



SANDRA L. SCHERMERHORN

COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE
415 EAST 12th STREET
Kansas City, Missouri 64106

(816) 881-3355
Fax: (816) 881-3398

MEMORANDUM

TO: MEMBERS OF THE COUNTY LEGISLATURE

FROM: SANDRA L. SCHERMERHORN *SLS*
COUNTY COUNSELOR

DATE: OCTOBER 9, 1997

RE: ORDINANCE 2743, AMENDING THE
COUNTY'S PURCHASING CODE

This ordinance, which will appear for introduction on the legislature's agenda of October 13, 1997, would amend the county's purchasing code to require the county executive to solicit competitive bids and secure legislative approval before contracting for the services of experts and consultants. Upon our review of this ordinance, it is the opinion of this office that this ordinance, if adopted, would violate the county's charter. We, therefore, cannot approve it as to form.

APPLICABLE CHARTER PROVISIONS

Article II, §16.13 of the Constitutional Home Rule Charter of Jackson County provides:

Section 16. The legislature shall have the power, pursuant to and in conformity with the constitution, and without limiting the generality of the powers vested in the legislature by this charter, to:

* * *

13. Contract and be contracted with and to authorize the making of contracts on behalf of the county by county officers, and establish by ordinance authority, limitations and procedures for making and review of



such contracts.

Article III, §6.2 of the charter provides:

Section 6. The executive, in addition to other powers and duties provided in this charter, shall have the power to:

* * *

2. Employ experts and consultants in connection with any of the functions of the county.

DISCUSSION

The county executive's power to employ experts and consultants is broad. It is limited only by the implied requirement that appropriated funds be available to pay for the expenditures. The records of the Jackson County Charter Commission indicates this was exactly as the charter's framers intended.

The Jackson County Charter is derived from the St. Louis County Charter, which was originally adopted by the voters of that county in 1950, and amended several times since then most recently in 1979. The St. Louis County Charter grants its county executive the power to "employ, by and with the approval of the council, experts and consultants in connection with any of the functions of the county;..." (Emphasis added.) This language was the source of the July 1, 1970 draft version of art. III, §6.2 of the Jackson County Charter, which would have given the Jackson County Executive the power to "employ, by and with approval of the County Legislature," experts and consultant in connections with any of the functions of the County." However, by the time of the charter commission's meeting of August 14, 1970, the phrase "with approval of the County Legislature," had been deleted from the commission's draft of that section. The transcript of that meeting indicates the commission's thought process:

MR. [JOHN R.] GIBSON: We'll come back to that.

Number two, employ experts and consultants in connection with any of the functions of the county.

Any problem on that?

Number three --

MR. [JAMES E.] GARDNER: Employ experts and consultants, that gives a contractual authority.

MR. [HAROLD L.] FRIDKIN: He's got that later on here anyway.

MR. GARDNER: Can we give him this kind of authority without any control? I mean, can he go out and commit the county to one hundred thousand dollar audit of its books without --

MR. FRIDKIN: He's got to get the money for that, so there would have to be an ordinance passed to appropriate the money.

MR. GIBSON: The appropriation.

(Transcript of Jackson County Charter Commission Meeting of August 14, 1970, pp. 49-50)

From this colloquy, it is clear that the charter's framers intended that the power of the purse be the legislature's sole check and balance on the executive's power to employ experts and consultants to accomplish county objectives.

Article II, §16.13 of the charter does grant the county legislature the power to "contract and be contracted with and to authorize the making of contracts on behalf of the county by county officers, and establish by ordinance authority, limitations and procedures for the making and review of such contracts." (Emphasis added.) The use of the word "such" is key to interpreting the extent of the legislature's power to establish limitations and procedures for making and review of contracts. The contracts for which the legislature may establish limitations and procedures are only those which the legislature has the power to enter into itself and those which it has the power to authorize other county officers to make.

The county executive's power to employ experts and consultants is granted, not by the legislature, but by the charter itself. That power is therefore not subject to restriction by the legislature, either by way of a requirement that such contracts be subject to legislative approval, or that they be competitively bid. A legislative power to approve these contracts was specifically considered and rejected by the Jackson County Charter Commission. See July 1, 1970 draft and Transcript of August 14, 1970 meeting. Further, a requirement of competitive bidding of such contracts is the exception, rather than the

Victor E. Callahan
October 9, 1997
Page 5

RSMo 1994. Again, the focus is on a negotiated contract with a firm responding to a solicitation. There is no exception to these requirements for a political subdivision which has adopted its own policy regarding construction management.

CONCLUSION

The county legislature may not by ordinance restrict the county executive's power granted under art. III, §6.2 of the charter to employ experts and consultants in connection with any of the functions of the county, either by way of requiring that such contracts be competitively bid or conditioning them upon approval of the legislature. Any ordinance purporting to impose such a requirement or requirements would be void as in violation of the charter.

SLS/pmm