

JOHNSON COUNTY, KANSAS ETHICS ADVISORY BOARD

ADVISORY OPINION AND RECOMMENDATION

MICHAEL LEVIN MATTER

To: Board of County Commissioners of Johnson County, Kansas
Attention: Chairman Ed Eilert

At the direction of the Board of County Commissioners of Johnson County, Kansas, an Ethics Advisory Board (hereinafter “Advisory Board”) was appointed for purposes of investigating and evaluating two complaints levied against Michael Levin, an appointed member of the Johnson County Planning Commission. The complaints were issued by Mr. Christopher Iliff, Chairman of the Planning Commission, and Ms. Teri Atwell, a newly-appointed member of the same Commission.

At issue is Commissioner Levin’s involvement in recommending and approving regulatory restrictions which, if ratified and adopted by the Board of Commissioners of Johnson County, Kansas, would significantly limit the construction and / or size and scope of utility-scale solar facilities in Johnson County. Questions have been raised over Commissioner Levin’s ability to objectively and fairly consider potential restrictions on utility-scale solar facilities in light of publicly-stated opposition to these projects by his superior within the Johnson County Sheriff’s Office – Sheriff Calvin Hayden. Commissioner Levin works for the Sheriff’s Office and reports to Sheriff Hayden both directly and through the Bureau Chief and Undersheriff. This is in addition to his work as a Commissioner.

The Advisory Board met and conferred on Thursday, May 5, 2022. Following careful consideration of the available facts, as applied to the Code of Ethics for Johnson County, Kansas (hereinafter “Code of Ethics”), the Advisory Board reached a consensus as concerns the complaints against Commissioner Levin.

First, it is important to note the Advisory Board greatly respects and appreciates Commissioner Levin’s public service – both in his capacity as a Commissioner and through his efforts to serve and protect the Johnson County community as a long-standing employee of the Sheriff’s Department. Equally important, it must be understood the Advisory Board in no way identified evidence of intentional or malicious conduct on Commissioner Levin’s part.

Advisory Opinion and Recommendation

Based on the Code of Ethics, the question before the Advisory Board is whether we have “cause to believe a violation of the Code of Ethics *may have occurred.*” In reaching an opinion and recommendation, a reasonable person standard was applied. That is, whether a reasonable person would perceive Commissioner Levin’s conduct to create the *appearance* of impropriety

and the *appearance* of a violation of the Code of Ethics (not whether an actual violation has or will occur).¹ The Advisory Board answers the question in the affirmative. That is, individually and collectively, the Advisory Board determines there is cause to believe a violation of the Code of Ethics may have occurred – again, based on application of a reasonable person standard.

It is the unanimous recommendation of the Advisory Board that Commissioner Levin abstain from any further discussion or deliberation on the subject of utility-scale solar facilities from this date forward. Stated differently, we recommend Commissioner Levin’s recusal from further discussion and deliberation on this single issue. We do not, however, recommend Commissioner Levin’s involvement with other business before the Planning Commission be impaired or restricted in any way. His ongoing participation on other issues, not pertaining to utility-scale solar facilities, remains important, valuable, and in the best interests of the citizens of Johnson County.

This Advisory Opinion and Ruling has been unanimously approved by the following members of the Advisory Board, as reflected by attachment of their electronic signatures below:

Jointly and respectfully submitted:

/s/ Kevin P. Moriarty
Kevin P. Moriarty
Judge of the District Court (Retired)

/s/ Stephen R. Tatum
Stephen R. Tatum
Judge of the District Court (Retired)

/s/ Amy Meeker-Berg
Ms. Amy Meeker-Berg
County Clerk and Register of Deeds

/s/ Carol Gonzales
Ms. Carol Gonzales
Mid-America Regional Council

Dated this 5th day of May, 2022

¹ The conduct at issue, generally, concerns Commissioner Levin’s change of position on project duration (from 25 to 20 years) and project scope (from 2,000 acres to 1,000 acres), during a November 16, 2021 Planning Commission meeting shortly after his Sheriff’s Department superior, Sheriff Calvin Hayden, spoke in firm opposition to installation of utility-scale solar facilities in Johnson County.