



OFFICE OF THE COUNTY COUNSELOR

JACKSON COUNTY COURTHOUSE

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To: Frank White Jr., County Executive

From: Bryan Covinsky, County Counselor

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RE: County Executive Advisory Groups and Executive Orders

The Office of the County Counselor has been asked for a legal opinion as to whether the County Executive is required to issue an executive order naming an advisory group when such a group is created. After review of the Jackson County Charter, Jackson County Code, and relevant case law, the Office of the County Counselor offers the following opinion on County Executive and County Legislature obligations and powers with respect to this issue.

Article III, Sec. 6, Paragraph 1 of the Jackson County Charter gives the County Executive the power to appoint members of county *boards* and *commissions*. This appointment power is subject to the County Legislature's approval or disapproval and requires written notice of said appointments to the Clerk of the County Legislature. The Charter does not specify in which form said notice must be given.

Here, the group at issue is an advisory group, which does not have power independent of the County. This is distinguishable from boards and commissions, which do have sovereign power of the County and require appointment by the County Executive to specific, designated positions which comprise the board or commission. The designated positions of County boards and commissions possess certain official powers or duties; an advisory group does not have any power or specific duties in relation to the County and has no authority to make decisions or act in any way on behalf of the County. Such a group merely advises the County Executive, but ultimately has no independent power or authority. Therefore, an advisory group is not required to be treated the same as boards and commissions with respect to the creation and naming process.

This distinction between boards and commissions versus advisory groups based on the former having certain powers and the latter not having those powers is, essentially, a distinction between what qualifies as a public governmental body and what does not. As articulated in *Colombo v. Buford*, 935 S.W.2d 690, 698 (Mo. Ct. App. 1996): "the quintessence of a public governmental body is the power to govern...it defies semantics to believe that the legislature intended inclusion of bodies or entities barren of the power to govern..." (internal citations omitted).

There is no requirement in state law, the County Charter, or the County Code which states the County Executive must name an advisory group of the nature at issue in this matter in any

specific manner or by any specific method. Therefore, the County Executive may establish an advisory group which is not subject to disapproval by the County Legislature. Previous County Executives have named other advisory groups by executive order as a courtesy, for reference purposes, or for other reasons, but again, there is no *requirement* that this be done.

However, in the interest of transparency and for a reference and record purposes, it is the recommendation of the Office of the County Counselor that, though it is not required nor subject to disapproval by the County Legislature, the County Executive name advisory groups by executive order. Such an action is mutually beneficial to both the County Executive and County Legislature in that it provides the County Legislature important information on the group and gives the Clerk a reference and record point, while also giving the group itself standing with respect to appearance and presentation before the County Legislature on important matters. Though there is an absence of a legal requirement for notice of the group to be given in this manner, it is our position that doing so allows for clarity and consistency, which is in the best interest of the County.