



JACKSON COUNTY

Office of the County Counselor

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

MEMORANDUM

TO: JACKSON COUNTY LEGISLATURE

FROM: BRYAN COVINSKY
COUNTY COUNSELOR

DATE: August 12, 2024

RE: LEGAL OPINION OUTLINING LEGALITY OF RESOLUTION 21694

This memorandum is written to address the legal interpretation of Resolution 21694. The Resolution can be broken into two parts. First, the requirement that the County Counselor not appeal the recent State Tax Commission (STC) Order, issued on August 6, 2024. And second, the requirement that the County Counselor receive approval as to the goals of all litigation valued in excess of \$5000.

The proposed legislation in question would direct the County Counselor to take a certain action, or not take action in response to a recent STC Order that was issued in the context of pending litigation. The Order in question orders Jackson County to essentially “cap” value increases on real property at 15% for the 2023 and 2024 tax years.

The proposed legislation would also require that the Counselor’s Office receive approval from the Legislature as to the “goals” of any pending litigation “valued” in excess of \$5000. This is problematic for a number of reasons.

1. It gives the Legislature authority to control the litigation of other elected officials and individual employees.

Jackson County is involved in litigation of all types and most do not name the Legislature or have any relation to the Legislature beyond the approval of a settlement. The County Counselor handles everything from lawsuits against elected officials such as the Sheriff or County Executive, to individual employees’ worker’s compensation matters. While the Missouri Rules of Professional Conduct for attorneys make it clear that a government attorney’s relationship with “the client” is a complex one, it does make it clear

in Footnote 6 that who the client is changes based on the circumstances of the litigation. The language states,

“Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as an executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the Department of which the Bureau is a part or the relevant branch of government may be the client...”

Therefore under these Rules, if litigation is against the Sheriff or Sheriff’s Office, it would follow that the Sheriff is the client. If the litigation is against the Prosecuting Attorney or their office, then the Prosecutor is the client. As attorneys, the County Counselors are bound by the Rules of Professional Conduct to the Client, even if someone other than the Client is charged with payment of the outcome. If there were a situation where the Client and the Legislature did not agree on the goals of litigation, the Counselor’s Office has a duty to the Client in that litigation that cannot be transferred to the Legislature without that client’s informed consent. This could place an individual employee in a position where they feel pressured to agree to a strategy that works against their own interest by the Legislature. Additionally, the County Counselor assigned to the litigation could also be in the impossible position of reconciling opposing goals from the individual client and the Legislature.

2. Resolution 21694 violates the County Charter.

The County Counselor is a Charter Officer under the Jackson County Charter and with that comes certain duties and responsibilities. Under Article 5, Section 7, “The County Counselor and assistants under his or her direction shall have charge of and conduct all of the civil law business of the county, and the departments, officers, board and commissions, institutions and agencies thereof.” Words in statutory context shall have their plain meaning unless a specific definition is included. “Have charge of” and “conduct” here have similar meanings; each means to be in control of, direct and administer the civil law business of the County. Under the Charter, the County Counselor and the lawyers he employs, have control of the civil law matters that the County is involved in.

Further, the Charter lays out, along with the Code, under what circumstances the approval of the Legislature is required. The limitations placed on the Counselors’ authority by the Charter include 1) not filing suit *to which the Legislature is a party* without legislative approval and 2) not entering into a contract for legal or other services without the approval of the legislature (Article 5, Section 7). The Jackson County Code

states that no final settlement of a lawsuit of legal claim in excess of \$5000 can be agreed to without the approval of the Legislature (§1606.1(3)). Beyond these limitations, the Charter and the Code place the duty and authority to defend the County's legal interest solely with the County Counselor's Office. At no point in the Charter or Code is there a requirement for the County Counselor to receive legislative approval for any goal or aims of litigation, only to receive approval for settlements over \$5000.

This resolution exceeds the Legislature's authority to direct the County Counselor and the limited scope of its own responsibilities concerning litigation. As such, this resolution would be invalid and unenforceable.

3. Resolution 21694 would subject Jackson County to significant liability.

The August 6th Order has a finding that Jackson County violated its duties as prescribed in RSMo 137.115.10-137.115.12, among other violations. However, they provided no reference to any investigation or review of facts or allegations. There is no record of anything to support this claim of error and despite numerous lawsuits, no Court has made any factual finding that Jackson County violated mandatory state law when conducting the 2023 real property assessments.

Without reference to any investigation as to the allegations, the STC ordered the County to cap values at 15% or less, which would require that any money paid as a result of a larger increase would be refunded to the taxpayers. However, the money refunded is not, for the most part, Jackson County's money. It is money that was collected on behalf of the taxing jurisdictions, and it has been long-since distributed and likely spent. All money that is refunded would have to be taken back from the taxing jurisdictions. This is done through a process called "claw backs", where the County withholds any future distributions until the amount equal to the refunds has been collected back. This means that for school districts, for example, they will not get any of their planned distributions for the 2024-2025 school year until the County has recouped millions to tens of millions, depending on the district, in tax dollars to refund to the taxpayers. Making the unilateral decision not to defend the taxing jurisdictions assets despite clear evidence and past litigation that supports their position, would subject us to a significant likelihood that the taxing jurisdictions would file suit against us for that decision. Similarly, if we chose to reduce the values but not offer refunds, we would undoubtedly be subject to similar litigation from taxpayers.

4. It puts the County at risk of missing mandatory deadlines and defaulting on litigation and puts our attorneys at risk of violating the rules of ethics.

The “goals of litigation” are not something that is decided upon reading the initial Petition. Goals are a moving target that are adapted regularly after pleadings are reviewed, new information is presented, and discovery occurs. There is no way to know based on an initial Petition or Complaint what the long-term goal of litigation should be. Any decision at that point would likely not be well-informed. That is why the lawyers on the case must do research, submit interrogatories and requests for admission, do depositions, etc.

If there is a requirement that all goals for litigation “valued over \$5000” be approved by the Legislature, and adapting those goals required a vote of the Legislature, then the Legislature would need to be available to meet far more regularly than weekly, and would often get little to no notice. Decisions in lawsuits as to how best to proceed need to be informed, often made quickly, and based on a firm knowledge of the law and the facts of each individual case.

In the foreseeable instance that the Legislature did not schedule a meeting requested by the County Counselor timely, did not have a quorum, did not agree on an outcome, or decided to vote to Hold the decision on approval, then the Counselor’s Office could miss our court ordered deadlines to respond. This would leave the County open to potential sanctions or a default judgment. Such a requirement to put every strategic and outcome-oriented goal before the Legislature for approval would put the County Counselor’s Office in the position of deciding between appropriately and timely responding to litigation, as it required by the Missouri Supreme Court’s rules of ethics or adherence to the proposed legislative requirement.