

Ohio House Bill 218: Public vs. Private Rights



Stephanie Showalter
Sea Grant Law Center
University of Mississippi



Public Trust Doctrine

Federal Common Law – Based on British Common Law

Tidelands, shorelands, and land beneath oceans, lakes, and rivers, are held by the states in trust for the benefit of all the people.

State holds the public title, often referred to as *jus publicum*

Ensures right of the public to use and enjoy the public trust waters and lands for commerce, navigation, fishing, bathing, and other related uses.

Generally, public title extends landward to Mean High Water.

Maine, Delaware, Massachusetts, New Hampshire, Pennsylvania, Virginia, and Wisconsin, however, have granted private property owners rights seaward of high water mark.

Boundary of Lake Erie in Ohio

The waters of Lake Erie . . . ***extending from the southerly shore of Lake Erie*** to the international boundary line between the United States and Canada, together with the soil beneath and their contents, do now belong and have always, since the organization of the state of Ohio, belonged to the state as proprietor in trust for the people of the state.

Ohio Code § 1506.10

“Southerly shore” was not defined by the Legislature nor has it been clearly defined by the courts. Most likely refers to the natural shoreline.

HB 218

As Introduced in the Ohio House:

The waters of Lake Erie . . . ***extending from the natural low water mark of the southerly shore of Lake Erie*** to the international boundary line between the United States and Canada.

As Passed by the Ohio House:

The waters of Lake Erie . . . ***extending from where the waters of Lake Erie make contact with the land*** to the international boundary line between the United States and Canada.

Current Status of Situation

- ❖ HB 218 stalled in Senate Committee since early 2004.
- ❖ Ohio Lakefront Group (coastal property owners) filed a lawsuit in May 2004.

Claim Ohio Department of Natural Resources “unconstitutionally and unlawfully asserted ownership and possession of the private property of Ohio citizens abutting Lake Erie” by requiring them to obtain submerged land leases.

- ❖ State filed motion to dismiss on procedural grounds on September 13, 2004.

Failure to exhaust administrative remedies, lack standing to argue case, etc.



Questions ???

Stephanie Showalter, Director

Sea Grant Law Center

(662) 915-7775

sshowalt@olemiss.edu

www.olemiss.edu/orgs/SGLC