



FRANK WHITE, JR.
Jackson County Executive

December 22, 2017

Veto Message from the County Executive

Ordinance 5062

TO THE JACKSON COUNTY LEGISLATURE:

I am returning herewith without my approval Ordinance 5062, which, most notably, would grant the County Legislature the unitary authority to transfer certain unencumbered county funds any time during the fiscal year, without the involvement or recommendation of the County's budget officer (chief administrative officer). Ordinance 5062 is in direct conflict with at least two provisions of Missouri's County Budget Law, and if approved, would be void.

This is not the Legislature's first attempt to circumvent Missouri Law regarding the transfer of funds. On November 8, 2017, I vetoed Ordinance 5038 due to the inclusion of a similar transfer provision to that of Ordinance 5062. Prior to that veto, the Jackson County Legislature received two memorandums regarding Ordinance 5038, from the County Counselor, Mr. Steve Nixon.¹ Within the first memorandum, Mr. Nixon stated on four occasions that he believed Ordinance 5038 was in conflict with State Law. Subsequently stating, in part, "(t)wo provisions of Ordinance 5038, (. . .) are in direct conflict with section 50.630, RSMo 2016, regarding inter-agency budget transfers." Concluding that, despite the Ordinance's passage, "a valid and proper inter-agency budget transfer continues to require the recommendation of the budget officer (chief financial officer) in all circumstances."²

Today, I received a memorandum from the County Counselor regarding Ordinance 5062's lack of compliance with Missouri Budget Law. In accordance with his earlier opinions, the County Counselor determined that Ordinance 5062 would violate Missouri County Budget Laws transfer requirements. Additionally, State Law requires that the annual county budget "shall present a complete financial plan" which sets forth "all proposed expenditures" for the upcoming budget year. Ordinance 5062 delays critical budget-making decisions, with a supermajority vote of the

¹ See Attached.

² See Attached.

Legislature, until later in the fiscal year. In the opinion of the County Counselor, this provision is "contrary to the clear requirements of the law."³

As I have stated before, putting into the hands of a single branch of government the power to transfer such amounts of taxpayer dollars during the fiscal year without any check to that power is once again not only bad public policy, but is also contrary to the law.

For the foregoing reasons, Ordinance 5062 has earned my veto.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Frank White, Jr.", with a stylized, cursive script.

Frank White, Jr.
Jackson County Executive

³ See Attached.



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE

415 EAST 12TH STREET
KANSAS CITY, MISSOURI 64106

816-881-3355

Fax: 816-881-3398

MEMORANDUM

TO: MEMBERS OF THE COUNTY LEGISLATURE
FRANK WHITE, JR., COUNTY EXECUTIVE

FROM: W. STEPHEN NIXON
COUNTY COUNSELOR

DATE: OCTOBER 30, 2017

RE: ORDINANCE 5038

WSON
10/30/2017

I am writing to advise the legislature of a conflict between a provision of this ordinance, now pending in the Finance and Audit Committee, and a provision of section 50.630, RSMo, regarding inter-agency budget transfers. The offending section of the ordinance would amend section 5034 of the county code. That section now provides:

534. Inter-Agency Transfers.

The County Legislature may by resolution authorize the transfer, within the same fund, of any unencumbered appropriation balance or any portion of that balance from one (1) spending agency under its jurisdiction into another.

534.1 Recommendation of County Executive.

This action shall be taken only after receiving the recommendation of the County Executive.

534.2 When Can Transfer.

Transfer may be made at any time during the budget year as may be deemed appropriate by the County Legislature.

Ordinance 5038 would amend this code section by adding to the end of subsection 534.1 thereof the following language: "except that an inter-agency transfer may be authorized without the recommendation of the county executive by a resolution that receives the affirmative vote of six members of the county legislature." It has been brought to my attention that this additional language would place this code section in conflict with section 50.630, RSMo. That section provides:

The county commission may authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one

spending agency under its jurisdiction to another; but this action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year, except that transfers from the emergency fund may be made at any time in the manner herein provided.

The language that Ordinance 5038 proposes to add to code section 534.1, if adopted, would place the code section in direct conflict with the provision of section 50.630 that requires inter-agency transfers to be recommended by the budget officer (in Jackson County, currently the chief financial officer).

This office has previously opined that the state law provisions governing county finances, sections 50.525-.745, RSMo, known as the "The County Budget Law," does generally apply in Jackson County. See attached opinion of County Counselor Thomas M. Larson, dated June 20, 1991.

I had hoped to be able to prepare a more formal research memo on this topic. Regrettably, the press of other county business that's arisen between the time I became aware of this issue, Tuesday, October 24, and now, has not allowed me sufficient time to conduct the research necessary to more formally address this issue. However, I am confident that a portion of the proposed ordinance does conflict with state law. If the legislature would like to see additional analysis on this, I request that the legislature delay action on Ordinance 5038 until at least November 6, 2017, to allow my office additional time to conduct the necessary research.



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE

816-861-3355

415 EAST 12TH STREET
KANSAS CITY, MISSOURI 64106

M E M O R A N D U M

TO: CLAIRe McCASKILL
JACKSON COUNTY LEGISLATURE

FROM: THOMAS M. LARSON
COUNTY COUNSELOR

DATE: JUNE 20, 1991

RE: 1. APPLICABILITY OF COUNTY BUDGET LAW, PARTICULARLY
\$50.540.4 RSMO, TO CHARTER COUNTIES

2. INTERPRETATION OF §532 OF THE JACKSON COUNTY CODE

You have requested the opinion of this office on two issues:

1. Does §50.540.4, RSMo, which requires first class counties to appropriate not less than three percent of total estimated general fund revenues as an emergency fund, apply to Jackson County?

2. Does §532 of the Jackson County Code limit the County's budget and appropriations to 95% of estimated income and revenue?

CONCLUSIONS

The duty to appropriate an emergency fund under §50.540.4, RSMo, applies to Jackson County.

Section 532 of the County Code applies only when the legislature seeks to increase an appropriation proposed by the county executive, and does not constitute a general limitation that only 95% of income and revenue estimated by the county executive can be appropriated.

DISCUSSION

1. Applicability of §50.540.4 RSMo

Sections 50.525 to 50.745 of the Missouri Statutes are known as The County Budget Law. Section 50.540.4, RSMo, provides in part:

. . . .

The budget officer shall provide in his [budget] recommendations, and the county commission shall provide in its appropriation order, that an amount equal to not less than three percent of the total estimated general fund revenues shall be appropriated each year as an emergency fund.

. . . .

To determine whether the duty to appropriate an emergency fund applies to Jackson County under its charter form of government, we first look to the Missouri Constitution. Art. VI, §18(b) of the Missouri Constitution requires a county charter to provide for the exercise of all powers and duties of counties and county officers prescribed by the constitution and laws of the state. Art. VI, §24 of the Missouri Constitution provides: "As prescribed by law all counties . . . shall have an annual budget" Art. VI, §26(a) provides: "No county . . . shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution."

Next, we look to the Jackson County Charter for provisions dealing with budget duties. Art. III, §5 of the Charter requires the county executive to appoint a budget officer "who shall have all the powers and duties prescribed by law and by ordinance." Art. VIII, §1 of the Charter states, "The executive shall submit to the legislature an annual budget prepared by the budget officer, all in the manner and form and at times prescribed by law or by ordinance." Art. XIII, §17 of the Charter provides, "In this charter the words 'law' or 'by law' mean the statutory laws

of the State of Missouri." Thus, the Charter provides for the exercise of budget duties by reference to state statutes and our own ordinances.

The next step in deciding whether a particular statutory provision, such as appropriation of an emergency fund, applies to a charter county is to analyze whether the provision relates to a governmental function of paramount statewide concern. The following excerpt from advisory opinion 73-53, issued by the counselor's office May 30, 1973, explains the principle:

In construing the home rule powers one must strike a balance between matters that are purely of local concern and those that are of statewide.

The following principle quoted in Kansas City, Missouri v. J.I. Case Threshing Machine Co., 87 S.W.2d 195 (Mo. 1935) should always be kept in mind:

"One state cannot without the consent of the other states divide itself up into a number of independent sovereignties, and consequently a municipal corporation cannot be made a free city wholly immune from legislative control. It is an essential element of all constitutional

1-----
The fact that the Charter refers to state statutes in describing powers and duties does not mean that state statutes control every detail of Charter government. In Hellman v. St. Louis County, 302 S.W.2d 911, 916 (Mo. 1957), the Supreme Court, in discussing a challenge to the manner in which the county assessor performed his duties, observed:

. . . We know of no constitutional or statutory provision that a charter county must exercise the powers and duties enjoined upon it by the constitution in precisely the same manner as prescribed by the general law of the state. . . . Little purpose would be served in authorizing the adoption of charters of local self-government in the more populous counties if such counties could not adopt reasonable means and methods of carrying out their governmental functions in such a manner as to meet the peculiar needs of such counties. . . .

provisions establishing the principle of municipal home rule that the constitution and general laws of the state shall continue in force within the municipalities which have framed their own charters, and that the power of the municipality to legislate shall be confined to municipal affairs. On the other hand, after the adoption of a home rule charter by a municipal corporation the Legislature cannot, even by a general law, affect the powers of the municipality with respect to matters of municipal and local concern."

This language applies to counties under home rule charters as well as cities.

It has been a slow process, but a body of law has developed through various court actions as to what is purely local and what is statewide in nature.²

There are several authorities and principles which support our conclusion that the requirement to appropriate an emergency fund is a matter of statewide concern and thus applicable to Jackson County.

² There is a memorandum dated January 1, 1973, found in the collection of 1973 advisory opinions issued by the counselor's office. The memorandum deals with several questions raised by the transition to Charter government, and includes the following:

Question No. 9

Does the budget under the Charter require that we provide for an emergency fund?

Answer:

No, however, an emergency fund can be provided for by ordinance. The present budget ordinance provides for emergency funds for emergency purposes.

The memorandum contains no citations to any legal authority and no further explanation. A later opinion dated March 7, 1973, appears to assume that the County Budget Law applies to Jackson County.

a. The Missouri Constitution requires all counties to have annual budgets (Art. VI, §24) and to avoid indebtedness exceeding income and revenue (Art. VI, §26(a)). The County Budget Law is the means for county officials to carry out their duty to comply with such constitutional provisions. See Bradford v. Phelps Co., 210 S.W.2d 996, 999 (Mo. 1948).

b. In a case which raised the question whether the County Budget Law applied to a charter county, the Missouri Supreme Court ruled that §50.640, RSMo, applied to St. Louis County. State ex inf. Anderson, ex rel. Weinstein v. St. Louis County, 421 S.W.2d 249 (Mo. en banc 1967). Likewise, §50.660, RSMo, another part of the County Budget Law, applies to charter counties, as explained in Missouri Attorney General Opinion No. 176, Dec. 21, 1973, a copy of which is attached to this memorandum.

c. The St. Louis County Charter, like the Jackson County Charter, does not specifically mention an emergency fund, but we are advised that St. Louis County routinely includes a 3% emergency fund in its annual budget.

d. Section 50.540 applies to all first class counties by its terms, and does not specifically exempt charter counties. Cf. §50.815, RSMo, concerning preparation of financial statements, which specifically excludes charter counties.

2. Interpretation of §532 of The Jackson County Code.

The financial advisor to the legislature interprets section 532 of the Jackson County Code to limit annual appropriations to 95% of estimated income and revenue. However, we believe that section 532, when interpreted in context with the preceding section of the Code, has a different meaning. See, 82 C.J.S. Statutes §345 (1953) ("a statute must, or should, be read or construed as a whole").

The two sections provide as follows:

531. Expenditures, Limitation on.
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)

532. Appropriations, Limitation on.
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)

Section 531 allows the budget presented by the county executive to propose expenditures from any fund up to 100% of the estimated income and revenue for that fund. If the intent of the Code was to limit appropriations to 95% of estimated income and revenue, section 531 surely would have expressed such a limitation. It makes no sense to allow a recommended budget up to 100% and then in the next section require the legislature to cut back to 95%.

Section 532 places a limitation on the legislature when it seeks to increase an appropriation recommended in the budget submitted by the county executive. For example, if the county executive recommended expenditure of 90% of the estimated income and revenue for a fund, and the legislature wished to increase the total appropriations from that fund, section 532 would apply, and the increase over the recommended appropriation could not bring the total above 95%.

TML/cjw

cc: Marsha Murphy
County Legislators
Susan Takacs
John D. McEnroe



OFFICE OF THE COUNTY COUNSELOR

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

816-881-3355
Fax: 816-881-3398

MEMORANDUM

TO: FRANK WHITE, JR.
COUNTY EXECUTIVE

MEMBERS OF THE COUNTY LEGISLATURE

FROM: W. STEPHEN NIXON
COUNTY COUNSELOR *WSN 11/8/2017*

DATE: NOVEMBER 8, 2017

RE: NONCOMPLIANCE OF ORDINANCE 5038 WITH SECTION 50.630,
RSMO

I am writing to confirm the preliminary opinion that this office issued on October 30, 2017, regarding the above-referenced matter. Two provisions of Ordinance 5038, which was adopted by the county legislature on that date, are in direct conflict with a provision of section 50.630, RSMo 2016, regarding inter-agency budget transfers. The offending section of the ordinance purports to amend section 5034 of the county code. That section, as amended by Ordinance 5038, now provides:

534. Inter-Agency Transfers.

The County Legislature may by resolution authorize the transfer, within the same fund, of any unencumbered appropriation balance or any portion of that balance from one (1) spending agency under its jurisdiction into another.

534.1 Recommendation of County Executive.

This action shall be taken only after receiving the recommendation of the County Executive *except that an inter-agency transfer may be authorized without the recommendation of the county executive by a resolution that receives the affirmative vote of six members of the county legislature.*

534.2 When Can Transfer.

Transfer may be made at any time during the budget year as may be deemed appropriate by the County Legislature. (Emphasis Added)

Section 50.630 provides:

The county commission may authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one spending agency under its jurisdiction to another; but this action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year, except that transfers from the emergency fund may be made at any time in the manner herein provided.

The language that Ordinance 5038 has purported to add to code section 534.1, italicized above, places the code section in conflict with the provision of section 50.630 that requires inter-agency transfers to be recommended by the budget officer (in Jackson County, currently the chief financial officer). Additionally, the provision of code section 534.2, allowing inter-agency transfers anytime during the budget year, which appeared in the code prior to the adoption of Ordinance 5038, conflicts with section 50.630's language restricting the timing of such transfers to the last two months of the fiscal year.

This office has previously opined that the state law provisions governing county finances, sections 50.525-.745, RSMo, known as the "The County Budget Law," generally apply in Jackson County, even though the county has adopted a constitutional home rule charter. See attached opinion of County Counselor Thomas M. Larson, dated June 20, 1991.

The opinion cited above cites several Missouri Supreme Court opinions in support. Notable among these is *State ex rel. Anderson v. St. Louis County*, 421 S.W.2d 249, 252 (Mo. banc 1967), in which the court held it to be "quite clear" that section 50.640 of The County Budget Law applied to St. Louis County, another home rule charter county. Additionally, in *Jackson County v. State*, 207 S.W.3d 608, 612-13 (Mo. banc 2006), the court held that the only provision in the Missouri constitution that restricts the General Assembly's authority to enact laws that are applicable in charter counties is that of article VI, section 18(2) of the constitution which prohibits the establishment of new county officers or employees or the fixing of the salaries of county officers or employees. Under this authority, since section 50.630 neither establishes additional county officers nor fixes county salaries, it is applicable in charter counties such as Jackson County.

Therefore, it is the view of this office that section 50.630, RSMo applies to Jackson County government, such that a valid and proper inter-agency budget transfer continues to require the recommendation of the budget officer (chief financial officer) in all circumstances. If such a transfer were to be initiated without the recommendation of the budget officer, a court would have to determine its ultimate legal effect. I would note in closing that this memorandum does not address the validity of Ordinance 5038's

Frank White, Jr.
Members of the County Legislature
November 8, 2017
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amendments to code section 533. or 570; no legal issues have been raised, of which we're aware, to the amendment of either of those sections.



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JACKSON COUNTY COURTHOUSE

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KANSAS CITY, MISSOURI 64106

816-861-3355

M E M O R A N D U M

**TO: CLAIRe McCASKILL
JACKSON COUNTY LEGISLATURE**

**FROM: THOMAS M. LARSON
COUNTY COUNSELOR**

DATE: JUNE 20, 1991

**RE: 1. APPLICABILITY OF COUNTY BUDGET LAW, PARTICULARLY
\$50.540.4 RSMO, TO CHARTER COUNTIES**

2. INTERPRETATION OF §532 OF THE JACKSON COUNTY CODE

You have requested the opinion of this office on two issues:

1. Does §50.540.4, RSMo, which requires first class counties to appropriate not less than three percent of total estimated general fund revenues as an emergency fund, apply to Jackson County?

2. Does §532 of the Jackson County Code limit the County's budget and appropriations to 95% of estimated income and revenue?

CONCLUSIONS

The duty to appropriate an emergency fund under §50.540.4, RSMo, applies to Jackson County.

Section 532 of the County Code applies only when the legislature seeks to increase an appropriation proposed by the county executive, and does not constitute a general limitation that only 95% of income and revenue estimated by the county executive can be appropriated.

DISCUSSION

1. Applicability of §50.540.4 RSMo

Sections 50.525 to 50.745 of the Missouri Statutes are known as The County Budget Law. Section 50.540.4, RSMo, provides in part:

. . . .

The budget officer shall provide in his [budget] recommendations, and the county commission shall provide in its appropriation order, that an amount equal to not less than three percent of the total estimated general fund revenues shall be appropriated each year as an emergency fund.

. . . .

To determine whether the duty to appropriate an emergency fund applies to Jackson County under its charter form of government, we first look to the Missouri Constitution. Art. VI, §18(b) of the Missouri Constitution requires a county charter to provide for the exercise of all powers and duties of counties and county officers prescribed by the constitution and laws of the state. Art. VI, §24 of the Missouri Constitution provides: "As prescribed by law all counties . . . shall have an annual budget" Art. VI, §26(a) provides: "No county . . . shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution."

Next, we look to the Jackson County Charter for provisions dealing with budget duties. Art. III, §5 of the Charter requires the county executive to appoint a budget officer "who shall have all the powers and duties prescribed by law and by ordinance." Art. VIII, §1 of the Charter states, "The executive shall submit to the legislature an annual budget prepared by the budget officer, all in the manner and form and at times prescribed by law or by ordinance." Art. XIII, §17 of the Charter provides, "In this charter the words 'law' or 'by law' mean the statutory laws

of the State of Missouri." Thus, the Charter provides for the exercise of budget duties by reference to state statutes and our own ordinances.

The next step in deciding whether a particular statutory provision, such as appropriation of an emergency fund, applies to a charter county is to analyze whether the provision relates to a governmental function of paramount statewide concern. The following excerpt from advisory opinion 73-53, issued by the counselor's office May 30, 1973, explains the principle:

In construing the home rule powers one must strike a balance between matters that are purely of local concern and those that are of statewide.

The following principle quoted in Kansas City, Missouri v. J.I. Case Threshing Machine Co., 87 S.W.2d 195 (Mo. 1935) should always be kept in mind:

"One state cannot without the consent of the other states divide itself up into a number of independent sovereignties, and consequently a municipal corporation cannot be made a free city wholly immune from legislative control. It is an essential element of all constitutional

1 The fact that the Charter refers to state statutes in describing powers and duties does not mean that state statutes control every detail of Charter government. In Hellman v. St. Louis County, 302 S.W.2d 911, 916 (Mo. 1957), the Supreme Court, in discussing a challenge to the manner in which the county assessor performed his duties, observed:

. . . We know of no constitutional or statutory provision that a charter county must exercise the powers and duties enjoined upon it by the constitution in precisely the same manner as prescribed by the general law of the state. . . . Little purpose would be served in authorizing the adoption of charters of local self-government in the more populous counties if such counties could not adopt reasonable means and methods of carrying out their governmental functions in such a manner as to meet the peculiar needs of such counties. . . .

provisions establishing the principle of municipal home rule that the constitution and general laws of the state shall continue in force within the municipalities which have framed their own charters, and that the power of the municipality to legislate shall be confined to municipal affairs. On the other hand, after the adoption of a home rule charter by a municipal corporation the Legislature cannot, even by a general law, affect the powers of the municipality with respect to matters of municipal and local concern."

This language applies to counties under home rule charters as well as cities.

It has been a slow process, but a body of law has developed through various court actions as to what is purely local and what is statewide in nature.

There are several authorities and principles which support our conclusion that the requirement to appropriate an emergency fund is a matter of statewide concern and thus applicable to Jackson County.

2 -----
There is a memorandum dated January 1, 1973, found in the collection of 1973 advisory opinions issued by the counselor's office. The memorandum deals with several questions raised by the transition to Charter government, and includes the following:

Question No. 9

Does the budget under the Charter require that we provide for an emergency fund?

Answer:

No, however, an emergency fund can be provided for by ordinance. The present budget ordinance provides for emergency funds for emergency purposes.

The memorandum contains no citations to any legal authority and no further explanation. A later opinion dated March 7, 1973, appears to assume that the County Budget Law applies to Jackson County.

a. The Missouri Constitution requires all counties to have annual budgets (Art. VI, §24) and to avoid indebtedness exceeding income and revenue (Art. VI, §26(a)). The County Budget Law is the means for county officials to carry out their duty to comply with such constitutional provisions. See Bradford v. Phelps Co., 210 S.W.2d 996, 999 (Mo. 1948).

b. In a case which raised the question whether the County Budget Law applied to a charter county, the Missouri Supreme Court ruled that §50.640, RSMo, applied to St. Louis County. State ex inf. Anderson, ex rel. Weinstein v. St. Louis County, 421 S.W.2d 249 (Mo. en banc 1967). Likewise, §50.660, RSMo, another part of the County Budget Law, applies to charter counties, as explained in Missouri Attorney General Opinion No. 176, Dec. 21, 1973, a copy of which is attached to this memorandum.

c. The St. Louis County Charter, like the Jackson County Charter, does not specifically mention an emergency fund, but we are advised that St. Louis County routinely includes a 3% emergency fund in its annual budget.

d. Section 50.540 applies to all first class counties by its terms, and does not specifically exempt charter counties. Cf. §50.815, RSMo, concerning preparation of financial statements, which specifically excludes charter counties.

2. Interpretation of §532 of The Jackson County Code.

The financial advisor to the legislature interprets section 532 of the Jackson County Code to limit annual appropriations to 95% of estimated income and revenue. However, we believe that section 532, when interpreted in context with the preceding section of the Code, has a different meaning. See, 82 C.J.S. Statutes §345 (1953) ("a statute must, or should, be read or construed as a whole").

The two sections provide as follows:

531. Expenditures, Limitation on.
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)

532. Appropriations, Limitation on.
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)

Section 531 allows the budget presented by the county executive to propose expenditures from any fund up to 100% of the estimated income and revenue for that fund. If the intent of the Code was to limit appropriations to 95% of estimated income and revenue, section 531 surely would have expressed such a limitation. It makes no sense to allow a recommended budget up to 100% and then in the next section require the legislature to cut back to 95%.

Section 532 places a limitation on the legislature when it seeks to increase an appropriation recommended in the budget submitted by the county executive. For example, if the county executive recommended expenditure of 90% of the estimated income and revenue for a fund, and the legislature wished to increase the total appropriations from that fund, section 532 would apply, and the increase over the recommended appropriation could not bring the total above 95%.

TML/cjw

cc: Marsha Murphy
County Legislators
Susan Takacs
John D. McEnroe



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE

415 EAST 12TH STREET
KANSAS CITY, MISSOURI 64106

816-881-3355
Fax: 816-881-3398

MEMORANDUM

TO: FRANK WHITE, JR.
COUNTY EXECUTIVE

FROM: W. STEPHEN NIXON
COUNTY COUNSELOR

DATE: DECEMBER 22, 2017

RE: ORDINANCE 5062

WSN
SPB

You have asked for guidance from this office concerning the status of the above-referenced ordinance, adopted by the county legislature on December 15, 2017. You are particularly interested in whether this ordinance complies with Missouri's County Budget Law, sections 50.525 -- .745 of the Revised Statutes of Missouri. In our view, Ordinance 5062 runs afoul of at least two provisions of the State of Missouri's statutory County Budget Law.

Ordinance 5062, should it become effective, would create three "Reserve Funds" within Jackson County's financial system. Under this ordinance, monies in these reserve funds could only be expended after the adoption of a resolution by a supermajority of the county legislature. Proposed Jackson County Code section 525.2, contained in the ordinance, states "The County Legislature may by resolution at any time during the year, on the recommendation of the County Auditor or Budget Officer, authorize a transfer from a Reserve Fund to an appropriate expenditure account within the same fund, provided that any such resolution receives the affirmative vote of six members of the County Legislature." It is unclear to us whether this language contemplates the establishment of expenditure accounts within the various reserve funds, or the term "same fund" refers to the main county spending funds, general, health, park, special road and bridge, etc.

It is our view that proposed code section 525.2 is contrary to section 50.630, RSMo, for the same reasons that we determined in our opinion of November 8, 2017, that a provision of Ordinance 5038, originally adopted on October 30, 2017, was and is

contrary to that same section of The County Budget Law. As a reminder, section 50.630 provides as follows:

The county commission may authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one spending agency under its jurisdiction to another; but this action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year, except that transfers from the emergency fund may be made at any time in the manner herein provided.

Under The County Budget Law, which is applicable in Jackson County for the reasons explained in the prior opinion, budgetary transfers such as are contemplated by proposed code section 525.2 of Ordinance 5062 can only be made upon the recommendation of the county budget officer (in Jackson County, the chief administrative officer pursuant to Executive Order 17-20), and only during the last two months of the fiscal year. To the extent that section 525.2 of Ordinance 5062 would allow transfers without the recommendation of the budget officer and/or during other months of the year, it is directly contrary to section 50.630 of The County Budget Law.

Additionally, section 50.550.1, RSMo, also a part of The County Budget Law, provides as follows:

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; the actual or estimated operating deficits or surpluses from prior years; all interest and debt redemption charges during the year and expenditures for capital projects. (Emphasis added)

Ordinance 5062, if finally enacted, would run counter to section 50.550.1's requirements that the annual county budget "present a complete plan" and "set forth all proposed expenditures." Rather, this ordinance would defer some budgetary decisions until later in the fiscal year, at the discretion of a supermajority of the legislature, contrary to the clear requirements of state law.

For these reasons, Ordinance 5062 is contrary to Missouri law, specifically sections 50.630 and 50.550.1, RSMo.

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE enacting section 525. Jackson County Code, 1984, relating to County finances.

ORDINANCE NO. 5062, December 6, 2017

INTRODUCED BY Scott Burnett, Alfred Jordan, Garry J. Baker, Crystal Williams, Tony Miller, Dennis Waits, Dan Tarwater, III, Greg Grounds, and Theresa Galvin, County Legislators

WHEREAS, the Legislature finds that certain revisions to Chapter 5, Jackson County Code, 1984, are in the best interests of the health, safety, and welfare of the citizens of Jackson County; now therefore,

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

Section A. Enacting Clause. Section 525., Jackson County Code, 1984, is hereby enacted, to read as follows:

525. Reserve Funds

There are hereby established funds within the accounting structure of the County for the purpose of restricting certain appropriations of the County to be called "Reserve Funds."

525.1 Types of Reserve Funds.

a. Reserve for Operating Expenditures.

Restricted general and administrative appropriations until such proposed expenditure is authorized by the County Legislature.

b. Reserve for Legal Expenditures.

Restricted legal fee expenses for lawyers, investigators, and related legal services appropriations, until such proposed expenditure is authorized by the County Legislature.

c. Reserve for Building and Improvements.

Restricted appropriations for building repairs and maintenance, until such proposed expenditure is approved by the County Legislature.

525.2 Use of Funds.

The County Legislature may by resolution at any time during the year, on the recommendation of the County Auditor or Budget Officer, authorize a transfer from a Reserve Fund to an appropriate expenditure account within the same fund, provided that any such resolution receives the affirmative vote of six members of the County Legislature.

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

APPROVED AS TO FORM:


Chief Deputy County Counselor


County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5062 introduced on December 6, 2017, was duly passed on December 15, 2017 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

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

12/15/17
Date


Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5062.

December 22, 2017-Veto message received from the County Executive. (See attached)

Date

Frank White, Jr., County Executive