

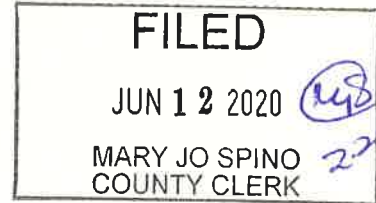


FRANK WHITE, JR.
Jackson County Executive

June 12, 2020

Signing Statement from the County Executive

Ordinance 5354



TO THE JACKSON COUNTY LEGISLATURE:

Today I have signed Ordinance 5354, which appropriates \$27,039,000 from the undesignated fund balance of the 2020 CARES Act Fund for the use and benefit of Truman Medical Centers (TMC).

I am signing Ordinance 5354 due to the urgent COVID-19 related needs in our community and TMC's essential role in Jackson County's response. However, I am doing so with significant hesitation and concern regarding the way the Ordinance was passed.

Specifically, prior to the passage of this Ordinance, the County Counselor warned that "the County Legislature is without authority at this time to appropriate any new revenues for these purposes."ⁱ Subsequently, at my request, the County Counselor provided additional information regarding the legality of the Ordinance and stated, in part, the following:

"I shall not here attempt to address the legal status of Ordinance 5354 as things stand now but, suffice it to say, that status at this point is murky at best. In view of this status, I believe that the most prudent course of action to follow in order to implement the intent of Ordinance 5354 would be for you to formalize your proposal of additional revenue, as required by code section 532, 1, and then recommend that the legislature introduce a new ordinance, in a proper form which I would approve, and adopt that new ordinance. This process would resolve any issues created by the adoption of Ordinance 5354."ⁱⁱ



Members of the County Legislature
June 12, 2020
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Therefore, I am asking that the County Legislature immediately follow the recommendation of the County Counselor and introduce and pass a new version of this Ordinance, but this time do so in full compliance with the law.

Sincerely,

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

ⁱ See County Counselor's Opinion, June 2, 2020.

ⁱⁱ See County Counselor's Opinion, June 10, 2020. (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

FOR: FRANK WHITE, JR.
COUNTY EXECUTIVE

FROM: BRYAN O. COVINSKY
COUNTY COUNSELOR

DATE: JUNE 10, 2020

RE: ORDINANCE 5354

You have asked for guidance from this office as to any legal issues associated with the recent adoption of Ordinance 5354 by the Jackson County Legislature. This ordinance, a copy of which is attached as Exhibit A., was introduced and purportedly adopted by the legislature on June 3, 2020. On its face, this ordinance appropriates \$27,039,000 in CARES Act funding for use by Truman Medical Centers, Inc. (TMC), in the current coronavirus pandemic. This ordinance was not approved as to form by this office, as is required by article V, section 7 of the Jackson County Charter. Nor does it bear the revenue certificate/fiscal note signed by the budget officer, required by section 50.660, RSMo. This approval and revenue certificate are missing because, as I stated in my memorandum of June 2, 2020, attached to Ordinance 5354 and included in Exhibit A, this ordinance would appropriate new revenues outside of Jackson County's annual budget process, in contravention of section 532 of the Jackson County Code, in that the county executive, has not "proposed any additional expenditures" for TMC, such as would be authorized by the ordinance, even though such a proposal of additional expenditures is a specific requirement of section 532.1 of the county code.

You have indicated your intent to authorize the funding of TMC provided for in Ordinance 5354, but have also expressed concern about whether the manner in which the ordinance was adopted might have negative legal repercussions in the future. I shall not here attempt to address the legal status of Ordinance 5354 as things stand now but, suffice it to say, that status at this point is murky at best. In view of this status, I believe that the most prudent course of action to follow in order to implement the intent of Ordinance 5354 would be for you to formalize your proposal of additional revenue, as required by code section 532,1, and then recommend that the legislature introduce a new ordinance, in a proper form which I would approve, and adopt that new ordinance. This process would resolve any issues created by the adoption of Ordinance 5354.

You have also asked whether, based on the information available today, the items which would be funded for TMC by Ordinance 5354, are eligible for funding under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Section 601(d) of the Act restricts the use of CARES Act funds to those that:

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease (COVID-19);
- (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

I don't believe there's any issue that the funds appropriated by Ordinance 5354 were not included in Jackson County's 2020 budget. Likewise, it seems fairly clear that the expenditures proposed are for the time period specified in subsection 3 above. The real issue is whether the proposed expenditures would be "incurred due to the public health emergency with respect to the Coronavirus Disease (COVID-19)." Attached to this memorandum as Exhibit B is a document that was distributed in some manner at the legislature's meeting of June 3, 2020, in connection with the adoption of Ordinance 5354. It shows in summary fashion thirteen proposed expenditures of CARES Act funds by TMC, which total \$27,039,000, the same amount as was appropriated by Ordinance 5354. Thus, it appears that Exhibit B sets out the proposed expenditures for the appropriated funds. But there is practically no detail here that will allow us to evaluate whether these are "necessary" expenditures "due to the public health emergency." I recommend that county staff contact TMC representatives and ask them to prepare a brief (less than five-page) summary document, explaining these proposed expenditures and how they're necessary due to the public health emergency. We can then review that response and make a determination. Regarding proposed contractual language to protect the county in the event the TMC makes inappropriate expenditures, the legislature has recently authorized the retention of attorney Travis Elliott of Springfield, MO, to assist us with contract drafting. We plan to speak with him later today. We'll work with Mr. Elliott to make develop the guidance you've requested.

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE appropriating \$27,039,000 from the undesignated fund balance of the 2020 CARES Act Fund for use by Truman Medical Centers, Inc., to make critical facility improvements and acquire needed equipment to better prepare for current and future pandemic response and authorizing the County Executive to execute a Cooperative Agreement with Truman Medical Centers, Inc., for the purchase or reimbursement by Jackson County for this purpose.

ORDINANCE NO. 5354, June 3, 2020

INTRODUCED BY Theresa Cass Galvin, County Legislator

WHEREAS, U.S. President Donald J. Trump, Missouri Governor Mike Parson, and County Executive Frank White, Jr., have all declared, in one form or another, the ongoing Coronavirus/COVID-19 pandemic to be a public health emergency; and,

WHEREAS, the County, through its various efforts, plays a significant role in the public health of its citizens; and,

WHEREAS, an appropriate response by the County to this emergency will require significant expenditures from the County CARES Act Fund, which consists of monies provided by the U.S. Treasury for this purpose; and,

WHEREAS, with the funding provided by this appropriation, Truman Medical Centers will make critical facility improvements and acquire needed equipment to better prepare for current and future pandemic response; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, that the following appropriation be and hereby is made:

<u>DEPARTMENT/DIVISION</u>	<u>CHARACTER/DESCRIPTION</u>	<u>FROM</u>	<u>TO</u>
CARES Act Fund 040-9999	32810- Undesignated Fund Balance	\$27,039,000	
TMC 040-2600	56790- Other Contractual Services		\$27,039,000

and,

BE IT FURTHER ORDAINED that the County Executive be and hereby is authorized to execute an appropriate Cooperative Agreement with Truman Medical Centers, Inc., in a form to be approved by County Counselor.

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

APPROVED AS TO FORM:

Chief Deputy County Counselor

See attached Counselor opinion

County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5354 introduced on June 3, 2020, was duly passed on June 3, 2020 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 7

Nays 0

Abstaining 0

Absent 2

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

6.3.2020
Date

Mary Jo Spino

Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5354.

6/12/2020
Date

Frank White, Jr.

Frank White, Jr., County Executive

Funds sufficient for this appropriation are available from the source indicated below.

ACCOUNT NUMBER: 040 9999 32810
ACCOUNT TITLE: CARES Act
Undesignated Fund Balance
NOT TO EXCEED: \$27,039,000.00

There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.

ACCOUNT NUMBER: 040 2600 56790
ACCOUNT TITLE: CARES Act
TMC
Other Contractual Services
NOT TO EXCEED: \$27,039,000.00

Date

See attached counsel opinion

Chief Administrative Officer



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE

415 EAST 12TH STREET
KANSAS CITY, MISSOURI 64106

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

TO: FRANK WHITE, JR.
COUNTY EXECUTIVE

FROM: BRYAN O. COVINSKY
COUNTY COUNSELOR

DATE: JUNE 2, 2020

RE: CARES ACT FUNDS

You have asked this office to provide guidance on the interplay between section 532 of the Jackson County Code and the recent midyear receipt of significant federal funding via the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. Per that Act, and pursuant to an application for direct federal funding that you filed with the U.S Treasury as authorized by the Act, Jackson County has received \$122,669,998.00 for coronavirus pandemic relief, of which \$18,354,806.00 has been previously appropriated by the County Legislature at your recommendation.

Section 532., Jackson County Code, 1984, provides:

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.

532.1 Exception, New Revenue.

If the County Executive shall propose and the County Legislature shall enact a measure that will provide additional income and revenues, and if the County Executive shall propose additional expenditures, the County Legislature may appropriate an amount equal to not more than ninety-five percent (95%) of the estimated income and revenue from the new source or sources.

This section governs how the County is to treat new revenues that are received mid-year and that are not a part of the County's annual budget process. Since the CARES Act funding received is not included in the 2020 Jackson County budget, the first paragraph of section 532, which governs the County Legislature's power to appropriate funds that you estimated in the annual budget, does not apply. Rather, the appropriation of CARES Act funds is governed by the exception in section 532.1. The County Legislature may

CARES Act Funds

June 2, 2020

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appropriate up to 95% of this “additional income and revenues” only if “the County Executive shall propose additional expenditures.”

Regarding pending legislative items, you have advised that you have not proposed any expenditures of CARES Act funds for hazard pay for County associates as contemplated by Ordinance 5352 now pending before the Legislature. You have also advised that you have not proposed any expenditure for Truman Medical Centers, Inc., for building improvements or equipment. Accordingly, the County Legislature is without authority at this time to appropriate any new revenues for these purposes.