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**OFFICE OF THE COUNTY COUNSELOR**

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

**MARY JO SPINO**  
**COUNTY CLERK**

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**MEMORANDUM**

**TO: MEMBERS OF THE COUNTY LEGISLATURE**

**FROM: W. STEPHEN NIXON**  
**COUNTY COUNSELOR**

**DATE: NOVEMBER 13, 2017**

**RE: ORDINANCE 5045**

*WSN*  
*11/13/2017*

I am writing to request that the legislature provide this office two additional weeks to research at least two legal issues raised by this ordinance. By way of background, this ordinance, which would amend chapter 93 of the county code relating to the anti-drug sales tax, was introduced as an add-on to the agenda at the legislature's last meeting, November 6, 2017. This version of the ordinance as introduced was not prepared by the County Counselor's Office, as is customary. Thereafter, this office's staff reviewed the ordinance as introduced, and revised it into a proper form, so that we could "approve as to form," which is required by article V, section 7 of the county charter. Please note that, in approving an item as to form, this office is not making any statement on its legality. The legal office's approval "as to form and legality" is a requirement in some local jurisdictions, but not in Jackson County.

Our initial review of the ordinance reveals at least two legal issues that must be resolved. The proposed amendment of section 9305.1 would limit the county executive's power to appoint members of the Drug Commission to those in a pool recommended by the legislature. Currently that subsection allows the executive to appoint from that pool as well as from a pool of those "known by the county executive to be interested in serving on the Commission." The proposed amendment would remove this second pool from the executive's consideration. This squarely raises the issue as to whether this amendment is an improper infringement on the executive's power to appoint members of boards and commissions, as set out in article III, section 6.1 of the charter. Our recollection is that this issue has arisen periodically over the years, and that this office's position that, while the legislature can impose reasonable qualifications for office and geographic residency requirements for board and commission members, requiring a certain officer or person to be a member, or limiting the executive's consideration to a defined pool is contrary to the charter.

The other issue clearly raised by the proposed amendment is section 9306's proposed assignment of the power to appoint the COMBAT director to the prosecuting attorney. Section 9306 now grants that power to the county executive. There are at least three charter provisions that are implicated by this proposed amendment: 1.) article III, section 1's vesting of "the executive power of the county" in the county executive; 2.) article IV, section 1's assignment of "the administrative functions" of the county to departments and directors appointed and removed by the county executive; and 3.) the power of the county executive under article III, section 1 to appoint "officers not otherwise provided for." We do not recall these issues having been raised previously, so we'll need some time to conduct the required research to be able to properly advise the legislature of the law in this area. Since we are not aware of anything time sensitive that would require the immediate consideration of this ordinance, we believe our request for two weeks is reasonable and prudent, to allow us to render proper advice.