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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.