

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DARON MCGEE,

and

MANUEL ABARCA, IV,

and

VENESSA HUSKEY,

and

SEAN SMITH

Relators,

vs.

FRANK WHITE, JR.

Respondent.

Case No.:

**PETITION IN MANDAMUS, OR IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT**

Relators DaRon McGee, Manual Abarca, IV, Venessa Huskey, and Sean Smith, (“Relators”), by and through their counsel of record, and for their PETITION IN MANDAMUS, OR IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT against Respondent, Jackson County Executive, Frank White, Jr. (“Respondent” or “County Executive”), state the following:

INTRODUCTION

1. Relators bring this action to challenge Respondent, Jackson County Executive, Frank White, Jr.’s veto of the entire Jackson County Budget submitted to his office on December 31, 2024 (the “Budget”), and vetoed on January 9, 2025.

2. The Constitution of Missouri, Missouri Revised Statutes, the Jackson County Charter, and the Jackson County Code of Ordinances govern the enactment of the Budget.

3. The Jackson County Charter requires that the County Executive “[s]ubmit to the County Legislature for approval by ordinance an annual balanced budget at the time and in the manner provided in this charter and by county ordinance.” CONSTITUTIONAL HOME RULE CHARTER, JACKSON COUNTY, MISSOURI, ART. III, SEC. 6(12) (“Jackson County Charter”).

4. The Jackson County Code of Ordinances (the “Code”) requires the County Executive to submit a recommended budget to the Jackson County Legislature (the “County Legislature” or “Legislature”) no later than November 15th of every year. JACKSON COUNTY CODE OF ORDINANCES (“CODE OF ORD.”), CH. 5, SEC. 530.

5. Additionally, the Code mandates that the Budget be enacted “not later” than December 31 of each year. CODE OF ORD. Ch 5, SEC. 530.1.

6. Despite the foregoing, after the Legislature, by majority vote, passed the Budget, ten (10) days later, on January 9, 2025, Respondent vetoed the entire despite the fact that *nearly all of the Budget* was what Respondent submitted to the Legislature.

7. Because of the veto, the County can only pay for salaries appropriated in the Budget for 2024. CODE OF ORD. CH. 5, SEC. 530.2.

PARTIES

8. Relators DaRon McGee, Manual Abarca, IV, Venessa Huskey, and Sean Smith are Jackson County, Missouri Legislatures, duly elected, and residents of Jackson County, Missouri. Relators bring this action in their official capacity.

9. Respondent, Frank White, Jr., is the Jackson County, Missouri County Executive, duly elected, and a resident of Jackson County, Missouri. Respondent is being sued in his official

capacity. Respondent can be served at 415 East 12th Street, Kansas City, Missouri 64106.

JURISDICTION AND VENUE

10. Jurisdiction and venue are proper as the acts giving rise to this matter occurred in Jackson County, Missouri.

11. This Court has general personal jurisdiction over Respondent as he is a resident of Jackson County, Missouri and an elected official of Jackson County, Missouri.

12. Jurisdiction in this Court is proper pursuant to Article V § 14, of the Missouri Constitution, and RSMo. § 478.070.

13. Venue in Jackson County, at Kansas City, is proper pursuant to RSMo. § 508.010, in that Respondent is located in, and Relators have been injured in, Jackson County, Missouri.

14. Additionally, this Court has jurisdiction under Rule 87 as well as Rule 94.

STATEMENT OF FACTS

15. On or about November 15, 2024, Respondent submitted his recommended budget to the Legislature.

16. On December 31, 2024, the Legislature, by majority vote, passed appropriation ordinances based on the recommended budget, with modifications (the "Budget"), as is required by the Code and the County Charter.

17. On January 9, 2025, Respondent vetoed the Budget in its entirety.

18. The Jackson County Charter requires that the County Executive "[s]ubmit to the County Legislature for approval by ordinance an annual balanced budget at the time and in the manner provided in this charter and by county ordinance." JACKSON COUNTY CHARTER, ART. III, SEC. 6(12).

19. Accordingly, Code Section 530.1 states, in pertinent part:

Appropriation ordinances based on the recommended budget with the modifications as the County Legislature considers advisable ***shall be enacted not later than the 31st day of December*** following the submission of the recommended budget. The budget for the year next following the election of the County Legislature and the County Executive, this being the budget for 1975 and every fourth year thereafter, shall be acted on by the County Legislature no later than January 31st of the budget year.

CODE OF ORD. Ch 5, SEC. 530.1 (emphasis added).

20. Shall, as used in the ordinance, is a term of art analogous with the word “mandatory.” *State ex rel. City of Blue Springs v. Rice*, 853 S.W.2d 918, 920 (Mo. banc 1993) (“Generally the word ‘shall’ connotes a mandatory duty.”).

21. The Code *mandates* that the budget be enacted “not later” than December 31 of each year by the use of “shall be enacted”. CODE OF ORD. Ch 5, SEC. 530.1.

22. Code Section 530.2 states, in pertinent part:

If the appropriation ordinances are not acted upon, on or before the date set forth in Section 530.1, the several amounts last appropriated for each office, department or agency so far as they relate to salaries shall be deemed to be reappropriated by ordinance for the same purposes for the ensuing fiscal year.

CODE OF ORD. Ch 5, SEC. 530.2.

23. “When a statute or rule provides what results will follow a failure to comply with its terms, it is mandatory and must be obeyed.” *Dorris v. State*, 360 S.W.3d 260, 266-67 (Mo. banc 2012) (citing *Kersting v. Director of Revenue*, 792 S.W.2d 651, 652-53 (Mo.App.1990)).

24. Code Section 530.2 sets forth the results following a failure to comply with Code Section 530.1, further evidencing its mandatory nature.

25. Code Section 537.3 states, “[t]he budget documents shall include completed drafts of appropriation and revenue ordinances ***to put the budget into effect as approved by the County Legislature.***” CODE OF ORD. Ch 5, SEC. 537.3 (emphasis added).

26. The Charter enumerates the County Executive’s powers regarding appropriation

ordinances, stating, in pertinent part:

In the case of county ordinances appropriating money the County Executive may object to one or more items or portions of items while approving other portions, in which case the approved items or portions shall take effect and the items or portions objected to shall be reconsidered separately.

JACKSON COUNTY CHARTER, ART. II, SEC. 12.

27. Notably, the Charter does not give the County Executive the power to object to the entire budget, but allows for line-item vetoes.

28. The Missouri Constitution (sometimes referred to as the “Constitution”) requires that county charters provide “for the exercise of *all powers and duties* of counties and county officers prescribed by the constitution and laws of the state[.]” MO. CONST. ART. VI § 18(b) (emphasis added).

29. Article VI of the Missouri Constitution also states “[a]s prescribed by law all counties, cities, other legal subdivisions of the state, and public utilities owned and operated by such subdivisions *shall have an annual budget*, file annual reports of their financial transactions, and be audited.” MO. CONST. ART. VI § 24.

30. The Constitution requires that the County have an annual budget, and there is no exception for such a requirement.

31. Neither the Jackson County Charter, nor the Code, provides the County Executive power to veto the entire budget passed by the legislature.

32. Neither the Jackson County Charter, nor the Code, allow Respondent to forego enacting the Budget by December 31.

33. The Jackson County Charter does require the County Executive to:

Execute and enforce the provisions of this charter, and the ordinances, resolutions and policies of the County Legislature, and the laws of the state pertaining to the government of the county; see that all contracts with the county are faithfully

performed and cause to be instituted in the name of the county appropriate actions thereon.

JACKSON COUNTY CHARTER, ART. III, SEC. 6(5).

34. Respondent, pursuant to the Charter, is required to "execute and enforce" provisions within the Charter, ordinances, and the laws of the state, which includes Chapter 5 of the Code.

35. Therefore, Respondent has no discretion regarding the enactment of the Budget passed by the Legislature on December 31, 2024, as set forth in Chapter 5 of the Code.

36. Respondent has a clear and mandatory duty to execute and enforce Code Section 5.30, which requires enacting the Budget passed by the Legislature on December 31, 2024.

37. Missouri Courts have held that mandamus can lie to compel county officials to budget for certain expenditures. *See State Ex. rel. Hunter v. Lippold*, 142 S.W.3d 241 (Mo. App. 2004).

38. In fact, Missouri Courts have specifically held that counties must enact budgets:

The overarching purpose of the County Budget Law is set forth in § 50.550.1, which states that "[t]he annual budget shall present a complete financial plan for the ensuing budget year." (emphasis added). Section 50.550 uses the word "shall" repeatedly. As explained in *Hunter*, the "word 'shall' is usually used to express compulsion, obligation or necessity." 142 S.W.3d at 243. Section 50.550.1 goes on to state that the budget "shall set forth all proposed expenditures for the administration, operation and maintenance of all offices, departments, commissions, courts and institutions ..." (emphasis added). Section 50.550.2 states that the "budget shall contain adequate provisions for the expenditures necessary for the ... salaries, office expenses and deputy and clerical hire of all county officers and agencies." (emphasis added).

The above provisions, ***and their repeated use of the word "shall," clearly mandate that the County not only adopt a budget***, but that it do so with consideration of the needs of the county and its various departments including the duties of the various elected officials of the county.

State ex rel. Vescovo v. Clay County, 589 S.W.3d 575, 584-85 (Mo. App. 2019) (emphasis added).

39. Thus, there is no question that the County is mandated to enact a budget and that the County Executive's veto is without effect and in violation of the Charter, the Code and his

mandated duty(ies).

40. In the alternative, if the veto of the entire Budget is valid and enforceable, which Relator's deny, then the only expenditures allowable are salaries appropriated in the County's 2024 budget. CODE OF ORD. CH. 5, SEC. 530.2.

41. Upon information and belief, Respondent has been spending County money on expenditures outside of salaries appropriated in 2024, in violation of the Code.

PRELIMINARY AND PERMANENT WRIT OF MANDAMUS

42. Relators incorporate the foregoing paragraphs as if fully stated herein.

43. Respondent has a clear and mandatory duty to perform the act of enacting the budget on or by December 31.

44. Respondent has a clear and mandatory duty to perform the act of enacting the Budget passed by the Legislature on December 31, 2024.

45. Relators, as County Legislatures and Jackson County residents, have a clear right to ensure the appropriations ordinances (the Budget) are enacted by December 31.

46. Respondent's January 9, 2025, veto of the entire Budget, which Relators deny is valid, purports to refuse to enact the Budget as is required under local and state law.

47. Respondent's duty to ensure the Budget is enacted not later than December 31 is mandated under the Code, the Charter, state law and the Constitution.

48. Respondent has no discretion as to whether to enact the Budget no later than December 31.

49. As such, this Court must compel Respondent to act, signing the Budget as passed by the Legislature on December 31, 2024, holding that it was enacted on the same date, and that Respondent's veto is without force and effect.

50. Further, the Court must enter a temporary order suspending all expenditures by Respondent until the conclusion of this matter.

RELIEF SOUGHT

51. Relators incorporate the foregoing as if fully stated herein.

52. Relators seek the Court to declare the County Executive's January 9, 2025, veto of the entire Budget invalid as the veto violates and contravenes the Constitution, state statutes and local laws;

53. Relators seek the Court to declare that the County Executive has no power to veto the entire Budget passed by a majority of legislatures if such veto would result in no budget being enacted by or on December 31;

54. Alternatively, if the Court finds that the County Executive does have the power to veto the entire Budget passed by a majority of legislatures, which Relator's deny, even if such veto would result in no budget being enacted by or on December 31, then Relator's seek the Court to declare that the County Executive must do a line-item veto so that a budget would be enacted by or on December 31;

55. Relators seek the Court to declare that the Budget passed by the Legislature on or about December 31 valid and enacted on December 31, 2024;

56. Relators seek the Court to declare that the County Executive has a duty to ensure the Budget is enacted on December 31;

57. Alternatively, if the Court finds that the County Executive's veto was valid and enforceable, then Relators seek the Court to declare that the County's only expenditures can be salaries appropriated in the prior year's budget, operation and maintenance;

58. Relators seek the Court to issue the WRIT OF MANDAMUS directing the Respondent

to perform his ministerial duties to:

- a. Enact the Budget passed by the County Legislature on December 31, 2024;
- b. Halt any further actions by the County Executive in conflict with enacting Budget passed by the County Legislature on December 31, 2024;
- c. Halt any further spending by Respondent, outside of salaries appropriated in the 2024 budget.

STATEMENT OF THE REASON THE WRIT SHOULD ISSUE

For a complete statement of the reasons the writ should issue, see Relator's Suggestions in Support, filed contemporaneously herewith. Simply stated, however, the writ requested should issue because Respondent has a ministerial duty, nay, a Constitutional duty to enact the Budget passed by the County Legislature on December 31, 2024. An action that violates and contravenes the Missouri Constitution, Missouri statutes, and the Jackson County Code is invalid and cannot be properly enacted nor enforced. As such, Respondent's veto of the Budget passed by the Legislature on December 31, 2024, is null and void and Respondent has a duty to enact and enforce the Budget.

WHEREFORE, for the reasons set forth in this Verified Petition and the related Suggestions in Support, Relators request the following from this Court:

1. Relators seek the Court to declare the County Executive's January 9, 2025, veto of the entire Budget invalid as the veto violates and contravenes the Constitution, state statutes and local laws;
2. Relators seek the Court to declare that the County Executive has no power to veto the entire Budget passed by a majority of legislatures if such veto would result in no budget being enacted by or on December 31;
3. Alternatively, if the Court finds that the County Executive does have the power to

veto the entire Budget passed by a majority of legislatures, which Relator's deny, even if such veto would result in no budget being enacted by or on December 31, then Relator's seek the Court to declare that the County Executive must do a line-item veto so that a budget would be enacted by or on December 31;

4. Relators seek the Court to declare that the Budget passed by the Legislature on or about December 31 valid and enacted on December 31, 2024;

5. Relators seek the Court to declare that the County Executive has a duty to ensure the Budget is enacted on December 31;

6. Alternatively, if the Court finds that the County Executive's veto was valid and enforceable, then Relators seek the Court to declare that the County's only expenditures can be salaries appropriated in the prior year's budget, operation and maintenance;

7. Relators seek the Court to issue the WRIT OF MANDAMUS directing Respondent to perform his ministerial duties to:

- a. Enact the Budget passed by the County Legislature on December 31, 2024;
- b. Halt any further actions by the County Executive in conflict with enacting Budget passed by the County Legislature on December 31, 2024;
- c. Halt any further spending by Respondent, outside of salaries appropriated in the 2024 budget.

8. In the alternative, Relators seek the Court to issue an INJUNCTION directing Respondent to:

- a. Enact the Budget passed by the County Legislature on December 31, 2024;
- b. Halt any further actions by the County Executive in conflict with enacting

Budget passed by the County Legislature on December 31, 2024;

c. Halt any further spending by Respondent, outside of salaries appropriated in the 2024 budget.

Respectfully submitted,

WEBSTER LAW, LLC

/s/ Madison J. McBratney

Madison McBratney # 73403
1317 W. 13th Terrace, Level #4/A
Kansas City, MO, 64102
Office Ph. (816) 629-6055
Direct Ph. Line (816) 629-6042
Fax: (816) 934-1194

mmcbratney@sjwebsterlaw.com

ATTORNEYS FOR PETITIONER