

# Advisory Opinion #76

Parties: Ben & Jolene Johnson and Town of Levan

Issued: October 27, 2009

## TOPIC CATEGORIES:

R(v): Other Topics (Interpretation of Ordinances)

A Town cannot deny a person from using an RV for a limited time because there is no “home” on the property, when the Town’s ordinance provides that any “authorized user” of the Town’s electrical service may connect an RV to the service for a maximum of three months. In addition, since the Town allows RVs to be used outside of authorized parks for up to three months, it cannot claim that use for a few days is an impermissible residential use.

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The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.



The Office of the Property Rights Ombudsman  
Utah Department of Commerce  
PO Box 146702  
160 E. 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84114

(801) 530-6391  
1-877-882-4662  
Fax: (801) 530-6338  
[www.propertyrights.utah.gov](http://www.propertyrights.utah.gov)  
[propertyrights@utah.gov](mailto:propertyrights@utah.gov)



GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

# State of Utah Department of Commerce

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN

## ADVISORY OPINION

Advisory Opinion Requested by: Ben and Jolene Johnson

Local Government Entity: Town of Levan

Applicant for the Land Use Approval: Ben and Jolene Johnson

Project: Use of Property for Limited Recreational Purposes

Date of this Advisory Opinion: October 27, 2009

Opinion Authored By: Elliot R. Lawrence, Attorney, Office of the Property Rights Ombudsman

### Issue

Is a local government's interpretation of ordinances governing the use of recreational vehicles correct?

### Summary of Advisory Opinion

The Town cannot deny a person from using an RV for a limited time because there is no "home" on the property, when the Town's ordinance provides that any "authorized user" of the Town's electrical service may connect an RV to the service for a maximum of three months. There is nothing in the ordinance which limits that provision to homes only. In addition, since the Town allows RVs to be used outside of authorized parks for up to three months, it cannot claim that use for a few days is an impermissible residential use.

### Review

A request for an advisory opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of UTAH CODE ANN. § 13-43-205. An advisory opinion is meant to provide an early review, before any duty to exhaust administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is

hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts.

A request for an Advisory Opinion was received from Ben and Jolene Johnson on July 20, 2009. A copy of that request was sent via certified mail to Robert Shepherd, Mayor of Levan. The return certificate, indicating that the City received the copy of the request, was received by the Office of the Property Rights Ombudsman on July 28, 2009. The City submitted a response to the OPRO, which was received on August 10, 2009. Copies of the City's response were mailed to the Johnsons. On August 19, 2009, the Johnsons submitted a reply, and on August 31, the Johnsons submitted a copy of a local newspaper report on the August 12 meeting of the Levan Town Council. Perry R. Davis, counsel for the Town, submitted additional information, which was received on September 22, 2009.

## Evidence

The following documents and information with relevance to the issue involved in this advisory opinion were reviewed prior to its completion:

1. Request for an Advisory Opinion, including attachments, filed July 20, 2009 with the Office of the Property Rights Ombudsman by Ben and Jolene Johnson.
2. Response from the Town of Levan, including attachments, submitted by Denton M. Hatch, Counsel for the Town of Levan, received August 10, 2009.
3. Reply from Ben and Jolene Johnson, received August 19, 2009.
4. Copy of article from the *Times-News*, Nephi, Utah, reporting on Levan Town Council meeting of August 12, 2009.
5. Letter from Perry R. Davis, Counsel for the Town, received September 22, 2009.

## Background

Ben and Jolene Johnson acquired a lot in Levan from Ben's father. The property is about ½ acre, and has a small shed and a larger "garage." The garage building has plumbing and electricity, and is also connected to a septic system on the property. The building was also evidently built with a kitchen and living quarters. The parcel was owned by Ben's uncle, who built the building in the early 1990s. In 2002, Ben's father acquired the property, and he undertook improvements to the garage, evidently intending to remodel it as a residential unit.<sup>1</sup> The Town denied a building permit for the renovations, in part because the building did not meet the Town's setback requirements.<sup>2</sup> Ben's father appealed that decision, noting that the Town had allowed residences

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<sup>1</sup> Ben's father began the renovations without obtaining a building permit. He applied after the Town notified him that a permit was necessary.

<sup>2</sup> The Town implies that there were other reasons for the denial, but the setback issue was the only one identified in the materials submitted for this Opinion. The Town did state that the building could not be converted to a residence, because it felt that the building's foundations did not meet residential standards. No evidence has been submitted as to whether or not the foundations are sufficient for a residential building. The Town requires a 30 foot front yard

which violated the same setback standard. The district court upheld the Town's decision, and the Utah Court of Appeals denied an appeal on procedural grounds.<sup>3</sup>

Ben and Jolene Johnson acquired the lot in January of 2006. The Johnsons used the property for weekend recreation, as they do not live in the Town. In February 2008, they were informed that they could not use the garage building as a residence, even on a limited basis, because the building was not approved as a residence. In addition, the septic system had not been approved by the local health department. The Johnsons complied with the Town's requests, and brought both the building and the septic system into compliance with current standards. The Johnsons discontinued using the building as a weekend residence, but brought a recreational vehicle (RV) onto the property, which they used on weekends. The Johnsons used the electricity from the garage for the RV when they stayed there, but otherwise did not use the garage for anything other than storage.<sup>4</sup> The RV only used electricity, and was not connected to water service or the septic system. The Johnsons state that the Town approved this use, as long as they didn't stay in the RV for more than 2 weeks at a time.

In the summer of 2009, the Johnsons received a letter from the Town, threatening to cut off electrical service to the property. The Town maintained that the Johnsons were violating a Town ordinance prohibiting residential RV use, except in RV parks.<sup>5</sup> The Town also cited an ordinance that allowed an "authorized user" to host a guest using an RV on the authorized user's property for a period of three months. The town felt that the Johnsons had violated those ordinances, and that termination of electrical service was justified.

The Johnsons claim that they do not use their RV "for residential purposes," but only brief weekend visits. They also state that the Town informed them that they could temporarily use the RV on their property for less than 14 days. Since they only visited the property on weekends, they did not feel that they had violated the Town's ordinance. The Town's ordinance does not define the term "residential purposes," but the Town claims that the Johnson's brief visits constitute residential use of their RV, which must be conducted in an RV park.

The Town ordinances provide that an "authorized user" of the Town's electricity system may provide electricity to a visitor using an RV, for a maximum period of three months. LEVAN TOWN CODE, § 14-323. The term "authorized user" is not defined, but the town states that "[t]he intent

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setback for a residence, but allows a smaller setback for garages. The building was 25 feet from the front property line.

<sup>3</sup> See *Johnson v. Levan Town*, 2006 UT App 423 (Unpublished opinion). The court denied the appeal, because it had not been timely filed, and because it was improperly briefed. The Utah Supreme Court declined to review the matter. See *Johnson v. Levan Town*, 168 P.3d 339 (Utah 2007) (Unpublished opinion).

<sup>4</sup> The Johnsons stated that they used the bathroom facilities in the building.

<sup>5</sup> "No recreational vehicle as herein defined shall be located, placed, used, or occupied for residential purposes in any district except within approved and licensed recreational vehicle parks and except as otherwise provided herein." LEVAN TOWN CODE, § 12-1611(1)(a).

of section 14-323, is that the ‘host’ or ‘authorized user’ actually be someone living in a residence — a home.” “Letter from Perry R. Davis, Counsel for Levan,” dated September 14, 2009.<sup>6</sup>

## Analysis

### **The Town Must Allow the Johnsons to Use Electricity from The Building.**

The Town has not shown that the Johnson’s use of their RV on their property for limited visits is different from any other visitor using electricity from an “authorized user” for three months. Since the Town allows visitors to use electricity provided by an “authorized user of the Town electricity system,” it must also allow the Johnsons, who are “authorized users” to provide electricity for their RV.

Statutory interpretation begins with the language of the ordinance. *See Biddle v. Washington Terrace*, 1999 UT 110, ¶ 14, 993 P.2d 875, 879. The “primary goal . . . is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve.” *Foutz v. City of South Jordan*, 2004 UT 75, ¶ 11, 100 P.3d 1171, 1174. Statutes should be construed so that “all parts thereof [are] relevant and meaningful.” *Perrine v. Kennecott Mining Corp.*, 911 P.2d 1290, 1292 (Utah 1996). The plain language of the statute as a whole must be interpreted so as to be in harmony with related statutes. *See Bluffdale Mountain Homes, LC v. Bluffdale City*, 2007 UT 57, ¶ 30, 167 P.3d 1016, 1026. Finally, “any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use.” *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 31, 104 P.3d 1208, 1217.

The Town notes that § 14-323 governs the Town’s electrical services. There is no language in the ordinance to support the argument that § 14-323 of the Town’s ordinances applies only to “homes.” The plain meaning of the term “authorized user” is *a person authorized to use the town’s electrical services*, i.e. is a person who receives electrical service from the Town in exchange for payment. Nothing in the term “authorized user” restricts it to residential homes only.<sup>7</sup> There may be numerous authorized users of electrical service that is not based in a home, such as a business, agricultural use, or an accessory building. Based on the ordinance’s plain language, § 14-323 allows users of the Town’s electrical services to share electricity with RVs for a limited time. Since the Johnsons are authorized users, they are also entitled to share their electrical service with an RV, including their own RV.<sup>8</sup>

The Town explains that § 14-323 is not the governing ordinance for RVs in general, but is part of an overall “theme” of electrical service addressed in the Town’s ordinances. *See* “Letter from Perry R. Davis, Counsel for Town of Levan,” dated September 14, 2009. While that may be true, the ordinance nevertheless provides an exemption from the Town’s ordinance regulating the use

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<sup>6</sup> The September 14 Letter also noted that a similar ordinance allowed visiting RVs to receive water service from a host, for a maximum of two months. Again, the term “host” is not defined, but the Town states that the intent of the ordinance is for “host” to mean a resident in a home.

<sup>7</sup> Municipal utility services should be made equally available throughout the municipality. *See Home Owner’s Loan Corp. v. Logan City*, 97 Utah 235, 242-43, 92 P.2d 346, 349 (1939).

<sup>8</sup> Section 14-323 provides that persons “visiting the premises of an authorized user” may share electrical service for a limited time. The Johnsons state that they are not residents of Levan, but visit their property from time to time. As property owners, they are authorized users, but they are also visitors on the premises.

of RVs in general. The location of the ordinance within the Town's statutes does not alter the meaning. The Johnsons are as entitled to take advantage of that exemption as any other authorized user in the town, and have therefore not violated the ordinance.<sup>9</sup> In essence, the Town established an exemption for short-term RV use. The plain language of the ordinance provides no justification for limiting that exemption to "homes" only.<sup>10</sup>

The Town also cannot invoke its "general" RV ordinance, and claim that the Johnsons are using their RV "for residential purposes" which can only take place within an authorized RV park.<sup>11</sup> The term "residential purposes" is not specifically defined in that ordinance. Looking again at the plain language, "Residence" is generally understood to refer to a permanent dwelling place, not a temporary use. The Johnsons reside in Sandy, and made short-term visits Levan on weekends. Such temporary visits cannot be considered "residential" use of their RV.

In addition, the Town allows persons to use RVs on any property, and share electricity from an "authorized user," for three months, outside of an RV park. Since ordinances must be interpreted so as to be in harmony with related ordinance (*Bluffdale Mountain Homes, LC v. Bluffdale City*, 2007 UT 57, ¶ 30, 167 P.3d 1016, 1026), the Town's intent must be interpreted to mean that "residential purposes" must mean a term longer than three months. Since the Town allows persons to "reside" in an RV outside of an authorized park for three months, it can hardly claim that use of an RV for a few days is residential purposes. Given the totality of the Town's ordinances, the Johnsons should be able to use their RV on their property for a few days.

## Conclusion

The Johnsons are entitled to take advantage of the Town's ordinance providing that RVs may connect to an authorized user's electrical service. There is nothing in the ordinance that limits the term "authorized user" to homes only, and there is no justification that the intent of the ordinance was limited to residences. All authorized users of the Town's electrical system may avail themselves of the exemption provided in the ordinance. Since the Johnsons are entitled to connect their RV to their electrical service, there has been no violation.

Brent N. Bateman, Lead Attorney  
Office of the Property Rights Ombudsman

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<sup>9</sup> It is also observed that discontinuing electrical service to the entire property is a rather severe remedy under the circumstances. If a person is misusing electrical service, the Town should seek compliance, not threaten disconnection.

<sup>10</sup> The Town also cited to a similar ordinance that allows RVs to connect to water service for a two-month period. The Johnsons state that they do not connect their RV to the Town's water service, so this ordinance would not apply. They have bathroom facilities in the building, which they are entitled to use.

<sup>11</sup> The general RV ordinance is found at § 12-1611 of the Levan Town Code.

**NOTE:**

**This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.**

**While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.**

**An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.**

**Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.**

## MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with Utah Code Ann. § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Mayor Robert Shepherd  
Town of Levan  
20 North Main  
Levan, Utah 84639

On this \_\_\_\_\_ Day of October, 2009, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

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Office of the Property Rights Ombudsman