

Opinion No. 2008-092

June 3, 2008

Mr. Donnie Kissinger
1844 East Highland Drive
Jonesboro, Arkansas 72401

Dear Mr. Kissinger:

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2000), of the popular name and ballot title for a proposed constitutional amendment. Your submitted popular name and ballot title are as follows:

Popular Name

A CONSTITUTIONAL AMENDMENT TO REPEAL ACT 1813 OF 2003
AND TO STATE THE PURPOSE OF A “DRY COUNTY” AND TO ESTABLISH THE
CRITERIA OF “PRIVATE CLUBS” IN DRY COUNTIES

Ballot Title

AN AMENDMENT TO THE ARKANSAS CONSTITUTION
THAT REPEALS ACT 1813 OF 2003 AND STATES “A DRY
COUNTY IS A COUNTY WHERE ‘IT SHALL BE UNLAWFUL
FOR ANY PERSON, FIRM, OR CORPORATION TO
MANUFACTURE, SELL, BARTER, LOAN, OR GIVE AWAY
INTOXICATING LIQUOR IN ANY COUNTY, TOWNSHIP,
MUNICIPALITY, WARD, OR PRECINCT IN WHICH THE
MANUFACTURE OR SALE OF INTOXICATING LIQUOR IS
OR SHALL BE PROHIBITED UNDER THE PROVISIONS OF
INITIATED ACT NO. 1 OF 1942” AND THAT THE PEOPLE OF

THESE “DRY COUNTIES” HAVE VOTED IT THIS WAY TO KEEP “PRIVATE CLUBS” FROM COMING INTO “DRY COUNTIES” AND SHALL NOT BE AMENDED WITHOUT A VOTE OF SAID “DRY COUNTIES” TO CHANGE THE STATUS OF SAID COUNTY. THIS SHALL STOP THE ISSUANCE OF “PRIVATE CLUB” LICENSES TO INDIVIDUALS OR COMPANIES OR CORPORATIONS UNTIL SAID COUNTIES BECOME “WET COUNTIES.” ANY “PRIVATE CLUB” THAT WAS IN EXISTENCE BEFORE THE ACT 1813 OF 2003 WILL BE EXEMPTED FROM THIS AMENDMENT AND ALLOWED TO KEEP OPERATING.

As an initial matter, I am required, pursuant to A.C.A. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or state constitutional amendments before the petitions are circulated for signature. My review is limited to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, of whether the proposed popular name and ballot title accurately and impartially summarize the provisions of a proposed amendment or act.

In accomplishing this task, however, I must be provided with the complete text of your proposed amendment before I can perform my statutory duty in certifying a popular name and ballot title. This is reflected in A.C.A. § 7-9-107(a), wherein it states that “the sponsors shall submit the *original draft* to the Attorney General, with a proposed . . . ballot title and popular name.” (Emphasis added.)

You have failed to submit the text of the proposed constitutional amendment you seek to have adopted. It is thus impossible for me to determine whether your proposed ballot title is an accurate and impartial summarization of your measure. Section 7-9-107(a) of the Arkansas Code is very clear in requiring a sponsor of a measure to submit the measure for my review with both a proposed ballot title and popular name. *See also*, Ops. Att’y Gen. 2001-378 and -379.

In addition, to the extent you intend your submitted ballot title to also serve as the text of your measure, this type of format may lead to ambiguities, necessitating rejection of your proposed ballot title and popular name. I explained the

difference between the text of a measure and its ballot title in Op. Att'y Gen. 2007-183 as follows:

The text of a proposed constitutional amendment, if adopted, becomes a part of the Arkansas Constitution. Ideally it consists of clear, complete sentences that actively dictate the legal effects desired by the sponsors. A ballot title, on the other hand, is an impartial, concise summary of the proposed amendment. As a consequence, it usually consists of a series of short descriptive phrases or clauses, which refer to, summarize and delineate the various important provisions of the amendment. The format and wording of these summary phrases or clauses, however, do not ordinarily direct action or actively bring about changes in the law. As a consequence, this summary format, while entirely appropriate for a ballot title, causes interpretive difficulty when used as a template for the language of a constitutional amendment.

Id. at 4.

I must therefore return your submission and instruct you to submit the language of your proposed amendment together with a proposed popular name and ballot title. I will be pleased to perform my statutory duties in this regard in a timely manner after resubmission.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:cyh