

Court upholds election board ruling on county charter petition; Alliance will appeal

By RON OSBURN rosburn@bryantimes.com July 17, 2019

The Williams County Common Pleas Court backed the county elections board in a ruling Wednesday, dealing a blow to efforts by a local grassroots residents group to qualify a county charter issue for the November general election ballot.

The ruling by Judge J.T. Stelzer affirmed the election board's rejection July 8 of a ballot petition submitted by the Williams County Alliance that seeks to let residents vote on the proposed county charter. The charter would switch the county from its current statutory form of government to one governed by a county charter.

The Alliance said the charter was proposed as a way to create "home rule" and to protect residents from a local water company's efforts to withdraw water from the local underground aquifer and sell it to entities outside the county.

The Alliance submitted petitions with more than 2,000 valid signatures of county registered voters, more than the 1,363 needed to qualify for the ballot. But Elections Director A.J. Nowaczyk rejected the petition, saying that on advice of county prosecutor Katie Zartman, and in his reading of the law, language in the proposed charter issue exceeds the scope of the powers afforded to local governments by the state.

Citing "existing Ohio (legal) precedent" and case law from the Ohio Supreme Court, Stelzer's ruling backed up that contention, saying "the content of the proposed charter fails to provide for an alternative form of government as required in Ohio Constitution Article X, Section 3."

In addition, Stelzer wrote, "it includes provisions to exercise control over the administration of State and Federal law which controls are not within the authority of a county to enact. It also does not provide for the performance of duties upon county officers and offices required by law."

Those three points by Stelzer were the same arguments cited in a Tuesday court hearing by attorney Derek Clinger, attorney with Columbus-based firm McTigue & Colombo LLC, in seeking to affirm the election board decision. McTigue & Colombo LLC were brought in by county commissioners to assist Zartman.

The hearing Tuesday was requested by Toledo-based attorney Terry Lodge, representing the Alliance. Lodge argued the election board exceeded its powers in making its ruling and instead should have ruled only on whether there were enough signatures to qualify the issue for the November ballot.

Lodge said the 16-page charter basically was a framework to ban commercialization of the Michindoh Aquifer and any lack of detail in reference to county job titles and duties was covered by reverting back to the Ohio Revised Code.

But Stelzer, in his four-page decision, wrote that while the language of the proposed charter “contains a general ‘catch-all’ provision that attempts to address these listed failures, the Ohio Supreme Court has ruled that such an overly general ‘catch-all’ is insufficient, citing the 2017 Ohio Supreme Court case of McGinn v. Walker.

Zartman said she was pleased with the ruling, though she noted that charter petitions law is relatively new, complex and “an unsettled process.”

“Obviously we agree with the court’s decision,” Zartman said, adding that while she was aware of criticism when the county brought in McTigue & Colombo LLC — at \$300 per hour for attorney fees — she said it was still more cost-effective than hiring a special prosecutor, which was the other option due to the heavy caseload at her office and the “complexity” of the law.

CHARTER

“I’m disappointed but not surprised,” Alliance organizer Sherry Fleming said Wednesday, adding she felt it is “unreasonable for us to catch every single thing every single official does, and if you missed them, then it makes the whole petition invalid.”

She said the Alliance will appeal the decision.

“I think the thing that is motivating this (charter) is people are feeling outrage. They see the state is not adequately protecting our natural resources and our health ... the state is doing nothing ... but restricting our right to bring an initiative to a vote,” Fleming said.

On the other hand, in a statement released late Wednesday, County Commission President Terry Rummel said he opposes the charter “as it would give the county commissioners the ability to enact regulations and laws with little or no oversight. This is a gross overreach of governmental power with no checks and balances,” Rummel said, adding, with emphasis, that he believes the charter would not stop Artesian of Pioneer from being able to pump water from a test well AOP has drilled near Fayette, in Fulton County. (The Ohio Environmental Protection Agency has yet to approve that well).

Rummel emphasized that he was speaking for himself as a commissioner, and not for fellow commissioners Lew Hilkert and Brian Davis. Both have declined to comment publicly.

Rummel pointed out the Williams County Commissioners have been working with commissioners and governmental officials in the nine counties in the three states — Ohio, Michigan and Indiana — that share a border with the Michindoh Aquifer to develop a board that will monitor the aquifer levels.

“The purpose of this board will be to ensure that the aquifer is regenerating at the rate the Ohio Department of Natural Resources and Ohio EPA require and to ensure that the water from the aquifer is plentiful for current and future generations of Williams County families. I feel that developing this board will be the most successful way to protect our resource,” said Rummel.

A meeting is set July 30 in Bryan to bring the following counties together: Williams, Fulton and Defiance counties in Ohio; Lenawee, Hillsdale and Branch counties in Michigan; and Steuben, DeKalb and Allen counties in Indiana.

On Tuesday, the Bryan Area Chamber of Commerce also released a statement opposing the proposed county charter initiative. The chamber has posted the statement on its website at: <https://chambermaster.blob.core.windows.net/userfiles/UserFiles/chambers/1963/File/CharterMotionsigned.pdf>.

Rummel also took issue with the Pennsylvania-based Citizens Environmental Legal Defense Fund (CELDF), which is working with the Alliance and provided Lodge's services to the Alliance under a \$1 agreement.

"I found that it is not uncommon for them to support initiatives like this for their own special interests and I do not believe that their views are in alignment with the majority of the citizens of Williams County," Rummel said.