



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE

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MEMORANDUM

FOR: FRANK WHITE, JR.
COUNTY EXECUTIVE

FROM: BRYAN O. COVINSKY
COUNTY COUNSELOR

DATE: JUNE 10, 2020

RE: ORDINANCE 5354

You have asked for guidance from this office as to any legal issues associated with the recent adoption of Ordinance 5354 by the Jackson County Legislature. This ordinance, a copy of which is attached as Exhibit A., was introduced and purportedly adopted by the legislature on June 3, 2020. On its face, this ordinance appropriates \$27,039,000 in CARES Act funding for use by Truman Medical Centers, Inc. (TMC), in the current coronavirus pandemic. This ordinance was not approved as to form by this office, as is required by article V, section 7 of the Jackson County Charter. Nor does it bear the revenue certificate/fiscal note signed by the budget officer, required by section 50.660, RSMo. This approval and revenue certificate are missing because, as I stated in my memorandum of June 2, 2020, attached to Ordinance 5354 and included in Exhibit A, this ordinance would appropriate new revenues outside of Jackson County's annual budget process, in contravention of section 532 of the Jackson County Code, in that the county executive, has not "proposed any additional expenditures" for TMC, such as would be authorized by the ordinance, even though such a proposal of additional expenditures is a specific requirement of section 532.1 of the county code.

You have indicated your intent to authorize the funding of TMC provided for in Ordinance 5354, but have also expressed concern about whether the manner in which the ordinance was adopted might have negative legal repercussions in the future. I shall not here attempt to address the legal status of Ordinance 5354 as things stand now but, suffice it to say, that status at this point is murky at best. In view of this status, I believe that the most prudent course of action to follow in order to implement the intent of Ordinance 5354 would be for you to formalize your proposal of additional revenue, as required by code section 532.1, and then recommend that the legislature introduce a new ordinance, in a proper form which I would approve, and adopt that new ordinance. This process would resolve any issues created by the adoption of Ordinance 5354.

You have also asked whether, based on the information available today, the items which would be funded for TMC by Ordinance 5354, are eligible for funding under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Section 601(d) of the Act restricts the use of CARES Act funds to those that:

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease (COVID-19);
- (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

I don't believe there's any issue that the funds appropriated by Ordinance 5354 were not included in Jackson County's 2020 budget. Likewise, it seems fairly clear that the expenditures proposed are for the time period specified in subsection 3 above. The real issue is whether the proposed expenditures would be "incurred due to the public health emergency with respect to the Coronavirus Disease (COVID-19)." Attached to this memorandum as Exhibit B is a document that was distributed in some manner at the legislature's meeting of June 3, 2020, in connection with the adoption of Ordinance 5354. It shows in summary fashion thirteen proposed expenditures of CARES Act funds by TMC, which total \$27,039,000, the same amount as was appropriated by Ordinance 5354. Thus, it appears that Exhibit B sets out the proposed expenditures for the appropriated funds. But there is practically no detail here that will allow us to evaluate whether these are "necessary" expenditures "due to the public health emergency." I recommend that county staff contact TMC representatives and ask them to prepare a brief (less than five-page) summary document, explaining these proposed expenditures and how they're necessary due to the public health emergency. We can then review that response and make a determination. Regarding proposed contractual language to protect the county in the event the TMC makes inappropriate expenditures, the legislature has recently authorized the retention of attorney Travis Elliott of Springfield, MO, to assist us with contract drafting. We plan to speak with him later today. We'll work with Mr. Elliott to make develop the guidance you've requested.