



**FRANK WHITE, JR.**  
Jackson County Executive

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**DEC 23 2022**

**MARY JO SPINO**  
**COUNTY CLERK**

815  
9:45

December 22, 2022

**Veto Message from the County Executive**

Ordinance 5707

TO THE JACKSON COUNTY LEGISLATURE:

I am returning herewith without my approval Ordinance 5707, which, most notably, makes significant changes to the Jackson County Code relating to the County's Pension Plan that would increase the retirement rate benefit by fifty percent for a small group of county associates.

First, I believe it is important to note the unique process and circumstances surrounding Ordinance 5707's passage. On December 12, 2022, the Jackson County Legislature held its last regularly scheduled meeting of 2022. At that meeting, Ordinance 5707 was both introduced and passed despite the lack of a fiscal note estimating the cost to the county nor any testimony in support of the Ordinance's passage. In addition, Ordinance 5707 was passed despite a direct request from the County's Pension Plan Board of Trustees for time to review and analyze the proposed changes. Finally, Ordinance 5707 was passed with the support of five Legislators who will not be returning in 2023 due to either retirements or election losses.

Second, since the inception of the county's pension plan, all appointed county associates have been treated equally regardless of their titles, duties, or departments. Ordinance 5707 proposes the unprecedented creation of a tiered system which will only benefit a small number of county associates despite all county associates sharing in the costs. The Presiding Judge echoed my concerns in his email requesting this veto, when he said, in part, "the ordinance unfairly treats county-funded employees of our Court disparately(.)"<sup>i</sup>

Third, Ordinance 5707 violates the terms of numerous labor agreements approved by the Jackson County Legislature and creates significant legal and financial risk to the county. Specifically, the Legislature has authorized contracts between the county and the following employee labor unions: Service Employees International (SEIU), Communication Workers of America (CWA), and the United Brotherhood of Carpenters, which contain the following language:

**"In the event that changes to Jackson County's pension plan are officially proposed by the Employer, the parties agree to meet and confer for the purpose of discussing the effects of said proposed changes."**

Since no such meetings have occurred between the parties, Ordinance 5707 would immediately violate all three labor agreements and provide cause for each of the unions to file grievances against the county.<sup>ii</sup> In addition, the Prosecuting Attorney has determined that Ordinance 5707 would trigger provisions of labor agreements, often referred to as “me-too” clauses, that will ultimately require the county to provide “commensurate compensation increases” to members of her staff.<sup>iii</sup>

Fourth, those appointed as pension plan fiduciaries have, for the second time, recommended against changes to the plan “which favorably impact only one limited group of individuals participating in JCRP and no one else.” I am extremely proud of the improvements that we have made to our pension plan since I have taken office, improvements that include taking our plan from 74% to 94% funded since I became County Executive. Improvements like this are possible because of the hard work, dedication, and expertise of our Pension Plan Board of Trustees.<sup>iv</sup>

Finally, in addition to returning Ordinance 5707 to the Legislature without my approval, I am calling on the new members of the Legislature to immediately consider substantive changes to the code of ordinances that will prevent this situation from occurring in the future. Potential changes include, but are not limited to, a requirement that no changes to the plan may occur until a fiscal note has been prepared and the Pension Plan Board of Trustees has had the opportunity to fully review the proposal and share their recommendations with the Legislature.

For the foregoing reasons, and on the recommendation of the Presiding Judge, Prosecuting Attorney, County Sheriff and Pension Plan Board of Trustees, I return Ordinance 5707 to the County Legislature without my approval and with my objections.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Frank White, Jr.", is written over a horizontal line.

Frank White, Jr.  
Jackson County Executive

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<sup>i</sup> See Presiding Judge’s Email Communication, December 16, 2022.

<sup>ii</sup> See County Counselor’s Memorandum, December 20, 2022.

<sup>iii</sup> See Prosecuting Attorney’s Letter, December 22, 2022.

<sup>iv</sup> See Pension Plan Board of Trustees Letter, December 22, 2022.

## Miriam N. Hennosy

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**From:** Dale.Youngs@courts.mo.gov  
**Sent:** Friday, December 16, 2022 10:50 AM  
**To:** Frank White  
**Cc:** Caleb Clifford; Troy Schulte; Mary Marquez; Scott.Brinkman@courts.mo.gov; Jalilah Otto; Jean Peters Baker; Jennifer Phillips; Janette Rodecap; Patrick Campbell; Mark Styles; Marco Roldan; Jeffrey Bushur; Susan Burnett; Kevin Harrell  
**Subject:** EXTERNAL Ordinance 5707

WARNING: This email originated outside of Jackson County.

DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good morning - it is my understanding that on December 12th, as the last item of business on the agenda at the last scheduled legislative session of the year, the legislature not only entertained introduction of Ordinance 5707, but advanced it for perfection and passed it.. Among its other provisions, Ordinance 5707 makes substantive changes to the pension rate for "peace officers," increasing that rate to 2.5 percent - a full percentage point higher than that which applies to most other county-funded employees, including employees of the Court. The legislators voting for this change (many of whom will no longer be serving on the legislature after the first of the year) took this action despite knowing the serious concerns the Pension Board of Trustees has with such a change (including those expressed in a July 3, 2018 letter sent to the legislature related to a similar measure introduced at that time), and without allowing the Pension Board the opportunity to review this particular ordinance and properly evaluate its provisions under current circumstances.

With all respect to those peace officers who serve our community, I believe the rushing through of this ordinance under these circumstances - while possibly well-meaning - was an ill-conceived exercise of the legislature's power, was bad public policy, and did not properly account for or allow the addressing of the issues previously raised by the Pension Board and others.

Further, we continue to believe the ordinance unfairly treats county-funded employees of our Court disparately, and agree with all other concerns raised by the Pension Board in its 2018 letter. Accordingly, on behalf of those employees, the Court requests that you exercise your authority to veto this ordinance so that its proposed revisions can be properly considered by the Pension Board and - as appropriate - the legislature as it will be constituted after January 1.

Thanks for your consideration of these views.

dy

J. Dale Youngs  
Presiding Judge  
16th Judicial Circuit, Division 6  
415 E. 12th St., 6th Floor  
Kansas City, MO 64106  
816.881.3606  
dale.youngs@courts.mo.gov





## **OFFICE OF THE COUNTY COUNSELOR**

**JACKSON COUNTY COURTHOUSE**

415 EAST 12TH STREET  
KANSAS CITY, MISSOURI 64106

816-881-3355  
Fax: 816-881-3398

### **MEMORANDUM**

**TO:** FRANK WHITE, JR.  
COUNTY EXECUTIVE

**FROM:** BRYAN O. COVINSKY *BC*  
COUNTY COUNSELOR

**DATE:** December 20, 2022

**RE:** ORDINANCE 5707, INCREASING PEACE OFFICERS' PENSION  
MULTIPLIER/ATTORNEY CLIENT PRIVILEGED MATERIAL

As you're aware, the above-referenced ordinance, adopted by the county legislature on December 12, 2022, awaits your action. This ordinance, if it eventually takes effect, will increase the pension multiplier for, and thus the pension benefits to be paid to, a specialize group of county employees classified as "peace officers." These employees are deputy sheriffs in the Sheriff's Office and park rangers in the Parks + Rec Department. Questions have been raised regarding whether the ordinance itself and the procedures by which it was adopted comply with the county's legal obligations under one or more collective bargaining agreements (CBA) in effect between the county and various labor unions. It is our view that, while the law governing these issues is not crystal clear, the county's action in adopting the ordinance and the procedures utilized may lead to legal action by the unaffected unions in the County.

The first question concerns whether the county had a legal duty to bargain with any of its employee labor unions concern the benefit increase for peace officers. The provisions of the CBA's will determine the answer to this question. There are three CBA's in effect that contain language relevant to this question. These are with the Service Employees International Union (SEIU), the Communication Workers of America (CWA), and Carpenters Union. All three of these CBA's contain the following sentence: "In the event that changes to Jackson County's pension plan are officially proposed by the Employer, the parties agree to meet and confer for the purpose of discussing he effects of said proposed changes." See SEIU CBA art. XIX, CWA CBA art. 15, Carpenters CBA art. 17. We are not aware that any "meet and confer" sessions were conducted with any of these unions in connection with Ordinance 5707. If the county did not meet and confer, then this would appear to be a violation of the applicable provision of each of these CBA's and could be the subject of a grievance filed by any or



all of the affected unions. However, we would defend such a grievance by arguing that Ordinance 5707 does not directly affect the pension benefits of any member of the affected unions. Those members' benefits would not be affected and the county's pension plan would remain funded at the level required by state law after the ordinance's adopted. We do recommend, though, that the indirect effect on any other proposals regarding the pension fund that involve other county bargaining units should be reviewed by the pension board. The pension board had requested more time to review this concern when Ordinance 5707 was adopted without its support. The county's action are defensible but a labor arbitrator would ultimately decide if the violation of the "meet and confer" clauses created any legal consequences for the ordinance.

The second question is whether this pension benefit increase to one group of employees violates the "Me Too" clause of our CBA's with the International Association or Fire Fighters (IAFF). Both of these CBA's contain a provision stating "In the event of a wage increase for any County department, division, or employee, including wage increases for elected officials not otherwise required by law that is above that provided to members of the bargaining unit, members covered by this Memorandum will receive a percentage increase equal to that granted to the other department, division, employee(s) or elected officials." See IAFF Letter of Understanding dated October 3, 2016, Carpenters CBA art. 21, sec. 2. We believe the answer to this question turns on whether an increase in pension benefits constitutes a "wage increase" as that term is used in the CBA's. The American Heritage Dictionary (5<sup>th</sup> Edition, 2018) defines "wage" as "A regular payment, usually on an hourly, daily, or weekly basis, made by an employer to an employee, especially for manual or unskilled work." This suggests that "wage" refers only to compensation paid to an employee at or near the time work is performed, and does not refer to other compensation or fringe benefits, such as pension benefits, that are paid in some other way or at some other time. Further, support for this position is found in a Missouri statutory definition of the term "wages." Under section 287.250.2, RSMo, relating to workers' compensation, "Wages'...does not include fringe benefits such as retirement, pension, health and welfare, life insurance, training, Social Security or other employee or dependent benefit plan furnished by the employer for the benefit of the employee." We therefore believe that the better view is that a pension benefit increase for a separate employee group does not violate the "Me Too" clause of the IAFF or Carpenters MOU.

Frank White, Jr.  
Jackson County Executive  
415 E 12<sup>th</sup> Street  
Kansas City, Missouri 64106

Re: Jackson County, Missouri Revised Pension Plan and Trust 2022

Dear Mr. White,

On December 12th, the Jackson County Legislature voted to increase the benefit accrual multiplier for "public safety personnel" without a respective increase to other Jackson County Employees, including the Jackson County Prosecutor's Office. It is my belief that this action violated the terms of the collective bargaining agreements executed by various parties including the Prosecutor's Office. In short, the agreements contain provisions which require commensurate compensation increases for all applicable divisions and departments when other divisions and departments of Jackson County receive compensation increases. Under Missouri law, pension plans are treated as compensation. As such, the proposed increase in pension benefits to "public safety personnel," without a respective increase, will violate the terms of the agreements.

We sought the opinion of outside counsel, who has confirmed that this is in violation of those agreements and is actionable. While we would like to avoid so proceeding, if this is not vetoed by your office, we will so proceed to protect the interests of those unfairly affected by this action.

I wish we could focus on the holidays instead of this matter but appreciate your immediate consideration of this.

Sincerely,

Jean Peters Baker

**ARNOLD, NEWBOLD, SOLLARS & HOLLINS, P.C.**

BRADLEY J. SOLLARS ♦ \* ‡  
SIMONE J. HOLLINS ♦  
MARK A. KISTLER ♦ \*  
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Δ ALSO ADMITTED IN ILLINOIS  
\* ALSO ADMITTED IN KANSAS  
‡ ALSO ADMITTED IN IOWA AND NEW YORK  
# ALSO ADMITTED IN WASHINGTON D.C.

December 22, 2022

Jackson County Executive  
Mr. Frank White, Jr.  
Jackson County Courthouse  
415 E. 12<sup>th</sup> St.  
Kansas City, MO 64106

RE: Jackson County, Missouri Revised Pension Plan and Fund  
Ordinance No. 5707 - Benefit Improvement for Peace Officers

Dear Mr. White,

The undersigned, as Fund Counsel for the Jackson County, Missouri Revised Pension Plan and Fund (JCRP), has been authorized and instructed to write to you regarding *Ordinance No. 5707*, which was passed by the County Legislature on Monday, December 12, 2022. This Ordinance in part, increased the benefit multiplier from 1.5% to 2.5% for all "Peace Officers" employed by the County effective for retirements on or after July 1, 2023. "Peace Officers" is defined to include only Deputy Sheriff officers in the Jackson County Sheriff's Office and Park Rangers in the Parks + Rec Department. This Ordinance makes benefit improvements which favorably impact only one limited group of individuals participating in JCRP and no one else. The Board of Trustees (BOT) of JCRP respectfully request your consideration in vetoing this Ordinance at your earliest opportunity.

The BOT convened a special board meeting today, December 22, 2022, to discuss Ordinance No. 5707. The BOT has expressed concerns that the Ordinance was passed without any relevant input or substantive recommendations from the BOT about the sustainability of such changes now or in the future. In addition, this Ordinance is not consistent with the fiduciary duties that the BOT is charged with which include in part, making decisions which are in the best interest of all Participants and Beneficiaries and to ensure the long-term sustainability of JCRP.

The BOT has reviewed the results of the September 16, 2022 Cost Study, prepared by the Fund Actuary and have considered the options presented in the Study to improve benefits for all Members of JCRP. However, there are other legal, cost, and benefit design issues that should be considered before making any comprehensive benefit improvement recommendations. These discussions are complex and require



Mr. Frank White, Jr.  
December 22, 2022  
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additional consideration, research, and consultation with JCRP's Benefit Consultant and Actuary.

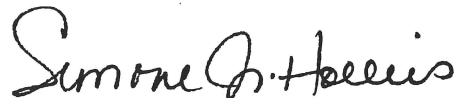
The BOT recognizes that only the County Legislature has the authority to make benefit changes to JCRP. However, the JCRP BOT has a fiduciary duty to protect the best interests all the participants of beneficiaries participating in the Plan and to maintain appropriate funding levels to maintain the sustainability of JCRP.

This BOT is required to discharge its duties with respect to JCRP solely in the interest of all participants and beneficiaries, including making recommendations on benefit improvements which are *fairly* distributed among all county employees in such a way as not to benefit only one limited group of Participants. The BOT has educated themselves on pension matters, including investment matters and sought the guidance of outside professionals to help the BOT carry out this purpose.

Therefore, the JCRP BOT respectfully requests that you exercise your authority as County Executive to veto Ordinance No. 5707.

Very truly yours,

ARNOLD, NEWBOLD,  
SOLLARS & HOLLINS, P.C.

A handwritten signature in black ink, reading "Simone J. Hollins". The signature is written in a cursive, flowing style.

Simone J. Hollins  
[sjhollins@a-nlaw.com](mailto:sjhollins@a-nlaw.com)