

CLERMONT COUNTY BOARD OF ELECTIONS  
HEARING ON PROTEST AGAINST MOSCOW PETITIONS  
MONDAY AUGUST 22, 2022

**I. Call to Order**

Chairman Ray Lembke called the hearing to order at 3:05 p.m. We are here for a hearing on the protest filed by the Village of Moscow against inclusion of the ballot issue for the surrender of corporate powers in the Village of Moscow. The only issue we are here about today is whether or not this issue should go on the November ballot for the voters of Moscow to decide.

**II. Introduction of Board Members**

Chairman Lembke introduced himself, other board members Rick Grant, Gregg Conrad, and Rick Combs.

Also present: Director Stephanie Haight, Deputy Director Chris Dennison, Assistant Prosecutor Julia Carney, Assistant Prosecutor Brian Shrive, Kenny Henning Ohio Secretary of State Liaison, and Clerk Becky Rudd. Protesters and petitioners: Tim Suter, William Gilpin, Emily Supinger, and Dennis Skeene.

**III. Swear in witnesses**

Brian Shrive administered William Gilpin the oath.

Emily Supinger (counsel for the village) had a brief argument. On August 1, 2022, a petition was filed with the board of elections by the committee consisting of Danny Freeman, Randy Sturgill, and Paula Hilberg to surrender the corporate powers of the Village of Moscow. The petition contained twenty-two signatures, one signature was crossed out and the board found that one person was not registered leaving twenty signatures on the petition and needing nineteen for the placement of the matter on the ballot. We are here to contest the placement on the ballot based on the failure of the committee to file the petition with the legislative authority of the village prior to filing it with the board of elections. Under section 703.20(A) of the ORC – corporate powers can be surrendered (1) upon filing the petition with the legislative authority or upon petition to the board of elections as provided in section 703.20(B)(1)- which provides that if the legislative authority of the village fails to act in thirty days after receipt of the petition then the electors may present a petition to the board of elections. There is nothing in 703.20(B) (1) that allows the filing of a petition with the board of elections unless the legislative authority fails to act. Those are key words in the statute. Nothing in the statute allows the committee to bypass council. Filing with the legislative authority is a mandatory prerequisite to placing this matter on the ballot and accordingly the board must reject this petition. Even the petition language itself indicates that it is being directed to the village council. The very first page, the very first sentence. That did not happen. Now I understand this board, the Pringle decision, is one that causes some issue with the matter being placed on the board on how you feel you have to vote today. I will say quite plainly that the Pringle decision was wrongly decided. It was a two to one decision and it doesn't take into account the entire statutory scheme for corporate dissolution. There are other code sections within the ORC that deal with this particular issue and they contradict the 12<sup>th</sup> District's reading of the statute. First section 703.21 provides after presentation of the petition mentioned in 703.20 of the ORC the legislative authority of the village shall not create any new liability until the result of the election under ORC 703.20 is declared. If the village is never presented with the petition, it has no way of knowing or triggering the requirement that it take on no new liabilities. In theory, after the filing of the petition, it could be the day of the election before the village has knowledge of the filing of the petition. There is no statutory scheme to provide notice to the village other than what is in 703.21, which requires a petition to be filed with the village and no action be taken for at least thirty days in order to file directly with the board of elections. This interpretation is actually consistent with the legislative history of the amendment 703.21 that occurred in 2017. Under the previous version of 703.20 the ability to place on the ballot rested solely with the legislative authority, there was no other mechanism to place it on the ballot. The amendments and the legislative analysis section provide, the act provides an alternative means for submitting a petition for dissolution through the legislative authority when the legislative authority fails to act on a petition within thirty days after receiving it. So even the legislative history supports the interpretation that it cannot be placed on the ballot unless it first has been filed with the legislative authority. Additionally, there is a mechanism within the ORC that requires the township be served a copy of the petition. Setting aside the issue whether or not it was, when or if it was, the fact that the statutory scheme provides for a mechanism for notice to the township but wouldn't provide to the village, doesn't make any sense. This can only move forward if all entities that are effected receive notice of the filing of the petition. So going back to that issue we were advised today and will provide testimony. Petitions were filed by an individual, Dennis Skeene, who was not a member of the committee but was one of the circulators, was filed today with Washington Township. That summarizes the village's position on the law I'm going to ask Mr. Gilpin a couple of questions.

Mr. Lembke – I understand your information is the petitions were filed with Washington township today, is it still the villages position that a failure to comply with 703.20 (B)(2) is a separate ground to reject the petitions.

Ms. Supinger – I believe it is a separate position for grounds for rejecting the petitions and the question is to when it needs to be filed, it is not explicitly set forth in ORC however it does reference the requirement to, it does reference the section that deals with filing with the board of elections. I think just by statutory interpretation you could look at that provision and it would be safe to assume that you would have to file it with the township at the same time. To be able to pick any day that you would want between the date of filing with the board of elections is the date of the election doesn't seem to make much sense or provide ample notice to the township that might be effected by the outcome of the election.

Ms. Supinger – Mr. Gilpin would you please state your name for the record?

Mr. Gilpin - William or Bill Gilpin.

Ms. Supinger – Do you have a position with the Village of Moscow?

Mr. Gilpin – Yes, fiscal officer.

Ms. Supinger – And as fiscal officer do you also perform the duties of clerk of council?

Mr. Gilpin – Yes.

Ms. Supinger – Are you responsible for maintaining the record of village council?

Mr. Gilpin – Yes.

Ms. Supinger – As fiscal officer have you on occasion been in a position to accept petitions filed by individuals on election matters?

Mr. Gilpin – Yes.

Ms. Supinger – Generally what has that involved?

Mr. Gilpin – The previous time it happened in Moscow is when there was a position to repeal zoning.

Ms. Supinger – Have you seen a copy of the petition to surrender the corporate powers of the Village of Moscow that was filed on August 1, 2022?

Mr. Gilpin – I saw the copy that came from you.

Ms. Supinger – Were you ever served with a copy of that by the committee?

Mr. Gilpin – No.

Ms. Supinger – And to the best of your knowledge was any official of the Village of Moscow served with a copy of that?

Mr. Gilpin – To my knowledge no.

Ms. Supinger – Do you know the fiscal officer for Washington Township?

Mr. Gilpin – Yes.

Ms. Supinger – Has the fiscal officer had any communications with you about the filing of the petitions with Washington Township?

Mr. Gilpin – I received an email today that they were dropped off at 10:25 this morning.

Ms. Supinger – Do you know who dropped that off?

Mr. Gilpin – I believe the message said Dennis Skeene dropped them off.

Ms. Supinger – That's all the questions I have for Mr. Gilpin.

Mr. Shrive – I just want to clarify if I could for the board, you said you weren't served with a copy but no copy was ever presented, to clarify the language, no one ever brought a copy of the petitions to the village council hall or you to file with the village council.

Mr. Gilpin – That is correct.

Mr. Combs – Do you have a copy of it now?

Mr. Gilpin – With me, no, I do not.

Mr. Combs – When did they file it with you, when did you get a copy of it?

Mr. Gilpin – It's not been filed with me, I received a copy of it through/from Ms. Supinger through email.

Mr. Lembke – So you got a copy from the village's counsel?

Mr. Gilpin – That's correct.

Mr. Shrive – We supplied the copy to Ms. Supinger.

Ms. Supinger – I made a public records request for the copy.

Mr. Lembke – So it wasn't actually served on you either as counsel?

Ms. Supinger – That's correct.

Mr. Combs – So how long has it been since this petition was filed with someone, I mean has it been filed now and served to the prosecutor's office?

Mr. Shrive – No, it was filed with the board of elections.

Mr. Combs – Nobody else?

Mr. Shrive – Mr. Dennison and Ms. Haight sent a copy to me, Ms. Supinger had asked when the last one was filed to let me know.

Mr. Lembke – This was filed with us on August 1, 2022.

Ms. Supinger – Are there any other questions for me? The village doesn't have any other witnesses.

Mr. Lembke – Sir are you here on behalf of the petitioners?

Mr. Skeene – yes I am.

Mr. Lembke - And you are?

Mr. Skeene - Dennis Skeene.

Mr. Lembke - Mr. Skeene you have any opening statements you want to make to the board/

Mr. Shrive - I would point out that Mr. Skeene is not one of the committee members and is not an attorney so I don't know if he has the authority to represent the committee.

Mr. Skeene - I'm here on behalf of the petitioner Danny Freeman.

Ms. Supinger - We would object to Mr. Skeene presenting on behalf of the committee.

Mr. Lembke - I think that objection is well taken, if you are not personally interested in the matter you cannot appear on behalf of somebody else in front of an agency or the state unless you practice law

Mr. Combs - to make sure I understand this, it was filed with us on August 1, you get it from us and send it to her. When was the village notified of this, was it on the first, was it a couple of days later when you opened your mail?

Mr. Supinger - it was not on the first, I believe it was a day or two after the first, I was advised that it had been filed and I submitted a public records request with Mr. Shrive to obtain a copy

Mr. Combs - and you [Dennis Skeene] are here on behalf of Danny Freeman?

Mr. Skeene - Yes.

Mr. Combs - Who couldn't show up here after he got this petition all done, he throws it back on you and you don't even live in Moscow anymore do you? Didn't you change your address back?

Mr. Skeene - No I changed, I'm here.

Mr. Combs - Out of Moscow?

Mr. Skeene - I was the circular for the petition.

Mr. Combs - But you no longer live there right?

Mr. Skeene - Right.

Mr. Combs - OK, I want to make sure I have all the things.

Mr. Skeene - His wife has cancer and she's in the hospital receiving a treatment today and just couldn't be here, so he asked me to come in his place.

Mr. Supinger - With all due respect, there are three committee members and if Mr. Freeman couldn't be here there are two other committee members that could have attended.

Mr. Combs - I'm just surprised someone didn't call and let us know to see if it was appropriate.

Mr. Grant - Just for the record trustee Cooper told me on the seventeenth that he has seen a copy of the petition, I don't know how, when or where but he did inform me the trustees were aware and he had seen it.

Mr. Combs - Mr. Shrive did you give that to Washington Township?

Mr. Shrive - I did not.

Mr. Combs - So who gave it to Washington Township?

Mr. Skeene - I did.

Mr. Conrad - That was today.

Mr. Combs - You said he knew about it on the seventeenth how did it get up there?

Mr. Skeene - I took it to the township hall.

Mr. Conrad - When?

Mr. Skeene - Today.

Mr. Combs - How did it get there before the seventeenth?

Mr. Skeene - Mr. Freeman may have given it to?

Mr. Grant - Stephanie.

Ms. Haight - We had a Robin Brewer who had asked for a records request for a copy of it

Ms. Supinger - She is associated with the township, I think this kind of illustrates how the entities are being notified of the petition, is by doing independent public records request based on.

Mr. Combs - Hearsay I guess.

Ms. Supinger - Someone picking up the phone and giving them a heads up.

Mr. Lembke - Let me take the township issue first. My question to counsel is 703.20(B)(2) in addition to filing with the board of elections as provided in (B)(1) a copy of the petition shall be filed with the board of elections in each township effected by the surrender but I haven't found anything that the townships are either required or authorized to do in response to that. So my question is, what is the basis for concluding the compliance with 703.20(B)(2) as a condition of precedent to putting this on the ballot?

Mr. Shrive - If I may answer briefly we dealt with this issue for Owensville because one of the things that comes with when a village is dissolved, it goes back into the township, it comes in with no zoning so the township that wants to not have a zoning free for all, what we did with Owensville was we got an issue to go on the ballot to adopt the zoning code to go into effect upon the dissolution of Owensville because we had notice, we had time to get it on the same election. It doesn't answer your question but my point being is there is some effect that the township may want to take action.

Mr. Lembke - You could go through all the hoops and even, and it would end up getting to us on the last day, the 90<sup>th</sup> day before the next general election and 703.20(B)(2) says in addition to filing with the board of elections, a copy of the petition shall be provided/filed with the board of township trustees, so

what this is saying is when it comes to us, it should go to the township and with that getting there too late for them to put any other issue on the ballot for the same election. So I get back to the point what basis do we have to conclude that filing with the township is a condition present for putting the petition for surrender of corporate powers on the ballot.

Ms. Supinger – I would argue that the state legislator put that provision in for a reason, that they felt is important that the township be put on notice as this matter is going to be put on the ballot, there's a lot of work that would need to occur leading up to and after the election should the village vote to dissolve, the legislative authority found that giving notice not only to the village but also the township would be effected is proper under these circumstances.

Mr. Lembke – Well ok, but when I look at the structure of the statute in (A) talks about presenting the petition to the village or the board of elections provided in (B)(1) then it goes on about (B)(1) and then the sub-section as provided by the township trustee the structure of the statute having difficulty getting to the idea meant for a copy of the petition be filed with the board of township trustees to be a condition precedent to the petition going on the ballot

Ms. Supinger – Well I think if you don't interpret it that way, renders that section somewhat meaningless, if it's not a requirement why is it there

Mr. Lembke – There could be all kinds. That the township, that seeming use, to just simply enjoying that the township should be aware of this I think that's, I don't think saying that gets us to the conclusion that giving it to the township must be a condition for putting this on the ballot, that's my question is there any further arguments to why filing with the township is a condition a precedent to the issue going on the ballot?

Ms. Supinger – Well I think that's a matter of first impression as of right now I don't know of any cases that say it is a condition precedent but I think certainly in order to give meaning to that phrase to have some bearing on whether or not it gets placed on the ballot otherwise there's no, I don't believe there is substantial compliance with the election laws to get this placed on the ballot.

Mr. Combs – Yes and it's probably like the law and a lot of other areas in the law unless you have a lawyer looking at it you may not know all of these steps. I mean it could be some of those steps as the way I read some of that was kind of making it an afterthought to writing the laws, slip these things in and put these things in because it shouldn't be difficult for a bunch of citizens who have a grievance for government in one way or another to be able to do it without having a bunch of lawyers sitting around reading every line. I'm not against lawyers.

Ms. Supinger – I don't disagree with you Mr. Combs, that's how the general assembly wrote the law, whether that is easy to comply with I don't know.

Mr. Lembke – (B)(2) is a separate sub subject and its telling that there is no time requirement in (B)(2), it says please provide a copy, (B)(1) says give a copy to the board of elections and (B)(2) says you also have to give it to the township trustees but it doesn't say when, which to me that cuts against the idea that you have to do this by some point in time or the issue is not going on the ballot.

Ms. Supinger – Well I don't think under the section for filing with the board of elections it doesn't give a date when you have to file with the board of elections either.

Mr. Lembke – It does through the back door and then it will appear on the next election if more than ninety days after the time it is filed regardless of year, so you could file with the board of elections in December and it would appear on the following May primary, so it does have a time, there is a time limit if you will, but there is no timing at all when it talks about giving a copy to the township trustees.

There's also a time limit when it talks about giving it to the village if you present it to the village-whether or not you do that first, they are in theory supposed to do something in thirty days and if they don't they then come to the board of elections to file here. So there are timing requirements with respect to the village legislative authority and presenting to the board of elections and then it would go on the ballot, there's no timing requirement at all with respect to the township trustees.

Ms. Supinger – What I would suggest is since it says it must also be filed with the township trustees those things should happen concurrently.

Mr. Lembke – How do I read that in the statute if it doesn't say that? That would not be a difficult thing even for the Ohio General Assembly; it is not a difficult thing to say. If they didn't say, doesn't that sort of leave me with the necessary implications they didn't intend to say it.

Ms. Supinger – I think you can read it both ways, Mr. Lembke, it's either the absence of a time frame or the presence of a time frame. I think you can interpret that both ways, the absence of a time frame suggests that it is filed at the same time, it's not a different time frame

Mr. Conrad – Does that have, that's just one section, one piece of it, the other piece is with the village, correct?

Mr. Lembke – The big question is do you have to file with the village first?

Mr. Grant – She brought up the Pringle/ Newtonsville case, and her conjecture was the court misinterpreted it, but isn't that the highest level of litigation at this point and those judges' opinion. Doesn't that over rule her opinion?

Mr. Lembke – Let me turn that into a question for counsel, it's what you read into, regardless of what I might think if I was just reading 703.20 without any judicial construction as you all know we have a judicial construction and it's from less than three years ago. The Court of Appeals has jurisdiction over this board and indeed in a case arising from the board whether we think we read the statute correctly or not, how do we maintain faithfulness, if you will, with the law, if it said you can file at either place, we just don't agree and we are not going to follow it, do I really get to thumb my nose at the 12<sup>th</sup> District?

Ms. Supinger - Well, the committee obviously has a remedy if they determine the decision if they believe your decision is incorrect and that's to appeal it and the matter will be back in front of the 12<sup>th</sup> District Court of Appeals most likely. I don't have an easy answer for you Mr. Lembke on that, unfortunately I understand the board's position with respect to the case but I think this board is also capable of reading the statute and applying it faithfully as you're obliged to do.

Mr. Lembke – With respect though I think applying it faithfully includes following the interpretation of the statute, now if this was the 8<sup>th</sup> District, the 11<sup>th</sup> District, it would be a different matter but this is a decision by the Court of Appeals, where we do what we do.

Ms. Supinger – You're correct but this is the only Court of Appeals decision.

Mr. Lembke - Which I think preempts the decision, whether or not I agree with them.

Mr. Shrive - I would like to point as well if that is an unreported decision, the 12<sup>th</sup> District Court of Appeals, they made the choice to not have it as a reported decision which mean that its weight of authority is less.

Mr. Lembke – But it's on the website all of those things, the reported undistinguished is basically out the window. I think it is the binding authority on us and most of the Court of Appeals these days are not court reported to an Ohio official. I don't think anything is anymore, the official site now is the website, so in that sense it is official.

Mr. Combs – Do we have any idea why they didn't report it?

Mr. Lembke – Cause they don't have to.

Mr. Shrive – Yea they are not required to.

Mr. Combs – We're in the same situation here.

Mr. Lembke – This is now the official Ohio citation, what used to be Ohio app third, it's now just this website, we have basically eviscerated the distinction between the reported and unreported authority . If it was from a different appellate district, it's a different situation, but this is the appellate district for Clermont County.

Mr. Skeene – (he started to say something)

Mr. Lembke – Mr. Skeene you can't argue.

Mr. Skeene – You won't let me make any statement even off the record.

Mr. Lembke – Hearings are on the record, you're not part of the committee, you're not a lawyer, you can't argue for the committee. It's not a rule I made up, it's the law of the state. Does anybody have any other questions?

Mr. Combs – I don't have any.

Mr. Lembke – Counselor sorry I gave you a difficult time

Ms. Supinger – No not at all.

Mr. Lembke – I not entirely envious of your position to be honest with you, is there anything else you want to say to us.

Ms. Supinger – No, I think we've beat this horse as much as we can today.

Mr. Lembke – And the village does have a writ of prohibition pending in front of the Ohio Supreme Court.

Ms. Supinger – Yes, that is correct, we have sought alternate relief.

Mr. Lembke – Well just one person's voice, with all due respect, I sort of think if somebody's going to tell the 12<sup>th</sup> District there're wrong I sort of feel that's the function of the seven people up in Columbus as opposed to four people in Batavia. OK, nothing else, then we will declare the evidentiary portion of the hearing closed. As this point we will adjourn if we want to, to deliberate and I would say don't run off because it won't take a tremendous amount of time.

The board went off the record at 3:35 p.m.

The board went back on the record at 3:54 p.m.

Mr. Lembke – We have deliberated and I want to thank everyone that is here and presented.

**2022-130** – Mr. Combs made the motion to reject the protest. Mr. Conrad seconded the motion.

Upon roll call.

Mr. Combs – yes

Mr. Conrad – yes

Mr. Grant – yes

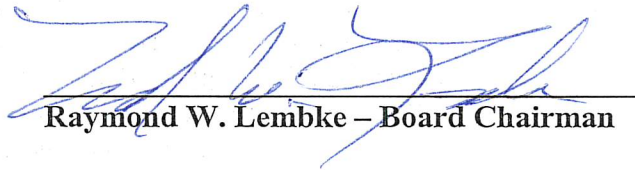
Mr. Lembke – yes

Mr. Shrive – I just wanted to make sure the board will be then voting at today’s meeting to place this issue on the ballot.

Mr. Lembke – Yes we will, at this point we have to.

Mr. Shrive – I just wanted to confirm that.

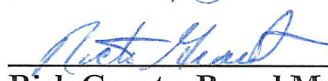
Mr. Lembke - Unless there is something else we will declare this hearing closed. Again thank you all for coming.

  
Raymond W. Lembke – Board Chairman

Rick W. Combs – Board Member



Gregg L. Conrad – Board Member



Rick Grant – Board Member

Date

9/21/2022