

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE appropriating \$314,395.00 from the undesignated fund balance of the 2020 CARES Act Fund to provide for hazard pay for impacted County associates in the Corrections, Public Works, and Parks + Rec Departments, Environmental Health, and Sheriff's and Medical Examiner's Offices in connection with the workplace risks of the ongoing Coronavirus/COVID-19 pandemic, at a cost to the County not to exceed \$314,395.00.

ORDINANCE NO. 5352, June 1, 2020

INTRODUCED BY Theresa Cass Galvin and Dan Tarwater III, County Legislator

WHEREAS, U.S. President Donald J. Trump, Missouri Governor Mike Parson, and County Executive Frank White, Jr., have all declared, in one form or another, the ongoing Coronavirus/COVID-19 pandemic to be a public health emergency; and,

WHEREAS, the County, through its various efforts, plays a significant role in the public health of its citizens and employees; and,

WHEREAS, an appropriate response by the County to this emergency will require significant expenditures from the County CARES Act Fund, which consists of monies provided by the U.S. Treasury for this purpose; and,

WHEREAS, with the funding provided by this appropriation, Jackson County will provide temporary hazard pay salary adjustments in the amount of \$150.00 per pay period, for the pay periods from March 14, 2020, to June 5, 2020, to impacted County associates in

the Corrections, Public Works, and Parks + Rec Departments, Environmental Health, and Sheriff's and Medical Examiner's Offices; and,

WHEREAS, the associates who shall receive these adjustments are frontline field personnel and exclude most management, clerical, and administrative personnel in the departments and offices identified; and,

WHEREAS, the pay periods selected coincide with the local onset of COVID-19 in March and the beginning of Phase 2 of the Jackson County reopening plan in early June 2020; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, that the following appropriation be and hereby is made:

<u>DEPARTMENT/DIVISION</u>	<u>CHARACTER/DESCRIPTION</u>	<u>FROM</u>	<u>TO</u>
CARES Act Fund 040-9999	32810- Undesignated Fund Balance	\$314,365	
Park Safety 040-1605	55090- Salary Adjustments		\$15,300
040-1605	55040- FICA Taxes		\$ 1,171
Detention Center Pop. Control 040-2304	55090- Salary Adjustments		\$4,500
040-2304	55040- FICA Taxes		\$ 345
Corrections 040-2701	55090- Salary Adjustments		\$165,150
040-2701	55040- FICA Taxes		\$ 12,634

Sheriff		
040-4201	55090- Salary Adjustments	\$78,900
040-4201	55040- FICA Taxes	\$ 6,036
Health Services		
040-1500	55090- Salary Adjustments	\$ 6,600
040-1500	55040- FICA Taxes	\$ 505
Medical Examiner		
040-2001	55090- Salary Adjustments	\$10,800
040-2001	55040- FICA Taxes	\$ 827
Fac. Mgmt. Kansas City		
040-1204	55090- Salary Adjustments	\$10,800
040-1204	55040- FICA Taxes	\$ 827

and,

Be IT FURTHER ORDAINED, that the Director of Finance and Purchasing be and hereby is authorized to implement the indicated temporary hazard pay salary adjustments in a manner consistent with the intent of this Ordinance.

Effective Date: This ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:

Chief Deputy County Counselor

See attached Com & LA Opinions

County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5352 introduced on June 1, 2020, was duly passed on June 3, 2020 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 6

Nays 0

Abstaining 1

Absent 2

VETOED - JUNE 12, 2020

This Ordinance is hereby transmitted to the County Executive for his signature.

6.3.2020
Date

Mary Jo Spino

Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5352.

June 12, 2020 - Veto message from County Executive (see attached)

June 12, 2020 - Memorandum from the County Counselor (see attached)

Date

Frank White, Jr., County Executive

Funds sufficient for this appropriation are available from the source indicated below.

ACCOUNT NUMBER: 040 9999 32810
ACCOUNT TITLE: CARES Act Fund
Undesignated Fund Balance
NOT TO EXCEED: \$284,036.00

There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.

ACCOUNT NUMBER: 040 1605 55090
ACCOUNT TITLE: CARES Act
Park Safety
Salary Adjustments
NOT TO EXCEED: \$15,300.00

ACCOUNT NUMBER: 040 1605 55040
ACCOUNT TITLE: CARES Act
Park Safety
FICA Taxes
NOT TO EXCEED: \$1,171.00

ACCOUNT NUMBER: 040 2304 55090
ACCOUNT TITLE: CARES Act
Detention Center Population Control
Salary Adjustments
NOT TO EXCEED: \$4,500.00

ACCOUNT NUMBER: 040 2304 55040
ACCOUNT TITLE: CARES Act
Detention Center Population Control
FICA Taxes
NOT TO EXCEED: \$345.00

ACCOUNT NUMBER: 040 2701 55090
ACCOUNT TITLE: CARES Act
Corrections
Salary Adjustments
NOT TO EXCEED: \$165,150.00

ACCOUNT NUMBER: 040 2701 55040
ACCOUNT TITLE: CARES Act
Corrections
FICA Taxes
NOT TO EXCEED: \$12,634.00

ACCOUNT NUMBER: 040 4201 55090
ACCOUNT TITLE: CARES Act
Sheriff
Salary Adjustments
NOT TO EXCEED: \$78,900.00

ACCOUNT NUMBER: 040 4201 55040
ACCOUNT TITLE: CARES Act
Sheriff
FICA Taxes
NOT TO EXCEED: \$6,036.00

ACCOUNT NUMBER: 040 1500 55090
ACCOUNT TITLE: CARES Act
Health Services
Salary Adjustments
NOT TO EXCEED: \$6,600.00

ACCOUNT NUMBER: 040 1500 55040
ACCOUNT TITLE: CARES Act
Health Services
FICA Taxes
NOT TO EXCEED: \$505.00

ACCOUNT NUMBER: 040 2001 55090
ACCOUNT TITLE: CARES Act
Medical Examiner
Salary Adjustments
NOT TO EXCEED: \$10,800.00

ACCOUNT NUMBER: 040 2001 55040
ACCOUNT TITLE: CARES Act
Medical Examiner
FICA Taxes
NOT TO EXCEED: \$827.00

ACCOUNT NUMBER: 040 1204 55090
ACCOUNT TITLE: CARES Act
Fac. Mgmt. Kansas City
Salary Adjustments
NOT TO EXCEED: \$10,800.00

ACCOUNT NUMBER: 040 1204 55040
ACCOUNT TITLE: CARES Act
Fac. Mgmt. Kansas City
FICA Taxes
NOT TO EXCEED: \$827.00

Date

See attached Council opinions

Chief Administrative Officer



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE
415 EAST 12TH STREET
KANSAS CITY, MISSOURI 64106

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

TO: FRANK WHITE, JR.
COUNTY EXECUTIVE

FROM: BRYAN O. COVINSKY
COUNTY COUNSELOR

DATE: JUNE 2, 2020

RE: CARES ACT FUNDS

You have asked this office to provide guidance on the interplay between section 532 of the Jackson County Code and the recent midyear receipt of significant federal funding via the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. Per that Act, and pursuant to an application for direct federal funding that you filed with the U.S Treasury as authorized by the Act, Jackson County has received \$122,669,998.00 for coronavirus pandemic relief, of which \$18,354,806.00 has been previously appropriated by the County Legislature at your recommendation.

Section 532., Jackson County Code, 1984, provides:

532. Appropriations, Limitation on.

The County Legislature shall not increase the total appropriation from any fund as proposed by the County Executive in the budget so that the total appropriations shall exceed ninety-five percent (95%) of the income and revenue as estimated by the County Executive in the budget.

532.1 Exception, New Revenue.

If the County Executive shall propose and the County Legislature shall enact a measure that will provide additional income and revenues, and if the County Executive shall propose additional expenditures, the County Legislature may appropriate an amount equal to not more than ninety-five percent (95%) of the estimated income and revenue from the new source or sources.

This section governs how the County is to treat new revenues that are received mid-year and that are not a part of the County's annual budget process. Since the CARES Act funding received is not included in the 2020 Jackson County budget, the first paragraph of section 532, which governs the County Legislature's power to appropriate funds that you estimated in the annual budget, does not apply. Rather, the appropriation of CARES Act funds is governed by the exception in section 532.1. The County Legislature may

appropriate up to 95% of this "additional income and revenues" only if "the County Executive shall propose additional expenditures."

Regarding pending legislative items, you have advised that you have not proposed any expenditures of CARES Act funds for hazard pay for County associates as contemplated by Ordinance 5352 now pending before the Legislature. You have also advised that you have not proposed any expenditure for Truman Medical Centers, Inc., for building improvements or equipment. Accordingly, the County Legislature is without authority at this time to appropriate any new revenues for these purposes.



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415 EAST 12TH STREET
KANSAS CITY, MISSOURI 64106

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

To: Frank White, Jr., County Executive

From: Bryan Covinsky, County Counselor

Date: June 2, 2020

RE: Retroactive County Hazard Pay

The Office of the County Counselor has been asked for a legal opinion as to whether the County is permitted to pay certain Jackson County employees retroactive hazard pay related to the COVID-19 crisis. After review of relevant case and state constitutional law, the Office of the County Counselor offers the following opinion on this matter.

The Missouri Constitution, in Article III, § 39, Subsection 3, states that “[t]he general assembly shall not have power ... [t]o grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor *after* service has been rendered or a contract has been entered into and performed in whole or in part[.]” (emphasis added).

Missouri courts have interpreted this article of the state constitution to mean that extra compensation, given after services have been rendered, is prohibited. *See State ex rel. Cleaveland v. Bond*, 518 S.W.2d 649 (1975) (retirement benefits conferred upon judges retired from the service prior to the enactment of the Retirement Act of 1971 would constitute extra compensation after services were rendered); *Jackson v. Wilson*, 581 S.W.2d 39 (Mo. Ct. App. 1979) (retroactive application of the tort defense fund is extra compensation after service has been rendered); and *Vangilder v. City of Jackson*, 492 S.W.2d 15 (Mo. Ct. App. 1973) (Article III, § 39, Subsection 3 pertains to extra compensation given after service has been performed, not to compensation earned during service but taken after the period of service).

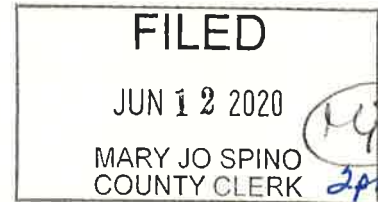
The law on this particular issue is longstanding, as evidenced by the *Cleaveland*, *Jackson*, and *Vangilder* cases standing the test of time under Missouri law, but also by two Missouri Attorney General’s Office Opinions released in 1955 and 1987. In 1955, Missouri Attorney General John M. Dalton handed down an opinion on this issue stating that “...a government agency which derives its power and authority from the Constitution and laws of this state would be prohibited from granting extra compensation in the form of bonuses to public officers or servants after the service has been rendered.” (Missouri Attorney General Opinion No. 72, June 14, 1955). Further, in 1987, Missouri Attorney General William L. Webster cited the above-mentioned case law in noting that additional payments which were rendered to workers for services performed, but

were part of their compensation for those services (as opposed to bonuses on top of their already-earned pay) were permissible. (Missouri Attorney General Opinion No. 114, July 31, 1987).

Here, the question at issue deals with whether certain Jackson County employees may receive hazard pay, on top of their regular pay, for working during particular periods of the COVID-19 crisis. Based on the above-cited state constitutional provision, as well as case law interpreting that provision, it is the opinion of the Office of the County Counselor that such hazard pay would constitute extra compensation after services have been performed, and is impermissible under Missouri law. Thus, we must advise against any payment to Jackson County employees which would be additional pay rendered for duties already performed and for which these employees already were compensated.



FRANK WHITE, JR.
Jackson County Executive



June 12, 2020

Veto Message from the County Executive

Ordinance 5352

TO THE JACKSON COUNTY LEGISLATURE

I am returning herewith without my approval Ordinance 5352, which, most notably, proposes the use of funds received by the County "to address necessary expenditures incurred due to the COVID-19 public health emergency"¹ to make unlawful payments to certain County Associates.

In passing Ordinance 5352, the County Legislature violated provisions of the County Charter,ⁱ the County Code of Ordinances,ⁱⁱ and the Rules of the Jackson County Legislature.ⁱⁱⁱ However, those "errors" are significantly overshadowed by the clear and obvious violation of the Constitution of the State of Missouri that would occur should I allow this Ordinance to become law.

While there are many troubling components relating to the passage of this Ordinance, the most egregious may be the timing of its passage. Remarkably, a majority of the members of the County Legislature voted in favor of Ordinance 5352 despite receiving the following warning from the County Counselor prior to their vote:

"... it is the opinion of the Office of the County Counselor that such hazard pay would constitute extra compensation after services have been performed, and is impermissible under Missouri law. Thus, we must advise against any payment to Jackson County employees which would be additional pay rendered for duties already performed and for which these employees already were compensated."^{iv2}

In addition, I believe it is important to remind the residents of Jackson County that the funds proposed to cover these unlawful payments are the very ones that the federal government provided directly to the County to help us address the on-going deadly pandemic in our community. While there is never an appropriate time to engage in political games, doing so in the midst of a pandemic is shocking, even by Jackson County standards.

¹ "H.R. 748 — 116th Congress: Coronavirus Aid, Relief, and Economic Security Act."
<<https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H5BC2CD415BB34FA29798052E64A29ABA>>

² The County Counselor's Office has also consulted with the legal advisor to the County Legislature, Mr. Paul Campo, and has learned that he too believes Ordinance 5352 is unlawful.



Members of the County Legislature

June 12, 2020

Page 2

For the foregoing reasons, Ordinance 5352 has earned my veto.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Frank White, Jr.", with a long horizontal flourish extending to the left.

Frank White, Jr.
Jackson County Executive

ⁱ See Article V, Section 7. Constitutional Home Rule Charter of Jackson County, 2018.

ⁱⁱ See Sec. 523.1, Jackson County Code of Ordinances, 1984.

ⁱⁱⁱ See Rules of the Legislature:

“The County Counselor shall approve the form of all ordinances before perfection and resolutions before final passage (Article V, Section 7).” Rule Eight. County Counselor and the Legislature.

“Only business relevant to the purpose stated in the notice to the Clerk may be considered at a special meeting.” Rule Thirteen. Special Meetings.

^{iv} See County Counselor’s Opinion, June 2, 2020.



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