



MEMORANDUM

To: House Government Accountability and Oversight Committee
From: Representative Bill Seitz
Date: May 31, 2017
Re: HB 218 Sponsor Testimony

Chairman Blessing, Vice Chair Reineke, Ranking Member Clyde, and members of the House Government Accountability and Oversight Committee, thank you for allowing me to offer sponsor testimony on House Bill 218.

For years, park districts have enriched the quality of life for many Ohioans. Whether it is environmental education or an outdoor experience, everyone feels a certain attachment with parkland. Therefore, we can all agree that parks provide invaluable lands worth protecting for future generations. That is why I have introduced House Bill 218.

In 1953, the Ohio legislature enacted laws concerning park districts and their operations. Ohio Revised Code Chapter 1545 gives authority to a probate court to create park districts, R.C. 1545.04; dissolve park districts, R.C. 1545.37; and appoint and remove park-district commissioners, R.C. 1545.05 and 1545.06.

Unfortunately, Chapter 1545 does not provide explicit authority for probate judges should a dispute arise concerning the park district. Hence, the genesis of this issue. In Geauga County, Ohio, a complaint was filed with the county probate judge that alleged serious violations of Ohio law, specifically the mismanagement of public tax dollars used to fund the park district. As a

result, over \$100,000 of taxpayers' money was wasted in attorney's fees as well as the many hours spent arguing in court.

In April 2016, the Ohio Supreme Court issued its ruling in *State ex rel. Chester Twp. v. Grendell*. The Supreme Court held a probate court does not “patently and unambiguously” lack jurisdiction to issue the orders where the township trustees eliminated funding from the township park, which hampered the park board’s ability to operate the park district. The Court stated, “[T]he master commissioner determined that certain activities by the township trustees frustrated the purposes for which the park district was created. The probate court’s authority to create park districts and its plenary power ‘to dispose fully of any matter’ that is properly before it surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district’s purposes.” *Grendell*, at ¶ 30.

However, the subsequent judicial interpretation of the *Grendell* decision has created uncertainty and conflicts among courts in Ohio. This uncertainty arose from a visiting judge finding certain decisional language in the *Grendell* decision to be “dicta.” Now, you may ask why the visiting judge’s decision was not appealed, or why we don’t wait for the issue to be resolved in the courts. The answer to that is, first, the township park district was starved for funds by the township and so lacked the wherewithal to appeal, and Judge Grendell was not a party to the case in which the visiting judge disregarded the Supreme Court’s decision, so he could not appeal

This legislation will codify and clarify the Ohio Supreme Court’s ruling, and save taxpayer money avoiding judicial involvement. The provisions of this bill are NOT the same as those I submitted for inclusion in HB 49, the budget bill. The original provisions have been substantially revised. These revisions have appeased the Ohio Newspaper Association’s reservations about the original bill. The legislation before us today “does” and “does not” do the following:

- DOES: Allow the probate judge to appoint a master commissioner to investigate alleged wrongdoing
- DOES NOT: Impose criminal sanctions such as jail time or fines on parties; the bill only allows a probate judge to issue an injunction or declaratory judgment as an appropriate remedy

- DOES: Provide a mandatory court hearing for the aggrieved party to dispute adverse evidence or testimony against him/her
- DOES NOT: Stifle free speech from any person, or any other First Amendment right protected by the United States and/or Ohio Constitution.
- DOES: Add a party to a court proceeding if their presence is necessary to make a fair decision; and remove a party when it is not.
- DOES NOT: Allow the probate judge to micromanage or impede with the daily operations of the park district, or second-guess park commissioner decisions, so long as said operations do not violate Ohio law

The practical effect of the Ohio Supreme Court's decision is to provide probate judges with the necessary framework to ensure park districts comply with Ohio law.

In *Grendell*, the Supreme Court made a compelling analogy concerning the relationship between the probate court and park districts. For example, a probate court has the authority to appoint guardians to oversee the personal and financial affairs over those that cannot do so because of legal or mental incapacity. Likewise, the probate court appoints park commissioners to oversee the affairs of the park. If the guardian improperly handles the ward's personal finances, it is the judicial duty of the probate court to remove the guardian. If a park board fails to follow Ohio law, then too, must the probate court have the authority to protect the park district and remove or prevent those from harming the park district, at his discretion.

The sound reasoning of the Ohio Supreme Court in *State ex rel. Chester Twp. v. Grendell* should not be disturbed, but rather clarified and codified. Indeed, the Ohio Probate Court Judges Association has promised me that they will have their input on this bill by June 6th; however, an illustrious committee of Ohio Probate Court Judges¹ felt so strongly about this issue that they filed a friend of the court brief in the *Grendell* case to urge the Supreme Court to adopt the very rule that the Court in fact adopted, and that this legislation codifies. Therefore, we

¹ Judge Richard Carey, Clark County, Ret. Judge James Cissell, Hamilton County, Ret. Judge Denny Clunk, Stark County, Judge Jan Long, Pickaway County, Judge Phil Mayer, Richland County, Judge Bev McGookey, Erie County, Judge Rob Montgomery, Franklin County, Judge Jack Puffenberger, Lucas County, Judge Randy Rogers, Butler County, Ret. Judge Ken Spicer, Delaware County, Ret. Judge Tom Swift, Trumbull County, Judge James Walther, Lorain County, Judge Mary Pat Zitter, Mercer County

should not wait for another conflict to arise. It is necessary, now, to ensure the judicial and constitutional framework is in place to protect Ohio parks and those that are entrusted with its daily operations.

Thank you for the opportunity to offer sponsor testimony on HB 218. I would be happy to answer any questions you may have at this time.