



**JACKSON COUNTY**  
**Office of the County Counselor**

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

MEMORANDUM

TO: JACKSON COUNTY EXECUTIVE  
JACKSON COUNTY LEGISLATURE

FROM: BRYAN COVINSKY  
COUNTY COUNSELOR

DATE: DECEMBER 11, 2023

RE: LEGAL ISSUES RAISED BY PROPOSED AMENDMENT TO  
ORDINANCE 5815, 2024 JACKSON COUNTY BUDGET

RECEIVED

DEC 11 2023

MARY JO SPINO  
COUNTY CLERK

This memorandum is written to address several legal concerns that have arisen in connection with a proposed amendment to Ordinance 5815, which outlines the 2024 County budget. The questions at issue are listed below, followed by our analysis and answers.

1. Is the Proposed Budget Amendment to Ordinance 5815, as it relates to ARPA funding, in compliance with County Code Secs. 531 and 532. Specifically, can ARPA funds be added into a Budget Amendment if no such funds were estimated and/or anticipated by the County Executive?

The Proposed Budget Amendment to Ordinance 5815 is not in compliance with Jackson County Code Sections 531 or 532. The Jackson County Code sections state:

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)

Jackson County Code 537.2 places the duty to create a detailed budget estimate with the County Executive. 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 estimated \$0 worth of income and revenue for the ARPA fund. Therefore, the County Legislature cannot increase the appropriation from that fund to exceed 95% of \$0.

While it could be argued that the ARPA funds are available for use and are therefore revenue and can be appropriated, it is the opinion of this office that Section 537.2 clearly places the authority with the Executive to determine "the total available fund balance for each fund, and projected revenue and expenses for the current year." Jackson County Code, Section 537.2.

The County Counselor's Office has several written legal opinions on this issue dating back to 1991. 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 a June 2, 2020 Legal Opinion, the Counselor's Office provided an option under Section 532.1 when these funds were still considered to be "new revenue". In that Opinion, 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% the estimated income and revenue for that fund.

Therefore the appropriation of ARPA funds by the Legislature would violate the Jackson County Code Chapter 5 as to the authority of the Legislature to appropriate funds without funds being estimated by the Executive.

2. Is the Proposed Budget Amendment to Ordinance 5815, if adopted, in compliance with Sec. 50.550 RSMo and County Code Sec. 535.1a?

Section 50.550, RSMo and section 535 of the Jackson County Code both require the County's annual budget to "present a complete financial plan for the ensuing budget year."

Jackson County Code Section 535.1a states that a budget shall set forth "[a]ll proposed expenditures for administration, operation and maintenance of all offices, departments, commissions, courts and institutions."

Similarly, section 50.550 RSMo states in part, "The annual budget shall present a complete financial plan for the ensuing budget year. It shall set forth all proposed expenditures for the administration, operation and maintenance of all offices, departments, commissions, courts, and institutions..." and "the budget shall contain adequate provisions for the expenditures necessary for...the salaries, office expenses and deputy and clerical hire of all county officers and agencies."

Further, in 2019, the Western District Court of Appeals stated in the *Vescovo* case, “[t]he overarching purpose of the County Budget Law is set forth in § 50.550.1, which states that “[t]he annual budget shall present a complete financial plan for the ensuing budget year.” (emphasis added). Section 50.550 uses the word “shall” repeatedly. As explained in *Hunter*, the “word ‘shall’ is usually used to express compulsion, obligation or necessity.” 142 S.W.3d at 243. The above provisions, and their repeated use of the word “shall,” clearly mandate that the County not only adopt a budget, but that it do so with consideration of the needs of the county and its various departments including the duties of the various elected officials of the county. State ex rel. Vescovo v. Clay Cnty., 589 S.W.3d 575, 584–85 (Mo. Ct. App. 2019).

*Vescovo* interprets 50.550 RSMO as requiring the County to adopt a budget that adequately provides for the Departmental expenditures needed to carry out duties as required by statute. *Id.* at 585. In this case, as one example, the Proposed Amendment to Ordinance 5815 removes over 30% of regular salaries from the Department of Assessment, a reduction that will drastically impact the Department’s ability to meet statutory requirements.

In the *Vescovo* case, the budgetary cuts were so drastic as to prevent the Department in question from being able to reasonably fulfill its duties as required by law. The case does specifically state that it does not apply in instances of good faith disagreements. However, the proposed amendment to Ordinance 5815 does not set forth expenditures to maintain the known, day-to-day business of numerous departments within the County and would not provide adequate funding for certain Departments, such as the Department of Assessment to perform duties that are required by state statute, the County Charter, and/or the County Code.

A review of Missouri statutes, County Code, and recent case law suggests that RSMo 50.550 should be interpreted to require a proposed budget to adequately fund departments to be able to meet their legally prescribed duties. As in *Vescovo*, the Legislature has provided no justification for such proposed underfunding and has not suggested that the reduction is a result of revenue shortfalls. In *Vescovo*, the County deliberately reduced a Sheriff’s budget as retaliation. The Court of Appeals found that the County in that case retaliated by, “exceeded its discretion by deliberately, unreasonably and in bad faith, providing inadequate provisions to a Department.” *Vescovo* at 588. The numerous statements made in Budget hearings and other open meetings suggesting that budgets will be impacted as retaliation rather than as a result of departmental need and/or revenue downfalls would suggest that the current Proposed Budget Amendment would be comparable to the facts of the *Vescovo* case.