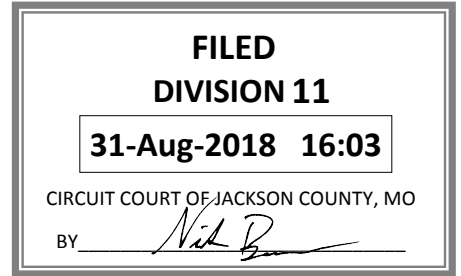


**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

SCOTT BURNETT, et al.,)
)
 Plaintiff,)
)
 vs.)
)
 FRANK WHITE JR,)
)
 Defendant.)

CASE NO: **1816-CV01045**
DIVISION **11**



**JUDGMENT AND ORDER GRANTING COUNTY LEGISLATURE AND
PROSECUTING ATTORNEY’S JOINT MOTION FOR SUMMARY JUDGMENT AND
DENYING THIRD PARTY PLAINTIFF WHITE’S MOTION FOR SUMMARY
JUDGMENT**

On this 31st day of August, 2018, the Court takes up both Third Party Plaintiff White’s Motion for Summary Judgment, filed July 16, 2018, and County Legislature and Prosecuting Attorney’s Joint Motion for Summary Judgment, filed July 16, 2018. The Court considers these to be cross-motions for summary judgment, and as such it is appropriate to consider and rule on them jointly. After full briefing of both motions, and being fully advised in the premises, the Court hereby GRANTS County Legislature and Prosecuting Attorney’s Joint Motion for Summary Judgment and DENIES Third Party Plaintiff White’s Motion for Summary Judgment, for the reasons stated below.

BACKGROUND

The issue in this case relates to whether or not Ordinance 5061, enacted on December 28, 2017, over the County Executive’s veto, is a valid and lawful ordinance under the Jackson

County Charter (hereinafter “Charter”).¹ The County Executive alleges that Ordinance 5061 constitutes an impermissible exercise of legislative power in that the County Legislature is exceeding its authority by removing powers specifically delineated to the County Executive under the Charter and transferring them to the Prosecuting Attorney. The County Executive alleges no procedural defect in the process by which Ordinance 5061 was passed, or that his veto was improperly overridden. The sole issue for this Court to decide is whether or not Ordinance 5061 improperly infringes upon powers granted exclusively to the County Executive by the Charter.

STANDARD OF REVIEW

Summary judgment is appropriate only where the moving party demonstrates there is no genuine issue of material fact and is therefore entitled to judgment as a matter of law. *Hill v. Ford Motor Co.*, 277 S.W.3d 659, 664 (Mo. 2009); *Stanley v. City of Independence*, 995 S.W.2d 485, 487 (Mo. 1999); Mo.R.Civ.Pro. 74.04. The record is reviewed in the light most favorable to the non-moving party, and the non-movant is given the benefit of all reasonable inferences from the record. *Woodson v. City of Independence*, 124 S.W.3d 20, 26, 2004 Mo. App. LEXIS 10, 14 (Mo. Ct. App. 2004) (citing *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993)).

Neither party controverts any material fact raised by the other party. Further, all parties agree that there are no material facts in dispute and that summary judgment is appropriate as a matter of law.

¹In relevant part, Ordinance 5061 reads as follows:

“9306. COMBAT Administration.

The administration of the COMBAT tax and the COMBAT Commission shall be under the day-to-day supervision of the Prosecuting Attorney. The Prosecuting Attorney is responsible for the selection of a COMBAT Director/Administrator. All COMBAT staff shall report to the COMBAT Director/Administrator.”

ANALYSIS

“Ordinances are presumed to be valid and lawful.” *McCullum v. Dir. of Revenue*, 906 S.W.2d 368, 369 (Mo. banc 1995) (citation omitted). The County Legislature is delegated the authority to pass county ordinances. *Charter*, Article II, §§ 1, 10 – 12. The Charter empowers the County Legislature to “[e]stablish and provide for the enforcement of all necessary regulations to protect and promote public health....” *Charter*, Article II, § 16, Paragraph 30. “The county executive shall provide for the administration of county operated health and welfare programs and agencies...except as otherwise authorized and provided by law.” *Charter*, Article IV, § 6. “In this charter the words ‘law’ or ‘by law’ mean the statutory laws of the State of Missouri or county ordinance....” *Charter*, Article XIII, § 17.

Although Article III, § 5, of the Charter provides that the County Executive “shall be responsible for the administration of all affairs of the county placed in his or her charge...,” the Charter contemplates that county ordinances may be used to establish the “affairs” within the administrative authority of the County Executive.² The Charter also specifically provides that “[t]he Prosecuting Attorney shall possess and exercise all the powers and duties now or hereafter given to that office...by county ordinance.” *Charter*, Article V, § 3. Finally, Article XIII, § 11 empowers the County Legislature to resolve, by county ordinance, any conflict regarding which county officer is to exercise or perform any power or duty imposed by the Charter or ordinance.³

²*Charter*, Article III, § 5 reads as follows:

“The county executive shall be responsible for the administration of all affairs of the county placed in his or her charge by this charter, by law or by county ordinance. The county executive may appoint a staff as may be authorized by county ordinance, and shall appoint a budget officer, who shall have all the powers and duties prescribed by law and by county ordinance, all of who shall serve at his or her pleasure.”

³*Charter*, Article XIII, § 11 reads as follows:

“If any doubt or conflict shall exist as to what department, office, officer, board, or agency of the county shall exercise or perform any power or duty conferred or imposed by the constitution, by law or by this charter, the county legislature by county ordinance shall specify by whom such power or duty shall be exercised or performed.”

It is undisputed by the parties that COMBAT was created by ordinance, and was intended to promote public health. Under the Charter provisions discussed above, this Court finds as a matter of law that the County Legislature has the authority to determine whether the County Executive or the Prosecuting Attorney shall have the responsibilities described in Ordinance 5061. This result is further confirmed by the history of the COMBAT program and its administration.

On November 7, 1989, the sales tax known as COMBAT was approved by voters in a special election pursuant to a question the County Legislature submitted by ordinance. In December 1989, the County Legislature—through ordinance—imposed the tax and granted the County Prosecutor and a newly created fiscal commission the authority to budget and administer the fund. No authority was granted to the County Executive. In January 1991, the County Legislature—through ordinance—authorized the fiscal commission to hire and supervise an executive director. In January 1996, the County Legislature—through ordinance—replaced the fiscal commission with the “COMBAT commission” and granted the County Executive the authority to appoint members of the COMBAT commission. This represents the first administrative involvement of the County Executive in COMBAT.

In January 2008, the County Legislature—through ordinance—placed the administration of COMBAT under the supervision of a COMBAT Director, who was to be appointed by the County Executive, subject to the disapproval of the County Legislature. Further, the COMBAT Director could be removed by either the County Executive or a majority of the County Legislature.

“[U]sage long established and constantly followed by the legislative and executive branches of the government carries with it much persuasive authority.” *State ex rel. McKittrick v. Kirby*,

163 S.W.2d 990, 996 (Mo. banc 1942). While the history of COMBAT is not dispositive, it is persuasive. The Court is persuaded by the fact that the County Legislature, by ordinance, has assigned various administrative responsibilities for COMBAT back and forth between commissioners selected by the County Legislature, the Prosecuting Attorney, and the County Executive. The County Legislature exerted this control over the course of 28 years, through the terms of numerous elected officials, without objection from any other branch or member of county government. If the County Legislature's assignment of the responsibilities described in Ordinance 5061 violated foundational principles of Separation of Powers or exceeded the County Legislature's authority under the Charter, it is reasonable to expect such an objection would have been raised to one of the many similar COMBAT ordinances reviewed, approved, passed, signed, enacted, implemented, and administered prior to December 2017.

The lack of such objection to the County Legislature's previous adjustments of the administrative responsibilities with respect to COMBAT is persuasive evidence that the County Legislature was acting within its authority when it passed Ordinance 5061. This confirms the Court's reading of the applicable Charter provisions.

CONCLUSION

For the reasons stated above, the Court finds that Ordinance 5061 was duly adopted by the County Legislature, does not violate the Charter, and is valid under the law.

IT IS THEREFORE ORDERED AND ADJUDGED that the County Legislature and Prosecuting Attorney's Joint Motion for Summary Judgment is hereby GRANTED and Third Party Plaintiff White's Motion for Summary Judgment is hereby DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that the Amended Preliminary Order in Prohibition, dated February 15, 2018, is hereby dissolved.

IT IS SO ORDERED.

August 31, 2018

Date


GEORGE E. WOLF, Judge

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system on August 31, 2018.

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