



Jackson County Missouri

Jackson County Courthouse
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Kansas City, Missouri
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Legislation Text

File #: 4104, Version: 1

Budget Committee Amendment
May 18, 2009

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing sections 919. and 920., Jackson County Code, 1984, relating to ethics and enacting, in lieu thereof, two new sections relating to the same subject.

ORDINANCE #4104, May 11, 2009

INTRODUCED BY Dan Tarwater, Henry C. Rizzo, Scott Burnett, Theresa Garza Ruiz, Fred Arbanas, James D. Tindall, Dennis Waits, Greg Grounds, and Bob Spence, County Legislators

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

Section A. Enacting Clause. Sections 919. and 920., Jackson County Code, 1984, are hereby repealed and two new sections enacted in lieu thereof, to be known as sections 919. and 920., to read as follows:

919. Commission's Power, Limitations.

The Commission does not have the authority to reverse or otherwise modify a prior action of the County Executive, the County Legislature, or an officer or employee of the County. If the Commission finds a prior action of the County Executive, the County Legislature, officer or employee to have been in violation of this chapter, the Commission may advise the appropriate party or parties

that the action should be reconsidered. Upon such advice by the Commission, the action may be reconsidered by the appropriate person or public body. If the Commission determines an existing County contract to be in violation of this chapter, after such determination and advice from the Commission, the County may void or seek termination of the contract if legally permissible. The Commission may refer a matter to the County Counselor for review and consideration for appropriate action. Upon completion of review and consideration, the County Counselor's Office shall report its findings to the Commission.

920. Complaints, Hearing Procedure.

(a) Any person may file a verified, written complaint, signed and sworn, with the County Counselor alleging a violation of Article XII of the Jackson County Charter or this chapter.

(b) A complaint shall specify the provisions of the Jackson County Charter or this chapter alleged to have been violated and facts alleged to constitute the violation.

(c) Upon receipt of such a complaint, but in any event not later five (5) business days after receipt, the County Counselor shall acknowledge receipt to the complainant(s), and forward the complaint simultaneously to the Commission and, the respondent or respondents. The notice must include a copy of the complaint, a statement indicating the commission meeting date and time when the matter will be addressed and the commission's Rules of Procedure.

(d) At the next regular meeting, or within thirty (30) days, whichever is sooner, following receipt of the complaint, the Commission shall review and consider the complaint and, if a hearing is to be held, shall within 14 days set a date certain for the hearing to take place no earlier than thirty (30) days, unless otherwise waived by both the complainant and respondent from the date of the written notice of the hearing.

(e) As soon as practicable after giving due consideration to a complaint, or, if a hearing was held, after the hearing, the Commission shall take any action or combination of actions which it

deems appropriate and which it is lawfully empowered to take, including, but not limited to the following:

- (1) dismiss the complaint based on any of the following grounds:
 - (I) the complaint does not allege facts sufficient to constitute a violation of article XII of the County Charter or this chapter; or
 - (ii) the Commission has no jurisdiction over the matter; or
 - (iii) failure of the complainant to cooperate in the Commission's review and consideration of the complaint; or
 - (iv) the complaint is defective in a manner which results in the Commission being unable to make any sound determination; and
- (v) the complaint is frivolous;
- (2) determine that no violation of this chapter has occurred; or
- (3) determine that the complaint alleges facts sufficient to constitute a violation of this chapter and that the Commission will conduct a hearing, in which case the Commission shall promptly send written notice of such determination to the respondent and to the complainant; or
- (4) determine that further information must be obtained in order for the Commission to determine whether the complaint alleges facts sufficient to constitute a violation of the chapter; and
 - (I) conduct its own investigation with respect to any alleged violation; or
 - (ii) request the County Counselor or Director of Human Resources to investigate the complaint and report all findings back to the Commission; or
 - (iii) schedule the complaint for further review and consideration at a future time certain, in which case the Commission shall promptly send written notice of such determination to the respondent and to the party who made the complaint; or
 - (iv) refer the complaint to any appropriate authorities for criminal investigation or

prosecution; or

(5) Any time a complaint is dismissed, the notice shall be in writing and contain the reasons for the dismissal.

(f) During any investigation and during any hearing which is conducted to determine whether a violation of this chapter has occurred,

(1) the respondent or his or her representative, if any, shall have an opportunity to challenge the sufficiency of any complaint which has been filed against him or her

(2) the complainant and the respondent(s) may be represented by counsel of their own choosing; and

(i) examine all documents and records obtained or prepared by the Commission in connection with the matter heard;

(ii) bring witnesses;

(iii) establish all pertinent facts and circumstances; and

(iv) question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(g) The following principles shall apply to evidence in connection with hearings conducted by the Commission:

(1) The Commission shall not be bound to adhere to statutory Rules of Evidence, but shall be fundamentally fair in its administration of evidence;

(2) During any hearing conducted by the Commission to determine whether a violation of this chapter has occurred, all evidence including certified copies of records which the Commission considers shall be fully offered and made a part of the record in the proceedings;

(3) The respondent or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence;

(4) The Commission shall inform the respondent or his or her counsel of exculpatory evidence in its possession; and,

(5) The standard of evidence in hearings conducted under this chapter shall be a preponderance of evidence admitted at the hearing.

(h) Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the Commission and who may be adversely affected thereby, may, upon request of the person or a representative of the person, or upon the request of any member of the Commission, appear at the hearing to testify on his or her own behalf or have a representative appear to so testify, and the Commission may permit any other person to appear and to testify at a hearing.

(i) No later than thirty (30) days after the date the hearing is concluded the Ethics Commission will determine whether to dismiss the complaint, or upon a finding of violation of this chapter, to make appropriate penalty recommendations pursuant to section 9025. of this chapter, or to recommend action to the County Executive or Appointing Authority where such action is recommended. The commission may issue any additional reports, opinions and recommendations as it deems advisable under the circumstances. All such reports shall be in compliance with all state and local laws governing confidentiality, open meetings and records, open government, and torts.

(j) A finding of violation of this chapter requires the affirmative vote of three members of the Ethics Commission that there is a preponderance of evidence that the respondent has violated this chapter. Any member not present at all public hearings and deliberations may not vote. The written final decision must specify the sections violated and provide a factual explanation supporting each violation or, if no violation is found, finding of fact and reasons for dismissal. When determining the appropriate penalty, the following should be considered: the severity of the respondent's offense; the position and responsibilities of the respondent; the presence or absence of any intention on the

part of the respondent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; and whether the incident was isolated or part of a pattern. The Ethics Commission must file its memorandum of decision with the County Counselor's office, and send it to the complainant and respondent, within ten days after it votes. When a party to the proceeding has appeared by counsel, service upon the counsel shall be deemed service upon the party.

(k) In any contested case, as defined by section 536.010(4), RSMo, before the Commission, any person aggrieved by a final decision of the Commission shall be entitled to judicial review thereof, as provided in sections 536.010 - .140, RSMo.

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 #4104 introduced on May 11, 2009, was duly passed on June 1, 2009 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8
0

Nays

Abstaining 0
Absent
1

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

Date

Spino, Clerk of Legislature

Mary Jo

I hereby approve the attached Ordinance #4104.

Date

Sanders, County Executive

Michael D.