

Testimony of Geauga County Probate Court Judge Tim Grendell
House Bill 218
House Government Accountability and Oversight Committee

Chairman Blessing, Vice Chair Reineke, Ranking Member Clyde, and Members of The House Government Accountability and Oversight Committee.

In 1953, the Ohio Legislature, by enacting Chapter 1545 of the Revised Code, gave Ohio Probate Court judges the authority to create county and township park districts and appoint and remove the members of those district's governing boards. Under Section 1545.06, the probate judge has the authority to remove park board members for any reason or no reason at all.

By enacting Section 1545.06, the Legislature made probate judges ultimately responsible for the park districts and park boards within the judge's jurisdiction.

Unfortunately, Chapter 1545 does not provide specific guidance to probate judges as to how to deal with problems such as noncompliance with Chapter 1545, violations of the Court order creating the park district, or third party interference with the park board's oversight of the park district.

This statutory gap recently has led to costly, conflicting judicial decisions that have added further confusion to the terms and scope of R.C. Chapter 1545.

For example, R.C. 1545.12 requires the approval of the probate judge for the sale of park property by the park board. What happens if a rogue park district sells land to a third party without probate court approval?

According to a recent appellate court ruling, the probate court's authority is limited to removing park board members, but the probate court could do nothing to rescind the improper sale in violation of R.C. 1545.12. Rather, according to the appellate court, any action to address the improper sale would have to go to the General Division of the Common Pleas Court for recourse. This derogation of judicial oversight over parks to non-probate courts appears nowhere in R.C. Chapter 1545.

Rep. Seitz introduced H.B. 128 to address this judicially-created confusion as to the scope and terms of R.C. Chapter 1545 and to ensure that the policy determination by the Ohio Legislature, as spelled out in R.C. Ch. 1545, is followed in Ohio.

Public parks advance the quality of life for Ohioans. From naturalist programs to playgrounds and picnic areas, parks provide outdoor experiences for all to enjoy.

The Ohio Legislature has provided townships with three (3) means to create a township park. Under R.C. 511.18, the township trustees can form a park district and appoint the park board members. Under R.C. 1545, the township trustees can petition the probate court to create the township park district by court order, and the probate court appoints the park board members. Finally, the township trustees can simply operate a township park district without a separate park board. Once the township trustees

petition for the creation of the park district by the probate court, pursuant to Ch. 1545, the township trustees have no statutory power to terminate the court-created park district.

In Geauga County, we have a county Chapter 1545 park and two township Ch. 1545 parks. For years, these park districts operated with little need of judicial review. Then a complaint was filed with me as the county probate judge that alleged serious violations of Ohio law, specifically, the mismanagement of public tax dollars used to fund the Chester Township Park District. Pursuant to R.C. 2101.06, I appointed Mary Jane Trapp as master commissioner to look into the matters. She provided a 250-page report with recommendations that resolved the matter. Two township trustees wanted to take over the township park. These trustees worked to prevent tax money from going to the township park district and asked the park board members to resign from the park board and work with the trustees. The township park board members declined. In the end, the trustees took back the township park land and took over the township park. The Court asked Master Commissioner Trapp to see if the township trustees interfered with the Ch. 1545 appointed park board. As a result, two township trustees have taken all of the money and land once operated as the Ch. 1545 township park, despite having no legal authority under R.C. Ch. 1545 to do so. As a result, the purpose of the Chester Township Park as created by court order in 1984 has been obliterated. Over \$100,000 of township taxpayers' money has been wasted in attorney's fees and many hours have been 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, two subsequent judicial interpretations of the *Grendell* decision have 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 not wait for the issue to be resolved by the courts. The answer to that is, first, the township park district was starved for funds by the township trustees and so lacked the financial wherewithal to appeal, and I was not a party to the case in which the visiting judge disregarded the Supreme Court's decision, so the probate court could not appeal. Despite the fact that the Supreme Court ruled 7-0, a visiting appellate court panel also called the Supreme Court's unanimous opinion "dicta" and said that matters involving Ch. 1545 park districts have to be litigated in non-probate courts.

HB 218 will codify and clarify the Ohio Supreme Court's ruling, and save taxpayers money by avoiding conflict and confusion. The provisions of this bill are not the same as those submitted as an amendment to HB 49 as those provisions have been substantially revised. The language today mirrors the Ohio

Supreme Court's 7-0 ruling, and the revisions have addressed the concerns of the Ohio Newspaper Association and others about possible judicial overreach.

The bill simply clarifies that:

- 1) The probate judge may appoint a special commissioner to investigate alleged wrongdoing, when requested by the park board;
- 2) The probate judge provide a mandatory court hearing for an aggrieved party to dispute adverse evidence or testimony against him/her;
- 3) The probate judge may add a party to a court proceeding if such presence is necessary to make a fair decision; and remove a party when it is not warranted.

This bill:

- 1) Does NOT impose criminal sanctions such as jail time or fines against parties, but only allows a probate judge to issue an injunction or declaratory judgment as an appropriate remedy.
- 2) Does NOT restrict free speech from any person, or any other First Amendment right protected by the United States and/or Ohio Constitution.
- 3) Does NOT allow the probate judge to micromanage the daily operations of park districts, so long as said operations do not violate Ohio law.

The practical effect of HB 218, when coupled with the Ohio Supreme Court's decision, is to provide county probate judges with the necessary framework to ensure that local park districts comply with Ohio law.

On June 5, 2017, the Ohio Probate Judges Law & Policy Committee overwhelmingly voted to approve HB 218 upon amendment to address solely township park districts created under R.C. Ch. 1545. That same day, the Executive Board of the Ohio Probate Judges Association voted unanimously in support of HB 218 upon amendment to apply solely to township park districts created under R.C. 1545.

Addressing this issue by legislation at the Township Park level is especially warranted and appropriate because township park districts, as compared to county park districts, are poorly funded, have little or no staffing, have limited ability to engage professional assistance, and have a higher likelihood of political conflict with better-funded township trustees. As a result, Township Park Districts cannot afford costly matters in non-probate courts and, as the creation of a probate court, would benefit from the ability to address critical problems directly in the Probate Court. By contrast, county park districts created under R.C. Ch. 1545 are better-funded, can afford legal counsel to pursue redress by various means, and statutorily are separated from interference by the county commissioners.

Moreover, ALL of the conflicting and confusing judicial decisions involving R.C. Ch. 1545 concern township park districts.

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. An illustrious committee of Ohio Probate Judges felt so strongly about this issue they filed a friend of the court brief to urge the Ohio Supreme Court to adopt

the very rule that the Ohio Supreme Court in fact adopted, and that this legislation codifies.¹ Passage of HB 218, as proposed or as amended to address township parks, will avoid further judicial interpretational conflict and confusion. HB 218, as proposed or as amended to address township parks, will ensure that judicial and constitutional framework is in place to protect R.C. Ch. 1545 park districts, as well as administrators who are entrusted with their daily operations.

Thank you to Rep. Seitz for introducing HB 218, and to the Committee for the opportunity to offer this testimony on HB 218. I would be happy to answer any questions you may have at this time.

¹ Judges included: 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