and any other information which may be used to establish the amount a parent should pay for support. Rule 5101:12-45-05.2(C); *see also* R.C. 3119.31 (in any action in which a CSEA is determining the person responsible for the health care of a child who is or will be the subject of a child support order, each party shall provide to the CSEA a list of any group health insurance policies, contracts, or plans available to the party). The information provided by the mother and the father is used by the administrative officer when he prepares the child support computation worksheet. *See* R.C. 3119.022; R.C. 3119.023.

One of the purposes of the child support computation worksheet is to determine the annual support obligation of each parent. *See* R.C. 3119.022; R.C. 3119.023. Another purpose

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[9] Under [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-05.1(D), at p. 306, the parents of a child may sign a waiver of formal notice of the administrative support hearing.

is to determine whether a parent's child support obligation becomes part of a child support order. *See* R.C. 3119.022; R.C. 3119.023. When making the latter determination, an administrative officer must consider who has custody of the child. For example, R.C. 3119.07 states:

> (A) Except when the parents have split parental rights and responsibilities, a parent's child support obligation for a child for whom the parent is the residential parent and legal custodian shall be presumed to be spent on that child and shall not become part of a child support order, and a parent's child support obligation for a child for whom the parent is not the residential parent and legal custodian shall become part of a child support order.
>
> (B) If the parents have split parental rights and responsibilities, the child support obligations of the parents shall be offset, and the court shall issue a child support order requiring the parent with the larger child support obligation to pay the net amount pursuant to the child support order.
>
> (C) If neither parent of a child who is the subject of a child support order is the residential parent and legal custodian of the child and the child resides with a third party who is the legal custodian of the child, the court shall issue a child support order requiring each parent to pay that parent's child support obligation pursuant to the child support order.

Thus, an administrative officer is required to determine the annual support obligation of a mother and establish whether the mother's child support obligation becomes part of a child support order when calculating the support to be given to a child under a support order.

If the mother of a child who is the subject of an administrative support order objects to the order, the mother may bring an action for the payment of support and provision for the child's health care under R.C. 2151.231:

> The mother or father of a child who is the subject of an administrative support order may object to the order by bringing an action for the payment of support and provision for the child's health care under [R.C. 2151.231] in the juvenile court or other court with jurisdiction under [R.C. 2101.022] or [R.C. 2301.03] of the county in which the child support enforcement agency that employs the administrative officer is located.

R.C. 3111.84; *accord* [2005-2006 Monthly Record] Ohio Admin. Code 5101:12-45-05.4, at p. 308.

In light of the foregoing provisions of law governing the calculation of support obligations of parents, it is clear that a mother may be the subject of an administrative child support order issued pursuant to R.C. 3111.81. It, thus, follows that an administrative officer may establish the amount of child support an emancipated woman who is the biological mother of a child is required to pay when the child resides with a third party who is the legal custodian of the child.

This conclusion is buttressed further by the fact that, regardless of the martial status and living arrangements of a child's parents, both the mother and the father have a common law and statutory duty to support their children. *State ex rel. Wright v. Indus. Comm.*, 141 Ohio St. 187, 47 N.E.2d 209 (1943) (syllabus, paragraph one); *see, e.g.*, R.C. 3103.03; R.C. 3103.031; R.C. 3109.05; *see also, e.g.*, R.C. 2111.08; R.C. 2151.011(B)(45); R.C. 2919.21(A); R.C. 3109.04(A); R.C. 3119.07. A mother's duty to support her children is owed "to the state, as well as to [her] children; and [she] has no more right to allow them to become a public charge than [she] has to allow them to suffer for want of proper care and sustenance." *Bowen v. State*, 56 Ohio St. 235, 239, 46 N.E. 708 (1897). Based on this well-established duty and the General Assembly's use of the term "parent," rather than "father," in R.C. 3111.80-.81, it is reasonable to conclude that the General Assembly intended to authorize an administrative officer of a CSEA to issue an administrative child support order that establishes the amount of child support an emancipated woman who is the biological mother of a child is required to pay when the child resides with a third party who is the legal custodian of the child. *Cf.* R.C. 2151.231 ("[t]he parent, guardian, or custodian of a child, the person with whom a child resides, or the child support enforcement agency of the county in which the child, parent, guardian, or custodian of the child resides may bring an action in a juvenile court or other court with jurisdiction under [R.C. 2101.022] or [R.C. 2301.03] under this section requesting the court to issue an order requiring a *parent* of the child to pay an amount for the support of the child without regard to the marital status of the child's parents" (emphasis added)). *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370 (1948) ("the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute").

It is, therefore, my opinion, and you are hereby advised that, pursuant to R.C. 3111.80-.81, an administrative child support order issued by an administrative officer of a child support enforcement agency may, regardless of the marital status and living arrangements of a child's parents, establish the amount of child support an emancipated woman who is the biological mother of a child is required to pay when the child resides with a third party who is the legal custodian of the child.

Respectfully,

JIM PETRO
Attorney General