



FRANK WHITE, JR.  
Jackson County Executive

August 23, 2018

Veto Message from the County Executive

Ordinance 5102

TO THE JACKSON COUNTY LEGISLATURE:

RECEIVED

AUG 23 2018

MARY JO SPINO  
COUNTY CLERK

JHK  
4:06 pm

I am returning herewith without my approval Ordinance 5102, which seeks to amend numerous sections of the County charter. Most notably, the majority is attempting to dramatically increase the salaries and implement term limits for elected officials in Jackson County. It is important to note, that this ordinance does not accomplish either of those goals. Finally, the proposed ballot language is misleading, inaccurate and requires voters to consider unrelated proposals in numerous questions.

First and foremost, Ordinance 5102 proposes to amend the County's charter to provide substantial salary increases for all of the County's elected officials. Specifically, the majority members are seeking to provide elected officials, including County legislators, pay raises of up to \$55,077 annually.<sup>i</sup>

By law, when issues are referred to voters, they must be submitted separately so that the voters may decide each issue upon its own merits. Specifically, the Missouri Supreme Court has held that "(t)he vice of 'doubleness' in submissions at elections is universally condemned. It is regarded as a species of legal fraud because it may compel the voter, in order to get what he earnestly wants, to vote for something which he does not want."<sup>ii</sup> Unfortunately, the majority members have proposed placing on the November ballot numerous questions that will prevent voters from deciding significant issues on their own individual merits. As an example, if a voter believes that a county legislator should not be allowed to receive a gift of over \$500 from a county vendor, the voter must also agree that legislator salaries should be dramatically increased.<sup>iii</sup>

In addition to the issue of doubleness, ballot summaries must also be accurate, fair, and quite simply, cannot mislead voters. As an example of one such holding, less than a month ago, a St. Louis County Circuit Court Judge held that a proposal to amend their charter was misleading, and was therefore removed from the ballot, simply because the proposed ballot language included the word



“interdepartmental” rather than “intradepartmental.”<sup>iv</sup> Unfortunately, the majority members’ proposed ballot language contains numerous provisions which are seemingly inconsistent with their own proposed changes to the County charter.

For example, the ballot summary for Question #4 contains the following language, “grant the Prosecuting Attorney the sole authority to prosecute cases in County Municipal Court (. . .)” Conversely, the actual proposed amendment to the County charter clearly states differently. Specifically, the Charter, as proposed, would state the “Prosecuting Attorney shall appoint a lawyer or lawyers to prosecute cases arising in the County Municipal Court.” Therefore, a voter that relied upon the language of the ballot may be quite surprised to later learn that any lawyer, as long as they are appointed by the Prosecuting Attorney, may prosecute a case in County Municipal Court.

Similarly, the ballot summary for Question #2 contains the following language, “Shall (. . .) the (. . .) Charter, (. . .) be amended (. . .) to require the County Executive to notify the County Legislature of any correction of errors in assessment and tax records (. . .)” Once again, the actual language of the Charter, if amended, would state something much different. Specifically, as proposed, the County Charter would state that the “County Executive (. . .) shall have the power to: Correct errors in assessment and tax records and report any such correction to the County Legislature within thirty days thereof.” Despite the ballot summary clearly stating that the County Executive would be required, the charter, as amended, would create no such requirement. Instead, the Charter would clearly and simply state that the County Executive merely has the power to do so, but is under absolutely no duty or requirement to do so.<sup>v</sup>

As a final example,<sup>vi</sup> Questions 1, 2, 3, and 4 all contain the following language, “to provide a salary increase for (. . .)” However, the majority chose to leave intact the following provision of the charter:

“The County Legislature shall have the power, (. . .) to: Set the compensation of (. . .) county officers (. . .) whether or not this charter fixes such compensation, except that the compensation of elective officers shall be fixed at least ten months prior to the election of such officers and shall not be increased or diminished during their term of office.”<sup>vii</sup>

In other words, regardless of any other charter provision, the salary of elected officials is solely and completely under the discretion of the legislature. The choice to increase elected official salaries, or not, rests with the legislature regardless of whether these amendments are approved, or even submitted to voters.<sup>viii</sup>

Finally, a significant amount of attention has centered upon the possibility of instituting term limits in Jackson County. Those discussions have included the prospective nature of the proposed term limits, the

seeming disconnect between seeking reelection to a third or subsequent term despite supporting the prohibition of such for others, and the potential benefit or detriment of having more frequent turnover of elected officials. In response to those discussions, and others, I believe it is important that I acknowledge that there are valid and fair arguments to be made in both favor and in opposition of instituting term limits in Jackson County. However, it is not necessary to discuss the merits of those discussions at this time because the majority failed to include enforceable term limits in their proposal.

Specifically, the majority proposes to amend various provisions of the charter to include the following language:

“No (member, County Executive, Prosecuting Attorney, Sheriff) may serve more than (two, three) consecutive full terms (. . .).”

The language selected by the majority is notable both for what they chose to include, and for what they chose not to include. First, the majority chose to only limit a person’s ability to “serve,” and not to prohibit a person’s ability to file for office or be elected.<sup>ix</sup> Second, the majority chose to further dilute their proposal by applying this limitation only to “consecutive full terms.”<sup>x</sup> The impact of coupling these two choices into a singular provision may best be explained by a hypothetical:

John Doe ran for a county legislative seat this year and is ultimately elected. Doe decides to file for re-election in 2022, and once again is elected. Since the charter, as amended, does not prohibit Doe from filing for a third consecutive term, Doe decides to file for re-election and is elected once again. On the day before his second consecutive term is to end, Doe resigns his office, therefore not serving a “full term.” Doe is sworn in the next day, without violating the charter, and serves his third term in three consecutive election cycles. In fact, Doe could even file and run for re-election for the next term and would not even have to go through the hassle of resigning for the final few minutes of his current four year term.

In conclusion, Ordinance 5102 proposes to dramatically increase the salary of elected officials, submits misleading and unfair questions to the voters, and ultimately fails to include an enforceable term limit for any elected office. For the foregoing reasons, I return Ordinance 5102 to the County Legislature without my approval and with my objections.

Respectfully submitted,



Frank White, Jr.  
Jackson County Executive

<sup>i</sup> In accordance with the county code, the Sheriff currently receives an annual salary of \$103,771. Ordinance 5102, in part, proposes that the Sheriff will make the same as a judge on the Missouri Court of Appeals. Currently, Missouri Appellate Court Judges receive an annual salary of \$158,848.

<sup>ii</sup> State ex rel. Bd. of Fund Comm'rs v. Holman, 296 S.W.2d 482, 488 (Mo. 1956) (Citing State v. Maitland, 296 Mo. 338, 246 S.W. 267, 272.)

<sup>iii</sup> See Ballot Question #1

<sup>iv</sup> Grommet vs. St. Louis County Board of Election Commissioners, et al. Case No. 18SL-CC02241.

<sup>v</sup> It is also worth noting, that this question is also misleading since the County Executive is only one of many parties or governmental bodies granted the authority to correct errors in assessments and tax records. Most notably, but not exclusively, the Jackson County Board of Equalization, the Missouri State Tax Commission and Missouri Courts are all granted the authority to correct such errors. Despite the clear language of the ballot summary to contrary, the County charter contains absolutely no provisions that even mention the reporting of corrections of assessments or tax records by any of these entities.

<sup>vi</sup> Other potential issues include, but are not limited to:

<sup>vii</sup> Art. II, Sec. 16.15. Jackson County Charter, 2010.

<sup>viii</sup> The salary of those currently seeking re-election should be determined based upon the application of relevant county charter and code provisions on January 6, 2018 (10 months before election).

<sup>ix</sup> Conversely, the City of Kansas City amended their charter to state "No person shall be elected a member of the Council who has been elected to the Council in each of the last two regular municipal elections." Sec. 206 Kansas City Charter.

<sup>x</sup> Conversely, the Missouri Constitution states that "No one shall be elected or appointed to serve more than eight years total in any one house of the General Assembly nor more than sixteen years total in both houses of the General Assembly." Art. 3, Sec. 8, Missouri Constitution.