

State of Nebraska

Accountability and Disclosure Commission

P.O. BOX 95086
Lincoln, Nebraska 68509
nadc.nebraska.gov



Centre Terrace, 1225 L St. #400
Phone (402) 471-2522
Fax (402) 471-6599

September 26, 2024

Kevin Mackeprang
119 S. Cherry St.
P.O. Box 346
Bloomfield, NE 68718

Re: Potential Conflict of Interest Statement (NADC Form C-2), filed September 19, 2024

Dear Mr. Mackeprang,

This will acknowledge receipt of the above-referenced C-2, Potential Conflict of Interest Statement ("Statement") which the Nebraska Accountability and Disclosure Commission ("NADC") received in our office on September 19, 2024.

The facts in this case are, as we understand them, that you are a County Supervisor in Knox County. You have signed an agreement with an entity which you have described as "North Fork Wind." You receive lease payments from this entity. In the event that North Fork Wind is able to construct windmills or windmill farms in Knox County, your property would probably be involved, and you may receive additional financial gain from such construction.

Earlier this year, the Knox County Board of Supervisors passed certain amendments relating to zoning. Because these amendments could have an effect on whether windmills or windmill farms could be constructed in Knox County, you abstained from discussion and voting on these amendments. It is our understanding that the amendments placed greater restrictions on the possible siting of windmills in Knox County. The amendments were passed by the Knox County Supervisors, on a vote of 5-1, with you abstaining, as noted above.

As a consequence of the adoption of the amendments by the Knox County Board of Supervisors, North Fork Wind has filed suit against the Knox County Supervisors, including yourself.

Your Statement poses three questions. First, do you have a conflict of interest such that you may not participate in any further discussions with your fellow Supervisors on the question of possible further action on amendments which might affect North Fork Wind development of windmills or windmill farms in Knox County? Second, in view of the fact that you have been named as a defendant by North Fork Wind, along with each of the other Supervisors, can you participate with them in the defense of the lawsuit brought by North Fork Wind? Third, have you properly disclosed your financial interests in your C-1 filing with the NADC for 2023?

In this response to your Statement, we will seek to address each of these questions in turn.

In answer to the first question, we note that as a County Supervisor, you are governed by the terms and requirements of Section 49-1499.03(1) of the Nebraska Political Accountability and Disclosure Act ("NPADA"). That Section provides, in pertinent part, that if an official (such as a County Supervisor) is required to, "take any action or make any decision in the discharge of his... official duties that may cause financial benefit or detriment to...him, a member of ...his immediate family, or a business with which he or she is associated..", then he should prepare and file with the NADC a written statement describing the matter. You have done this by filing your Statement with the NADC. The cited NPADA Section further provides that the NADC will advise you with respect to what action you should take under the circumstances.

Based upon the foregoing facts and circumstances, it is our opinion with regard to the first question, that you would have a direct financial interest, and, therefore, a conflict of interest, under the terms of the NPADA with respect to any action or decision which you would be required to take concerning the zoning amendments which could affect windmill development in Knox County. Accordingly, you were correct in abstaining from discussion and voting on the zoning amendments when they were adopted, and you should recuse yourself or otherwise abstain from taking action with respect to any further action by the Knox County Board of Supervisors on this issue.

The second question concerns your position as a defendant in the lawsuit brought against all of the Supervisors by North Fork Wind. As noted in the discussion above, you have a conflict of interest due to your contractual relationship with North Fork Wind on the question of the adoption of the zoning amendments. Apparently, this issue is a material one in the lawsuit brought by North Fork Wind. Because of this conflict of interest, your situation is separate and different from that of the other Supervisors in the lawsuit. Consequently, it would not be possible for you to participate in a common defense against the lawsuit with the other Supervisors.

Consequently, you would need to obtain separate counsel from the other Supervisor defendants in the lawsuit due to your conflict of interest on a fundamental issue involved in the lawsuit. As a Supervisor, we believe that Knox County should provide you with separate counsel in your defense of the said lawsuit, given your different position and your conflict of interest on the issue of the zoning amendments. In reaching this conclusion, we have consulted with the Nebraska Office of Counsel for Discipline.

The third question raised by your Statement is whether you have adequately described your financial interests in your C-1 Statement of Financial Interests filed with the NADC for the last calendar year, 2023.

We have reviewed your 2023 C-1 Statement, which you filed with the NADC on or about January 10, 2024. In Item 6, you have correctly listed your source of income from Knox County. In Item 7, there is no indication, based upon the foregoing facts, that you have business association with North Wind Development. In Item 8, you have listed your farmland as owned property. We see no discrepancies with respect to your C-1 filing for 2023, and it appears that, in answer to the third question, you have adequately described your financial interests.

If any of the facts stated in this letter relating to this matter are not accurate, or if there are other important and relevant facts relating to this matter which have not been stated in this letter, or if you have any further questions concerning this opinion, please contact me.

The NADC thanks you for your filing.

Very truly yours

A handwritten signature in black ink, appearing to read "Neil B. Danberg", with a stylized flourish at the end.

Neil B. Danberg
General Counsel

Cc: Marty O'Connor

NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION 1225 L St., Suite 400 P.O. Box 95086 Lincoln, NE 68509 (402) 471-2522	POTENTIAL CONFLICT OF INTEREST STATEMENT NADC FORM C-2	POSTMARK DATE	EM
		MICROFILM NUMBER	
BEFORE COMPLETING THIS FORM READ THE FILING REQUIREMENTS ON PAGE 3		OFFICE USE ONLY	
		RECEIVED SEP 20 2024 NEBRASKA ACCOUNTABILITY and DISCLOSURE COMMISSION	

- An official or employee of the executive branch of state government or any other official or employee required to file Statements of Financial Interests must file this form if he or she has a potential conflict of interest.
- Elected officials of school districts and elected officials of villages and cities (except Omaha and Lincoln) should not use this form. Use Potential Conflict of Interest Statement Form C-2A.
- File this Potential Conflict of Interest Statement with the Nebraska Accountability and Disclosure Commission and with your immediate superior (if any) whenever a potential conflict of interest situation arises.
- Persons who fail to disclose a potential conflict of interest or who otherwise do not comply with the law are subject to penalties.

ITEM 1	NAME, ADDRESS AND TELEPHONE NUMBER
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Name	<u>Mackeprang</u>	<u>Kevin</u>	<u>D</u>	Telephone No.	<u>402 841-4633</u>
	Last	First	Middle		
Address	<u>119 S Cherry St; PO Box 346</u>			<u>Blomfield</u>	<u>NE 68718</u>
	STREET ADDRESS OR RURAL ROUTE			City	STATE ZIP CODE

ITEM 2	TITLE, AGENCY, ADDRESS, PHONE AND SUPERIOR
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Your Title	<u>Supervisor - District 5</u>	Agency	<u>Knox County</u>
Agency Address	<u>206 Main St; PO Box 41</u>	Agency Phone	<u>402 288-5603</u>
Name of Immediate Superior	<u>John Thomas</u>	Title	<u>Knox County Attorney</u>

ITEM 3	DESCRIBE POTENTIAL CONFLICT OF INTEREST IN DETAIL (Use Item 7 Continuation, if necessary)
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Date action is to be taken or decision is to be made: _____

Description of Potential Conflict:

I own real estate and have signed an agreement with North Fork Wind. The original agreement was signed in 2018 and extended in 2023. These agreements/memos of leases are recorded in Knox County, Nebraska. There were some zoning amendments to be considered and I advised the Knox County Attorney. The Knox County Attorney wrote me a letter detailing procedures that I should take. (See attached 2-page letter) I followed these procedures.

The Amendments passed by a 5-1 vote from the Knox County Board of Supervisors. I abstained from discussion and voting.

North Fork Wind has filed suit against Knox County listing all supervisors as defendants. Our insurance company scheduled a closed/executive session with the Knox County Board of Supervisors to go over the court case. Knox County Attorney advised me and the board that I could attend since the lawsuit was against the Knox County Board of Supervisors, and am a named defendant.

(See Item 7 for Continuation)

ITEM 4 PERSONS WHO MAY RECEIVE FINANCIAL BENEFIT OR DETRIMENT☒ You☐ Member of your Immediate Family: Kevin D Mackeprang

NAME

☐ Business With Which You☐ Are Associated (See Definitions)

NAME OF BUSINESS

ITEM 5 NATURE OF FINANCIAL BENEFIT OR DETRIMENT

I have received lease payments of \$167 annually from 2018 to 2022. The lease payment in 2023 was \$334.

ITEM 6 FOR MEMBERS OF THE LEGISLATURE ONLY

If you will not abstain from acting on a matter state why, despite the potential conflict, you intend to vote or otherwise participate.

ITEM 7 CONTINUATION

Continued. . .

On September 18th a similar closed/executive session was held but Marty O'Connor, Supervisor District 1, suggested that I leave since I had a conflict of interest. After discussion I left the closed/executive session.

1) Should I be denied participation of a closed/executive session regarding North Fork's lawsuit against Knox County?

On September 18th Marty O'Connor, Supervisor District 1, also advised me that I had not been completing my NADC FORM C-1s accurately.

I believe I have completed my NADC FORM C-1 correctly as I have not completed Item 6 Sources of Income since my annual payments have been less than \$1,000. I have included my real estate holding on Item 8 as prescribed.

2) Have I completed my NADC FORM C-1s correctly, regarding these items?

(SIGNATURE)

(DATE)

KNOX COUNTY ATTORNEY'S OFFICE

JOHN THOMAS
KNOX COUNTY ATTORNEY
P. O. BOX 41
CENTER, NE 68724

HANNA KNOX JENSEN
DEPUTY KNOX COUNTY ATTORNEY
402-288-5603
countyattorney@knoxcountyne.gov

July 22, 2024

Kevin Mackeprang
County Board of Supervisors

RE: North Fork Wind

Dear Mr. Mackeprang,

You have advised me you own real estate and have signed an agreement with North Fork Wind. North Fork Wind has a pending application for a conditional use permit.

A county supervisor may not have an interest in a contract in which the county is a party. A contract in which a county supervisor has such an interest is voidable. The county supervisor has an interest in such a contract if he has a business association with a party to the contract or will receive a direct pecuniary fee or commission as the result of the contract. Section 49-14,103.01(2). Additionally, the County of Knox Code of Ethics requires disclosure of conflicts of interest.

I recommend you follow this procedure. At the next board meeting, you:

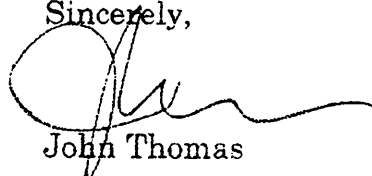
1. Make a declaration on the record to the Board of Supervisors regarding the nature and extent of your interest prior to official consideration of the proposed zoning changes or conditional uses permit.
2. Do not vote on the matters of amending the zoning code or accepting performance work under the conditional use permit.

3. Do not act for the Board as to the inspection or performance under the conditional use permit.
4. Do not participate in discussions of the zoning changes or conditional use permit. In fact, I advise you to leave the room whenever such matters are discussed.

After I had drafted this response, Vanessa Silke, representing North Fork Wind, contacted me concerning a supervisor who signed a lease. In her opinion, such a supervisor could act on the presiding zoning matters as they apply to the whole County and not to the North Fork Wind project specifically and that such a supervisor would only be conflicted out of the actual application for a conditional use permit. I told her that everyone thinks the current zoning matters are about the North Fork Wind project and you have to abstain from acting on the matters coming up on July 24, 2024.

If you have any questions, please do not hesitate to ask.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Thomas', with a large circular flourish on the left and a long horizontal stroke extending to the right.

John Thomas
Knox County Attorney