

Re: HB 2160 (Kansas municipal employee whistleblower act) – Proponent

Date of hearing: Feb. 14, 2025

To: House Committee on Local Government

From: Catherine Ellsworth | Douglas County, Kansas

As a freelance writer in my 60s, I thought I was to the point in my life where I would just write for pleasure or curiosity. So in 2021, when I wanted to know more about a rumored 3,400-acre solar project south of Eudora, Kansas, I started researching, interviewing people, and attending meetings.

It didn't take long before I understood that something wasn't right in Douglas County government. I discovered a virtually impenetrable wall of bias, contempt, and secrecy – with local residents shut out of their own government in any meaningful way – while developers (and their surrogates) were granted exceptional access to the decision-making process, both publicly and behind closed doors.

Conventional avenues of engagement were obstructed.

For the past four years, residents outside of Lawrence had zero elected representation. Until recently, the Board of County Commissioners was composed of three Lawrence residents. (To be clear, when one left in 2022, local Democratic precinct heads appointed a replacement, but she is, by all accounts, not favorably viewed by her rural constituents.) Moreover, the local planning commission overseeing all of the county's land-use policies and permits is "Metropolitan", meaning it's a combined board with five appointed by the city of Lawrence and five appointed by the county, with only two required to be from outside of Lawrence.

Because of the "Metropolitan" planning commission structure, any related information is stored on the city of Lawrence website and anything pertaining to the BOCC is housed on the county website. Both websites are opaque and difficult to navigate, and they're not linked in any way; it's up to the public to figure it out. Minutes for the planning commission are vague and meaningless; minutes for the BOCC, though slightly more detailed, take months to appear. Important documents are often scanned in as bitmaps, creating large and unsearchable files. Meeting recordings, when they happen, can be challenging to find on their two disorganized YouTube channels.

Some meetings haven't been recorded at all. During the writing of the industrial-scale solar and wind regulations, the county routinely used ad hoc committees to meet out of the public eye. Secret meetings with developers that were supposedly recorded "for the public" were never posted and, in fact, Open Records requests for those recordings have been ignored. An agenda published two days before a November 8, 2024, planning commission orientation stated the meeting would not be recorded due to "technological issues" in spite of the fact that meetings in that same room were recorded everyday leading up to the meeting and everyday after.

Open Records requests were often thwarted.

The cost of KORA requests was erratic. Sometimes they over-estimated: one I was told would be \$145 actually cost \$25, another estimate for \$186.50 ended up being \$50. Sometimes the cost was simply bizarre: after the county records custodian told me it would be \$18 for approximately 25 emails about the unrecorded planning commission meeting, I received only two emails which were completely blacked out except for one sentence – and the county still wanted the \$18 (until I objected). The staffer explained the \$18 was for them to go through those 25 emails. In essence, it seemed as if I was expected to pay for the time it took to figure out how to withhold information. Not that it hasn't happened before. The most expensive KORA to date was \$89.50 for the county attorney to pack 384 pages into three huge PDFs, all out of order, with any email attachments floating unidentified among the hodge-hodge.

Prior to the recent \$18 oddity, the county had never used conventional "redaction" methods, that is, blacking out the relevant sections. They would just withhold documents and emails in their entirety and state they were deleted because of assorted exemptions, the most common one being K.S.A. 45-221(a)(20), which excludes "notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed" from Open Records requests. Basically, that exemption would cover everything a planner does.

This was during tasks associated with the commissions' *legislative* function. When it came to the *quasi-judicial* task of permitting a particular project, apparently it was worse. So much worse that there is a lawsuit pending based in part on the bias and manipulation of one county commissioner (ostensibly with the assistance of staff).

And how do we know this? Mostly through the actions of a whistleblower.

As it turns out, regular folks, especially if they are part of a rural minority, can be at a significant disadvantage when it comes to county government. In Douglas County, with 80% of the population in Lawrence, nearly 25,000 people beyond the city limits have very little in the way of authentic representation.

People outside of the inner sanctum of local government don't have the symbiotic relationship with staff that developers do. (And there's no ex parte requirements for county staff to disclose their interactions.) Compounding this power differential, everyday people don't have marketing departments to whip up research and shiny graphics. They don't have the connections to manipulate public opinion with sound bites spoon-fed to the press. They don't have funds to pay academics and non-profits to create favorable research. They don't even have the support of Kansas courts, which have made it clear that local residents have little recourse when it comes to a county's authority regarding zoning and land-use decisions; precedent implies that county officials can act with unfettered impunity.

So – while county officials can hide behind clandestine ad hoc committees, secret “pre-submittal” permit meetings, Non-Disclosure Agreements, weak ex parte requirements, KORA exemptions, confusing websites, meager documentation, and skewed press coverage – the public is left to their own devices. Sadly, the last line of defense can boil down to one ethical and conscientious government employee willing to put themselves on the line to expose what's been hidden.

In a nutshell, the state needs to protect county whistleblowers. Not only on the principle of ensuring transparent and equitable government, but because sometimes a whistleblower is all that's left to protect Kansans.

Thank you for your time,
Catherine Ellsworth