

Information from Lisa Wiegand

The following is a legal opinion prepared in 2013 in response to a question if the National Park Service Organic Act could supersede local zoning regulations. The opinion of Michael Willet with the Willet & Carothers law firm was that the National Park Service Organic Act could not supersede local zoning regulations.

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MICHAEL E. WILLET
ANDREW K. CAROTHERS

December 4, 2013

Norman Pieper
4849 W. Maple Rd.
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RE: National Park Service Organic Act/Volkswind

Dear Norman:

We have reviewed the National Park Service Organic Act with regard to the authority it may have to prohibit Volkswind from erecting wind turbines in southern Gage County.

The National Park Service Organic Act was adopted in 1916 and defines the mission of the National Park Service (NPS) "to conserve the scenery and natural and historic objects and the wild life therein, and to provide enjoyment of the same in such manner...as will leave them unimpaired for the enjoyment of future generations".

One source I encountered during my research stated, "The agency has fully embraced these responsibilities...even as internal and external debates have swirled as to...how its strictures apply in particular situations".

The NPS is required to identify areas that should potentially be preserved, and to identify acts which could impair existing parks, monuments and historical sites. Based upon our limited research it does not appear the NPS has the ability to simply ban or prohibit the acts which it believes could impair an existing site such as the Homestead National Monument. While the NPS has virtually absolute control over existing national parks and monuments, it no right to control the development of adjacent private lands.

The plan being utilized by the NPS on a nationwide basis is just what Mr. Engler has been doing here. By strategically engaging in local zoning and land use and development planning the NPS tries to find ways to influence local development. The NPS has been known to provide technical assistance, financial assistance and has promoted conservation easement purchases in attempts to restrict local development.

While the NPS has, in our opinion, the authority to take legal action in an attempt to prevent development it deems would negatively impact the Homestead National Monument, we found nothing to indicate the NPS has the authority to unilaterally prohibit Volkswind from erecting wind turbines in southern Gage County so long as Volkswind is in compliance with the local zoning and

land use rules and regulations and has obtained the necessary permits relating to the same.

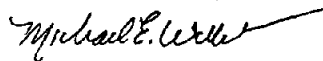
By voluntarily agreeing not to construct wind turbines in certain locations in the viewshed of the Homestead National Monument Volkswind appears to have made an election not to fight a public battle over the impact, if any, construction of those towers would have. While we are of the opinion Volkswind could have continued with its plans to construct the windfarm as it originally planned, apparently it has decided not to pursue that course of action.

With regard to the scenic easements you and Ron mentioned during our meeting, it is my understanding your group has already checked in the Office of the Register of Deeds and determined that no scenic easements have been filed of record. As such, I did not search that office for any scenic easements. If such easements were obtained but not recorded, the easements would still be effective between the National Park Service and the property owner who granted the easement. As long as the specific tract of land upon which a wind turbine was to be erected was not subject to an unrecorded easement between the NPS and the current owner any unrecorded easements would not prohibit the erection of a wind turbine on that land.

Based upon our initial investigation of the National Park Service Organic Act we are of the opinion the Act does not give the National Park Service any authority to regulate development on private lands in the viewshed of the Homestead National Monument. It can, as it has done in this case, attempt to influence public opinion and the local governing entities who can regulate development.

In an attempt to limit the cost to your group we purposely limited the time we spent researching this issue and, as I indicated above, we did not attempt to verify the existence of any scenic easements. If you would like us to do any further research on this issue, please advise.

Very truly yours,



Michael E. Willet

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