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MEMORANDUM

TO: FRANK WHITE, JR.
COUNTY EXECUTIVE

FROM: BRYAN O. COVINSKY *BC*
COUNTY COUNSELOR

DATE: FEBRUARY 3, 2023

RE: LEGAL ISSUES RAISED BY ORDINANCE 5701, 2023 JACKSON
COUNTY BUDGET

RECEIVED

FEB 10 2023

JHK
11:40 AM

MARY JO SPINO
COUNTY CLERK

This memorandum is written to address several questions that have arisen in connection with the county legislature's adoption of the floor amendment to the above-referenced ordinance at the legislature's meeting of January 30, 2023. The questions we've been asked are listed below, followed by our analysis and answers.

1. Is the ARPA fund, as 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." The county executive's proposed budget recommended the appropriation of some \$74.7M from the undesignated fund balance of the American Rescue Plan (ARPA) Fund to seven listed purposes, programs, and/or agencies. This sum constituted the entirety of the income and revenue for this fund estimated by the county executive. The floor amendment to Ordinance 5701 did not appropriate any portion of this sum and, instead, left the entire amount in the fund's undesignated fund balance, presumably to be dealt with at a later date. This is a clear violation of the statutory and code mandate that the annual budget present a "complete plan."

2. Is the budgetary amendment process detailed in Sec. 50.622 RSMo irrelevant since the ARPA funds are not "additional funds" that "could not be estimated when the budget was adopted"?

This is correct. Section 50.622, RSMo, sets out a procedure to be followed for amending a county's annual budget "during any fiscal year in which the county receives additional funds...[that] could not be estimated when the budget was adopted. See section 50.622.1. However, this procedure will not apply to any budget amendment relating to the county's ARPA Fund, since there's no anticipation that the county will receive any additional ARPA funds this year. The procedure that must be followed in the event of a later appropriation from the undesignated fund balance of the county's ARPA Fund is described in the Missouri State Auditor's Report on Jackson County's Budgets and Transfers Policies, No.2020-108, dated November 2020, viewable at this link: <https://auditor.mo.gov/AuditReport/ViewReport?report=2020108>. There the auditor found "when the County Legislature approves these undesignated fund transfers, it is effectively amending its budget without the existence of new revenues, and thus, should follow the same procedures required for adopting the original budget, including holding a public hearing." See Audit Report No. 2020-108, p. 13. The state law procedures for adopting the original budget are found in sections 50.525 - .,610, RSMo. Particularly instructive here is the requirement in section 50.540.4 that the budget be prepared by the "budget officer." Pursuant to Executive Order 19-30, in Jackson County the duties of the budget officer are assigned by the county executive to the county administrator. In short, the budget cannot be amended absent the recommendation of the county administration.

3. Does the Health Fund, as adopted, violate Sec. 532? If so, would the legislature be able to override a line-item veto that takes the funding level back to 95%?

In his proposed budget for the Health Fund, the county executive recommended the appropriation of \$30,006,301, which is over 95% of the available income and revenue anticipated for that fund. Pursuant to section 532. of the county code, the legislature is prohibited, under these circumstances, from increasing this appropriation. In the floor amendment to Ordinance 5701, the legislature increased the appropriation from the Health Fund to \$32,006,301. This increase violates section 532. Because the legislature lacks legal authority to increase the county executive's recommended Health Fund appropriation, the legislature would lack legal authority to "override" the county executive's veto of any sum appropriated in excess of the county executive's originally recommended appropriation.