

VETOED

VETOED BY COUNTY EXECUTIVE November 15, 2024

Floor Substitute
October 30, 2024

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE appropriating \$30 million from the undesignated fund balance of the general fund.

ORDINANCE NO. 5896, October 28, 2024

INTRODUCED BY DaRon McGee, Sean E. Smith, Manuel Abarca IV, Donna Peyton and Venessa Huskey, County Legislators

WHEREAS, by Resolution 21769, dated October 14, 2024, the County Legislature implemented the method for the distribution of approximately \$70.4 million in remaining Jackson County American Rescue Plan funds by the end of 2024; and,

WHEREAS, this is a match to ARPA funds designated by Resolution 21769; and,

WHEREAS, ARPA funds must be obligated by December 31, 2024 and spent by December 31, 2026; and,

WHEREAS, an appropriation is necessary in order to place the funds in the proper spending account; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, that the following appropriations be made from the undesignated fund balance of the 2024 General Fund:

<u>DEPARTMENT/DIVISION</u>	<u>CHARACTER/DESCRIPTION</u>	<u>FROM</u>	<u>TO</u>
General Fund- Undesignated Fund			
001-9999	32810 - Undesignated Fund Balance		30,000,000

Jury Room Relocation		
001-3001	58020 Building and Improvements	2,550,000
Exterior/ADA Compliance/Beautification		
001-1204	58020 Building and Improvements	2,600,000
Ground Floor Separation		
001-1204	58020 Building and Improvements	1,600,000
Family Justice Center		
001-2199	58020 Building and Improvements	500,000
Public Health Department		
001-2603	58060 Other Improvements	1,500,000
Election Boards		
001-5006	58170 - Other Equipment	375,000
Election Boards		
001-5004	58170 - Other Equipment	375,000
Historic Courthouse Independence		
001-1206	58020 Building and Improvements	1,500,000
Contingency Fund		
001- 8005	58020 Building and Improvements	2,000,000
Health Department		
001-2603	56830 - Contingency	1,500,000
Food Insecurity		
001-0112	56830 - Contingency	1,000,000
Arts Revitalization		
001-0112	56789 - Outside Agency	500,000
Small Business Grants Initiative		
001-0112	56789 - Outside Agency	2,000,000
New Affordable Housing Expansion		
001-0112	56789 - Outside Agency	2,000,000
Municipal/Other Taxing Jurisdictions		
001-0112	56790 - Other Contractual	10,000,000

and,

BE IT FURTHER ORDAINED, that all Jackson County construction projects will be appropriately executed in accordance with the procurement rules and regulations under Jackson County's Purchasing Code Chapter 10, and be constructed using Missouri prevailing wage and approved occupational titles and all compliance guidelines of the county; and,

BE IT FURTHER ORDAINED, that in accordance with current U.S. Treasury Guidelines and under Chapter 10 of the County Code, under the titled section denoted as Competitive Bid Not Required subsection 1030.7 tax exempt organizations and agencies stating that, "competitive bidding shall not be required when funds are appropriated and a contract for services is or will be awarded by resolution or ordinance of the County Legislature to an organization or agency which is exempt from federal income taxation"; meaning all funded categories denoted as grant programs will utilize this mechanism for fast and vetted distribution of funds by the deadline; and,

BE IT FURTHER ORDAINED, that all County officials be and hereby are authorized to execute any and all documents necessary to give effect to said appropriations.

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

ACCOUNT NUMBER: 001 9999 32810
ACCOUNT TITLE: General Fund
Undesignated Fund
NOT TO EXCEED: \$30,000,000.00

Date

Chief Administrative Officer



5896

FRANK WHITE, JR.
Jackson County Executive

RECEIVED

NOV 15 2024

12:25 pm
[Signature]

VETOED

NOV 18 2024

Veto Message for Ordinances No. 5895 and No. 5896

Date: November 15, 2024

To the Honorable Members of the Jackson County Legislature,

After a thorough review of Ordinances 5895 and 5896, I am compelled to return them without my approval. As determined by our County Counselor’s Office, both ordinances are legally unsound and cannot be enacted without violating state, local, and federal statutes governing County budget and appropriations. These legal requirements ensure that both the Executive and Legislative branches work collaboratively — a partnership fundamental to effective governance and sound fiscal responsibility.

Before I go further, I want to extend my gratitude to Budget Committee Chairman Jalen Anderson, the members of his committee, and all who participated in the recent hearings on the remaining American Rescue Plan Act (ARPA) funds. I also thank Legislative Chair Jeanie Lauer and others who have joined me in discussions on this important matter. Through collaboration like this, Jackson County has successfully managed and distributed over \$230 million from various federal programs, including ARPA funds. These resources have supported University Health, provided millions in rental and utility assistance, and strengthened our community health centers, first responders, teachers, and parents as they navigated the challenges of the pandemic. This is the power not only of teamwork but of a government that truly works for the people.

While we’re all committed to helping our community thrive, the remaining ARPA funds are limited and the deadline to allocate them is quickly approaching. It is our responsibility to ensure every dollar goes where it can do the most good. Let me be clear: there are no easy choices here. The needs in our community, especially among our non-profits, far exceed the resources we have left to allocate. These organizations are doing remarkable work, and I’m proud of the partnerships we’ve built with them, supporting their efforts with tens of millions of dollars to date. But as leaders, our duty is to the entirety of Jackson County and its future. That means we’ll have to make hard decisions—and sometimes say “no,” even when it’s unpopular.

Key Issues with Ordinances 5895 and 5896

1. Collaborative Agreement on Appropriations is Essential

The laws governing our County require that any spending, particularly from remaining ARPA funds, be based on mutual agreement between the County Executive and the Legislature. No single branch has the authority to act unilaterally on these funds. The \$230 million we’ve already distributed is proof of what we can accomplish together, and I remain committed to finding common ground. But meaningful collaboration is essential to make sure we’re putting



the community's interests first, not the interests of individual elected officials, as we've been entrusted to do.

2. A Need for Transparency and Responsibility

These ordinances are part of a pattern of actions that have created confusion and false hope, especially for our non-profit partners. From announcing funds prematurely to making promises that go beyond the Legislature's authority twice, these moves have delayed essential support. The people of Jackson County deserve better. We have an obligation to make decisions transparently and thoughtfully, setting a clear, consistent path that the community can trust.

3. Financial Stability Must Be a Priority

These ordinances also propose taking large sums from our rainy day fund—funds that protect us against unexpected crises. With potential revenue reductions from cannabis sales tax and senior property tax freezes, we face serious fiscal challenges. These challenges are compounded by capital improvements needed across our facilities, from the downtown courthouse to University Health, totaling over \$750 million. If we deplete our reserves now, we put our financial future at risk and weaken our ability to address these pressing needs.

4. Unprecedented Expansion of Legislative Budget Control

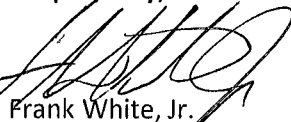
These ordinances would place nearly all remaining ARPA funds and over \$15 million from the rainy day fund under the Legislature's direct budget control, allocating funds to vague line items like "contingency" and "other contractual services" without clear explanations. Ordinance 5895 alone would transfer over 90% of ARPA funds to the Legislature, creating the largest budget expansion in our County's history. That's not how taxpayer dollars should be handled—especially not at a time when our community is looking to us for transparency and accountability.

5. Commitment to Thoughtful, Long-Term Solutions

Our path forward must be responsible, transparent, and grounded in the best interests of our community. I'm committed to using these funds to meet urgent infrastructure needs, reduce long-term costs to taxpayers, and ensure Jackson County remains resilient. This means that while we'll continue to support our non-profits, we must also prioritize projects that strengthen our County's foundations, benefit the community as a whole, and prepare us for the challenges ahead.

Ordinances 5895 and 5896, if enacted, would jeopardize our County's financial health and set a troubling precedent for the misuse of public funds. I urge the Legislature to reconsider and join me in forging a path that reflects our shared commitment to the people of Jackson County. Together, we can ensure these remaining ARPA funds serve the community thoughtfully, transparently, and effectively. My commitment is to the people of Jackson County, to a fair and transparent process, and to a future we can all be proud of.

Respectfully,



Frank White, Jr.
County Executive



OFFICE OF THE COUNTY AUDITOR JACKSON COUNTY, MISSOURI

Office: 816-881-3310
Fax: 816-881-3340
auditor@jacksongov.org

Q. TROY THOMAS, CPA
COUNTY AUDITOR

JACKSON COUNTY COURTHOUSE
415 E. 12th Street, 2nd Floor
Kansas City, Missouri 64106
www.jacksongov.org


VETOED

NOV 18 2024

MEMORANDUM

TO: Honorable Members of the Jackson County Legislature

CC: Mary Jo Spino, Clerk of the County Legislature
Troy Schulte, County Administrator
Bryan Covinsky, County Counselor

FROM: Q. Troy Thomas, Legislative Auditor 

DATE: November 1, 2024

RE: Bryan Covinsky, County Counselor Memorandum, October 30, 2024, Relating to the Proposed Appropriation from the Restricted Fund Balances of the American Rescue Plan Fund and Undesignated General Fund Balance, Ordinances 5895 & 5896

The County Counselor deliberately attempts to distort state law and county code to fit his narrative that the Legislature does not have the authority to appropriate funds from undesignated fund balance or restricted fund balance, without the approval of the County Executive, which is not factual. For example, he states, in ¶ two that Section 50.630 RSMo, "details how unencumbered fund balances may be transferred and appropriated," but Section 50.630 RSMo, does not say "transferred and appropriated" nor is there any reference to "unencumbered fund balances,": Section 50.630, RSMo states:

- Section 50.630, RSMo. County commissions shall have the power to authorize the transfer of any unencumbered appropriation balance. – The county commission may authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one spending agency under its jurisdiction to another; but this action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year, except that transfers from the emergency fund may be made at any time in the manner herein provided.

Therefore, based on of Section 50.630, RSMo, cited above, it's obvious, that it has no bearing on an appropriation from undesignated fund balance, and it does not say "transferred and appropriated". This state law specifically refers to appropriated funds that are **unencumbered**, can be transferred from one spending agency (department) to another (department) within the same fund. This means that funds must first be appropriated before a determination can be made as to whether they are available to be transferred to another agency (department).

The definitions below, I believe, should be helpful in better understanding why Section 50.630, RSMo, and the County Counselor's entire opinion regarding this matter are not applicable to an appropriation from Undesignated General Fund Balance or Restricted (ARPA) Fund Balance, as they relate to Ordinances 5895 and 5896:

- Government revenue: Is the total amount of money a government receives from external sources (i.e., taxes, fees, grants, etc.) during a specific period to pay for its expenditures.
- Government fund balance: Refers to the total accumulation of operating surpluses and deficits within a specific government fund, essentially representing the difference between the fund's assets and liabilities and signifying the amount of money available for future spending within that fund; it's considered a key indicator of a government's financial health and ability to meet obligations.
- Undesignated General Fund Balance: Is the amount of money in a government's general fund that is not restricted, committed, assigned, or nonspendable.
- Restricted (ARPA) Fund Balance: A government's restricted fund balance is the portion of its fund balance that is limited to be spent for a specific purpose. These amounts are subject to constraints that are externally imposed or imposed by law.
- Appropriation: The act of setting aside a specific amount of money for designated use, usually done by a legislative body like congress (Legislature).
- Encumbrance: A commitment of funds for a specific purpose or expense (Purchase Order or Contract), essentially "holding" a portion of an appropriation until the item is received or the service rendered.
- Unencumbered: The process of releasing funds from an encumbrance (Purchase Order or Contract), making them available for spending again.

However, as previously stated, the County Counselor claim that §50.630, RSMo, restricts the Legislature's ability to appropriate monies from the undesignated fund balances is unfounded, since §50.630 RSMo, obviously, does not govern the appropriation of funds from the County's undesignated fund balance. Furthermore, the sole role of the budget officer is to confirm via a recommendation that the proposed transfer of appropriated funds is unencumbered and thus available to be transferred.

The County Counselor failed to do his due diligence and relied on the State Auditor's report who erred in their recommendation that the County "Discontinue authorizing transfers from the fund balance (not appropriated through the county budget process), and ensure budget amendments are only made when the county receives new revenues..." The State Auditor was incorrect, because a transfer of funds from undesignated fund balance and an appropriation from undesignated fund balance has entirely different meanings in governmental accounting, as follows:

- In governmental accounting an “appropriation from undesignated fund balance” is not the same as a “transfer from undesignated fund balance”; while both involve using unallocated fund balance, an appropriation is a formal legal authorization to spend a specific amount of money for a designated purpose, while a transfer simply moves funds between different funds within the government, without necessarily specifying how the money will be used. For example:

Appropriation: The County Legislature votes to appropriate \$100,000 from the General Fund’s Undesignated Fund Balance to purchase software for the IT Department to be used during the calendar year.

Transfer: The County transfer’s \$100,000 from the General Fund Undesignated Fund Balance to the County Improvement Fund to cover the cost of facility improvements. (No action by the County Legislature is required)

The County Counselor, again failed to do his due diligence, when he cited a statement in the State Auditor’s report that said:

- “Although Section 50.622.1 RSMo, [Article VIII] Section 2 of the Jackson County Charter, and Section 532.1 of the county code allow the County Legislature to enact ordinances regarding budget amendments when the county receives unanticipated funds...it does not provide for the County Legislature to transfer funds from undesignated fund balances...instead of properly amending the budget. As a result, when the County Legislature approves these undesignated fund transfers, it is effectively amending its budget without the existence of new revenues, and thus, should follow the same procedures required for adopting the original budget, including holding public hearings.”

The state law, county charter and county ordinance referenced in the above quote has nothing to do with enacting “ordinances regarding budget amendments” nor do they mention an appropriation from the undesignated fund balance or restricted fund balance. But what Section 50.622.1, RSMo, and Jackson County Code Section 532.1, does govern, is the county amending the budget when “additional funds” or “new revenue” is received during the year. Furthermore, as previously noted, a transfer from undesignated fund balance and an appropriation from undesignated fund balance, by definition, are not the same. And by definition nor is revenue, new or otherwise, the same as undesignated fund balance. The following are the state and county laws referenced in the above quote:

- Section 50.622.1, RSMo, states, “Any county may amend the annual budget during any fiscal year in which the county receives additional funds, and such amount or source, including, but not limited to, federal or state grants or private donations, could not be estimated when the budget was adopted.” In addition, Section 50.622.6, RSMo, states, “Notwithstanding the provisions of this section, no charter

county shall be restricted from amending its budget pursuant to the terms of its charter.”

- Article VIII, Section 2 of the Jackson County Charter: “The County Legislature may enact further requirements concerning the budget and financial affairs of the county by ordinance, which shall be govern by this charter and the constitution of the State of Missouri.”
- Jackson County Code Chapter 5, Section 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.”

As you can see, in reading the above state and county laws there is no reference to “County Legislature to enact ordinances regarding budget amendments” but he is correct that none of the state or county laws cited above refer to an appropriation from undesignated fund balance. And a “public hearing” should be held when we amend the budget to recognize additional or new revenue or an appropriation from undesignated fund balance.

It is disappointing that the County Counselor, whose opinion should be reliable and unbiased, failed to cite Section 50.622.6 or Article II, Section 16.6 of the county charter that specifically grants the County Legislature the authority to amend the county budget, and appropriate funds from the restricted or undesignated fund balances, independent of a recommendation from the County Executive:

- Section 50.622.6, RSMo, “Notwithstanding the provisions of this section [50.622], no charter county shall be restricted from amending its budget under and pursuant to the terms of its charter.”
- Article II, Section 16.6, of the Jackson County Charter, states the County Legislature shall have the power to “Adopt a budget and appropriate money for the payment of debts and expenses of the county and for any public purpose.”

The County Counselor’s flawed analysis of state and county laws unabashedly distorts these laws, to reach his conclusion that Ordinances 5895 and 5896 constitutes a violation of state and county laws, is shortsighted and without merit.

In conclusion, based on an analysis of the County Counselor’s opinion, regarding Ordinances 5895 and 5896 it is unquestionable that no violation of Jackson County Code Chapter 5 or Chapter 50 of the Revised Statutes of the State of Missouri have been or will be violated by the County Legislature adoption of these ordinances.



JACKSON COUNTY
Office of the County Counselor

Jackson County Courthouse-2nd Floor
415 East 12th Street
Kansas City, MO 64106

Ord. #5896

VETOED

NOV 18 2024

MEMORANDUM

TO: JACKSON COUNTY LEGISLATURE

FROM: BRYAN COVINSKY
COUNTY COUNSELOR *Bryan Covinsky*

DATE: OCTOBER 30, 2024

RE: LEGAL ISSUES RAISED BY PROPOSED ORDINANCES 5895 AND 5896,
RELATED TO THE DISTRIBUTION OF ARPA FUNDS

This memorandum is written to address legal concerns with proposed Ordinances 5895 and 5896, which attempt, if adopted, to appropriate money from the undesignated fund balances of the General Fund and the American Rescue Plan Fund. The questions at issue are listed below, followed by our analysis and answers.

1. Are Ordinances 5895 and 5896, if adopted, in compliance with Chapter 50 RSMo?

Chapter 50 RSMo is titled "County Finances, Budget and Retirement Systems." This Chapter details how county budgeting and finance operations are to be performed statewide. Conformity with Chapter 50 is mandatory to meet state law requirements. §50.630 RSMo details how unencumbered fund balances may be transferred and appropriated. Specifically, this section states:

The county commission may authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one spending agency under its jurisdiction to another; but this action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year except that transfers from the emergency fund may be made at any time in the manner herein provided.

The first issue with the appropriation and transfers proposed in Ordinances 5895 is that the ARPA Fund has not been appropriated. County Ordinance 5815, approved January 1, 2024, set out the appropriations for each fund and department for the 2024 fiscal year. Ordinance 5815 did not appropriate any funds from the County ARPA Fund account. This can be found for reference on page 109 of the 2024 adopted budget. Therefore, there is no unencumbered appropriation which can be transferred.

With regards to both 5895 and 5896, Section 50.630 requires that such a transfer of unencumbered funds come at the recommendation of the County Budget Officer. While this is arguably not a transfer from one "spending agency" to another, the underlying requirement still applies. Article III, Section 5 of the Jackson County

Charter requires that the County Executive appoint a budget officer “who shall have all powers and duties prescribed by law and ordinance.” On January 16, 2020, by Executive Order, Troy Schulte was appointed to be the Budget Officer of Jackson County. The County Budget Officer has not recommended these transfers. Proposed Ordinances 5895 and 5896, if adopted, would not comply with §50.630 RSMo.

2. Are proposed Ordinances 5895 and 5896 in compliance with County Code Section 530?

Jackson County Code Chapter 5, Section 530 details the process for budget recommendations and appropriations. This section states that “Appropriation ordinances based on the recommended budget... shall be enacted not later than the 31st day of December following the submission of the recommended budget.”

Proposed Ordinances 5895 and 5896 attempt to appropriate and encumber monies from a fund that was not appropriated in the adopted budget for fiscal year 2024, as noted above. This means that the fund itself is unavailable to be appropriated from, unless a specific exception applies, such as that contained in County Code 532.1.

In 2020, Missouri State Auditor, Nicole Galloway, issued an Audit Report related to Jackson County Budgets and Transfers (Report No. 2020-108). In the report, the Auditors Office stated the following:

Chapter 5, Section 532.1, of the county code indicates budget amendments must be proposed by the County Executive and enacted upon by the County Legislature. Although Section 50.622.1 RSMo, Section 2 of the Jackson County Charter, and Section 532.1 of the county code allow the County Legislature to enact ordinances regarding budget amendments when the county receives unanticipated funds, or experiences an unanticipated decline in funds, it does not provide for the County Legislature to transfer funds from undesignated fund balances (not appropriated through the county budget process) instead of properly amending the budget. As a result, when the County Legislature approves these undesignated fund transfers, it is effectively amending it's budget without the existence of new revenues, and thus, should follow the same procedures required for adopting the original budget, including holding public hearings.

Auditor Galloway went on to provide the following Recommendation:

Discontinue authorizing transfers from undesignated fund balances (not appropriated through the County budget process), and ensure budget amendments are only made when the County receives new revenues and public hearings are held for all other budget amendments in accordance with State law.

3. Are the Proposed Ordinances 5895 and 5896 in compliance with County Code Secs. 531 and 532?

Jackson County Code Chapter 5 details the fiscal requirements for appropriations, encumbrance and expenditures. Specifically, Section 532.1 "Appropriations, Limitation on." governs how the County is to treat revenues that are not part of the annual budget process.

Section 531: The total expenditures proposed for any fund in the preliminary budget or the budget shall be no greater than the estimated income and revenue for that fund. (Ord. 11, Sec. 3.58, Eff. 1-1-73)

Section 532: 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. (Ord. 11, Sec. 3.59, Eff. 1-1-73)

Section 532.1: 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 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 Code section governs how the County is to treat revenues that are not part of the annual budget process. Since the funds contemplated in Proposed Ordinances 5895 and 5896 were not included in the 2024 budget, it must first be determined if these are "additional income and revenues" such that the funds may be appropriated outside of the regular budget process. The County Counselor's Office has provided several legal opinions about what constitutes "additional income and revenues." In 2020-002 Legal Opinion, the Counselor's Office concluded that under Section 532.1 CARES Act funds were considered to be "additional income and revenues," in part because the CARES Act funds were not included in the estimated annual budget. Similarly, the funds contemplated in Proposed Ordinances 5895 and 5896 were not estimated. Therefore, the first paragraph of section 532, which governs the County Legislature's power to appropriate funds that are estimated in the annual budget does not apply. Rather, the appropriation of these funds is governed by the exception in section 532.1.

Section 531 states that the total expenditures proposed for any fund cannot be greater than the estimated income and revenue, which is set by the Executive. Section 532 states that the County Legislature shall not increase the total appropriation from any fund, so that the appropriation would exceed 95% of the income and revenue estimated by the Executive. In this case the County Executive did not anticipate these funds and therefore the funding cannot be appropriated without the approval of the County Executive as outline in 532.1 of the County Code.

The County Counselor's Office has several written legal opinions on this issue dating back to 1991 and this opinion remains consistent with our historical opinions, including those written by Nixon and Larson. In a June 20, 1991 Legal Opinion, the question is asked "[d]oes section 532 of the Jackson County Code limit the County's budget and

appropriations to 95% of estimated income and revenue?" County Counselor Thomas Larson wrote, "Section 532 places a limitation on the legislature when it seeks to increase an appropriation recommended in the budget submitted by the County Executive."

In Legal Opinion 2020-002, it states that "the County Legislature may appropriate up to 95% of this "additional income and revenues" only if "the County Executive shall propose additional expenditures". Finally, in a February 3, 2023 Legal Opinion, the Counselor's Office determined that it violated Section 532 for the Legislature to increase the County Health Fund because the County Executives recommendation was already over 95% of the estimated income and revenue for that fund.

Conclusion

Appropriation of funds by the Legislature via proposed Ordinances 5895 and 5896 would violate the Jackson County Code Chapter 5 and Chapter 50 of the Revised Statutes of the State of Missouri.

Due to the urgent need for this review of proposed Ordinances 5895 and 5896, this opinion may not capture all possible legal concerns or all facets of the legality of the proposed Ordinances. The County Counselor reserves the right to supplement this opinion in the future if needed