



JACKSON COUNTY
Office of the County Counselor

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

O# 5896

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