

**VETOED BY COUNTY EXECUTIVE
JANUARY 12, 2018**

Finance and Audit
Committee Amendment
January 3, 2018

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing section 533., Jackson County Code, 1984, relating to the County's fiscal policies, and enacting, in lieu thereof, one new section relating to the same subject, with an effective date.

ORDINANCE NO. 5067, December 28, 2017

INTRODUCED BY Dennis Waits, County Legislator

BE IT ORDAINED by the County Legislature of Jackson County, Missouri as follows:

Section A. Enacting Clause. Section 533., Jackson County Code, 1984, is hereby repealed, and one new section enacted in lieu thereof, to be known as section 533., to read as follows:

533. Intra-Office Transfers.

The following intra-office transfers are authorized.

533.1 By Executive and Auditor.

The County Executive, on the recommendation of the budget officer, is authorized to approve and effect a transfer from one (1) appropriation account to another within the same agency in an amount not to exceed ten thousand dollars (\$10,000) when the County Executive determines that any such transfer is necessary or advisable in the efficient administration of that office, department or agency of Jackson County. But no

transfer to a Legal Services account, Other Professional Services account or Other Contractual Services account can be made or take effect until approved by the County's Legislative Auditor.

533.2 By Legislature.

The County Legislature may by resolution at any time on the recommendation of the County Executive transfer any unencumbered appropriation balance or any portion of that balance from one (1) appropriation account to another within the same agency. Further, the County Legislature may by resolution at any time transfer any unencumbered appropriation balance or any portion of that balance from one (1) appropriation account to another within the same agency without the recommendation of the County Executive, provided that any such resolution received the affirmative vote of six members of the County Legislature.

Section B. Effective Date.

This ordinance shall be effective as of January 1, 2018.

Effective Date: This Ordinance shall be effective immediately upon its passage by the County Executive.

APPROVED AS TO FORM:

[Signature]
Chief Deputy County Counselor

[Signature]
County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5067 introduced on December 28, 2017, was duly passed on January 3, 2017 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

VETOED - January 12, 2018

This Ordinance is hereby transmitted to the County Executive for his signature.

1-3-18
Date

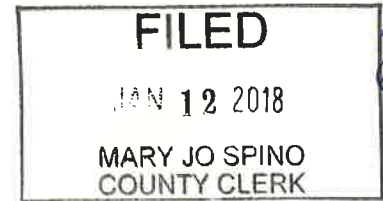
[Signature]
Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5067.

January 12, 2018 - Veto message from the County Executive. (See attached)
January 8, 2018 - County Counselor Memorandum recieved. (See attached)

Date

Frank White, Jr., County Executive



FRANK WHITE, JR.
Jackson County Executive

January 12, 2018

Veto Message from the County Executive

Ordinance 5067

TO THE JACKSON COUNTY LEGISLATURE

I am returning herewith without my approval Ordinance 5067, which, most notably, requires the approval of the Legislative Auditor for certain budgetary transfers. The Ordinance was passed in violation of the Jackson County Charter and Rules of the Legislature. Finally, the proposed changes to the Jackson County Code, if adopted, violate the County's Charter and are therefore unlawful.

The County Counselor's Office is required by the County's Charter to approve ordinances as to form.¹ The County Legislature's own rules reiterate the Charter's requirement by specifically stating that "(t)he County Counselor shall approve the form of all ordinances before perfection (. . .)"² Ordinance 5067, as adopted, was not approved as to form by the County Counselor's Office.³

The Ordinance included an effective date that the County Counselor has determined "is inconsistent with both the charter and constitution."⁴ As I have stated before, I have an obligation to veto any ordinance that has been determined to violate federal, state or county law.

Finally, if passed, the attached ordinance would impermissibly delegate the executive authority granted to the County Executive by the County's Charter to the Legislative Auditor. "The executive power of the county shall be vested in the County Executive."⁵ The County Executive shall be responsible for the administration of all affairs placed in his or her charge by this charter, by law, or by county ordinance."⁶ As the Missouri Supreme Court stated in a unanimous holding, "the legislature may not control, supervise or manage the execution of a law except by the language contained in the law itself."⁷

¹ Art. V, Section 7.

² Jackson County Rules of the Legislature, Rule 8.

³ County Counselor's Memorandum to the Clerk of the Legislature, January 8, 2018.

⁴ County Counselor's Memorandum to the Clerk of the Legislature, January 8, 2018.

⁵ Art. III, Section 1.

⁶ Art II, Section 5.

⁷ State Auditor, Appellant, v. Joint Committee on Legislative Research, Et. Al., Respondents 956 S.W.2d 228; 1997 Mo.



As County Executive, the people of Jackson County have uniquely entrusted me with both the authority and responsibility to execute and enforce the provisions of the Jackson County Charter, ordinances, resolutions and applicable state laws. In accordance with the Charter and all other applicable laws, the Administration will construe, not to abrogate these Executive authorities, duties and responsibilities.

For the foregoing reasons, Ordinance 5067 has earned my veto.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Frank White, Jr.", with a long horizontal flourish extending to the left.

Frank White, Jr.
Jackson County Executive



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE
415 EAST 12TH STREET
KANSAS CITY, MISSOURI 64106

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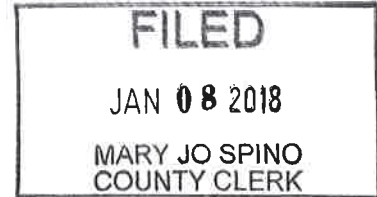
MEMORANDUM

TO: MARY JO SPINO
CLERK OF THE COUNTY LEGISLATURE

FROM: W. STEPHEN NIXON *WSN*
COUNTY COUNSELOR

DATE: JANUARY 8, 2018

RE: ORDINANCE 5067



I am unable to approve this ordinance as to form, as is required by article V, section 7 of the Constitutional Home Rule Charter of Jackson County. As you'll recall, this ordinance was originally prepared by legislative staff, and not by this office; it was introduced on December 28, 2017. As introduced, the ordinance proposed to amend section 5067 of the county code relating to county fiscal policies. After its introduction, this office reviewed the ordinance, found nothing objectionable, and approved it as to form. On January 3, 2018, the Finance and Audit Committee took up the ordinance and amended it by the addition of an effective date in a new Section B, which provides "This ordinance shall be effective as of January 1, 2018." Again, this committee amendment was prepared by legislative staff, and not by this office. At that time, Jay Haden of this office advised the committee that an ordinance containing a retrospective effective date is not authorized by the charter. The committee considered this advice but proceeded to forward the amended ordinance to the full legislature with a recommendation to perfect. The legislature perfected and adopted the amended ordinance at the same meeting. The ordinance was presented to the county executive for signature on that same date.

Article II, section 11 of the charter provides: "The County Legislature shall specify the effective date of each county ordinance, which may be any time after the approval of the County Executive or its passage notwithstanding the objections of the County Executive." Section 12 of the same charter article governs the effective date of ordinances not signed or objected to by the county executive. Neither charter section authorizes a retrospective or retroactive effective date, *i.e.* an effective date earlier than the ordinance's final adoption. This is consistent with article II, section 13 of the Missouri Constitution, which provides in part: "That no *ex post facto* law, nor law...retrospective in its operation,... can be enacted." Ordinance 5067, as finally

enacted, is in a form inconsistent with both the charter and constitution. Therefore, I am unable to approve it as to form.

I note that the signature page attached to the adopted ordinance presented to the county executive does contain my signature and that of Mr. Haden on the "Approved as to Form" lines. The top of that signature page indicates: "This Ordinance will be effective upon its passage by the County Executive." That signature page is inconsistent with the unauthorized effective date contained in Section B of the amended ordinance. In a conversation last week with Mr. Haden, you indicated that your staff had simply used the original ordinance's signature page for the amended version, consistent with your office's past practice when signatures on amended legislative items are missing. Please note that, while I do not disagree with that practice as a matter of convenience, efficiency, and/or expediency, I am still required to approve each item as to form, in its final form. With regard to Ordinance 5067, I am unable to do so, for the reasons expressed above.

cc: Scott Burnett
Frank White, Jr.