



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE

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MEMORANDUM

TO: FRANK WHITE, JR.
COUNTY EXECUTIVE

FROM: BRYAN O. COVINSKY
COUNTY COUNSELOR

DATE: SEPTEMBER 28, 2020

RE: POSSIBLE REDUCTION OF COUNTY TAX LEVIES

BC

Included within the clerk of the county legislature's distributed agenda packet for its upcoming meeting of this date are three proposed amendments to three pending ordinances that, when adopted, will set the Jackson County's permanent tax levies for 2020. Ordinance 5405 relates to the County's "sheltered workshop" levy, Ordinance 5407 relates to the mental health levy, and Ordinance 5408 relates to the general, health, park, and special road and bridge levies. The first two levies mentioned above are outside of the county's budget process, so much of this memorandum will focus on the remaining four levies and Ordinance 5408. The proposed amendments to Ordinance 5408 would reduce the rates of these four levies from those needed to adequately fund the County's 2020 annual budget adopted by Ordinance 5292 on December 16, 2019. You have asked for guidance on whether these tax levy ordinances may be amended as proposed. Our review indicates that the proposed amendments are not authorized under Missouri law.

The setting of the county's permanent tax levies is governed by section 137.055, RSMo 2016. Subsection 1 of that section requires charter counties to adopt their levies by October 1 of each year. Section 137.055.2 contains provisions relating to a required public hearing and publication of notice in a newspaper meeting certain qualifications. Regarding the notice, this subsection provides: "The notice shall include the aggregate assessed valuation by category of real, total personal and other tangible property in the county as entered in the tax book for the fiscal year for which the tax is to be levied, the aggregate assessed valuation by category of real, total personal and other tangible property in the county for the preceding taxable year, *the required sums to be raised from the property tax for each purpose for which the county levies taxes as approved in the budget adopted under chapter 50, the proposed rate of taxes which will produce substantially the same revenues as required by the budget, and the increase in tax revenue realized due to an increase in assessed value as a result of new construction*

and improvement, and the increase, both in dollar value and percentage, in tax revenue as a result of reassessment if the proposed tax rate is adopted. (Emphasis added).

We understand that the clerk did arrange for the statutorily required published notice. However, that notice related only to the tax levy rates that were set out in Ordinances 5405, 5407, and 5408 as originally introduced. There has been no newspaper publication of the rates set out in the proposed amendments to these ordinances described above, as required by law. Further, only the rates contained in the current form of Ordinance 5408 "will produce substantially the same revenues as required by the (county's annual) budget," which is a requirement of section 137.055.2.

A possible work-around to this would be a formal amendment reducing the 2020 county budget to match the reduced revenues that would be produced by the proposed amended ordinances. Formal budget amendments are governed by section 50.622, RSMo Supp. 2019. An amendment that reduces the budget is governed by special provisions contained in subsection 2 of this section. Of particular note is the requirement of thirty days' advanced notice of a public hearing on the budget reduction amendment. At this point, the county has not provided any notice of a budget amendment. Further, it is impossible to enact a budget amendment with this required notice, prior to the October 1 deadline for setting the permanent levies contained in section 137.055.1.

Therefore, because the county has not provided the required published notice of the proposed revised tax levy rates and because those rates will not produce substantially the same revenues as required by the county's annual budget, the county is without legal authority to adopt the tax rate levies set out in the proposed amendments to Ordinances 5405, 5407, and 5408. I should note that neither section 50.622 nor section 137.055 contains any provision that governs what happens when a county fails to comply with these sections. But I believe that noncompliance could provide any party allegedly harmed by the county's adoption of tax levies by use of procedures not in conformance with statutory requirements, such as the Jackson County Board of Services for the Developmentally Disabled or the Jackson County Community Mental Health Fund Board of Trustees, fertile grounds for a lawsuit challenging the levies.