

Opinion No. 2011-160

December 27, 2011

Jimmy White, Spokesperson
Sportsmen2010
Post Office Box 1346
Manila, Arkansas 72442

Dear Mr. White:

I am writing in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2007), of the following popular name and ballot title for a proposed constitutional amendment:

Popular Name

A PROPOSED CONSTITUTIONAL AMENDMENT TO AMENDMENT 75 REDUCING THE AMOUNT OF EXCISE TAX PERCENTAGE FROM ONE-EIGHTH OF ONE PERCENT (1/8 OF 1%) TO ONE-FOURTEENTH OF ONE PERCENT (1/14 OF 1%)

Ballot Title

TO AMEND THE ARKANSAS CONSTITUTION CONCERNING THE TAX BURDEN PLACED ON THE CITIZENS OF ARKANSAS BY REDUCING THE EXCISE TAX RATE; PROVIDING THAT THE RATE OF ONE-EIGHTH OF ONE PERCENT (1/8 OF 1%) BE REDUCED TO ONE-FOURTEENTH OF ONE PERCENT (1/14 OF 1%); PROVIDING THAT THE ARKANSAS STATE GAME AND FISH COMMISSION BE REMOVED FROM THE AGENCIES RECEIVING A PORTION OF THE EXCISE TAX; PROVIDING THAT THE PORTION OF THE EXCISE TAX FOR THE DEPARTMENT OF PARKS AND TOURISM BE INCREASED FROM FORTY-FIVE PERCENT (45%) TO EIGHT-TWO PERCENT (82%); PROVIDING THAT

THE PORTION OF THE EXCISE TAX FOR THE DEPARTMENT OF HERITAGE BE INCREASED FROM NINE PERCENT (9%) TO SIXTEEN PERCENT (16%); PROVIDING THAT THE PORTION OF THE EXCISE TAX FOR KEEP ARKANSAS BEAUTIFUL BE INCREASED FROM ONE PERCENT (1%) TO TWO PERCENT (2%)

RESPONSE

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. The ballot title in particular must be fair, impartial and complete in order to withstand scrutiny if challenged before the Court.

As a condition of my certification, however, I must be provided with the *complete text* of your proposed act or amendment. This requirement is reflected in A.C.A. § 7-9-107(a), which provides 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. Instead, you have submitted a line-edited copy of Amendment 75— a document that can best be described as a work-in-progress preliminary to a finished product. Although such a document may be of use to you as a drafting step that enables you to reflect on how, precisely, you propose changing Amendment 75 – any such transitional work product does not amount to an “original draft” of the sort that the statute requires you to submit along with your proposed popular name and ballot title. Section 7-9-107(a) of the Arkansas Code is unequivocal in requiring a sponsor of a measure to submit the *actual text of the measures* for my review with both a proposed ballot title and popular name for each proposal. *See also* Op. Att’y Gen. Nos. 2009-116 (rejecting the proposed popular names and ballot titles of five proposed initiated acts and one proposed

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constitutional amendment when no “original drafts” of the proposed measure accompanied the submission).

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

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:cyh

POPULAR NAME

A PROPOSED CONSTITUTIONAL AMENDMENT TO AMENDMENT 75
REDUCING THE AMOUNT OF EXCISE TAX PERCENTAGE FROM ONE-EIGHTH OF ONE
PERCENT (1/8 OF 1%) TO ONE-FOURTEENTH OF ONE PERCENT (1/14 OF 1%).

BALLOT TITLE

TO AMEND THE ARKANSAS CONSTITUTION CONCERNING THE TAX BURDEN PLACED ON
THE CITIZENS OF ARKANSAS BY REDUCING THE EXCISE TAX RATE;
PROVIDING THAT THE RATE OF ONE-EIGHTH OF ONE PERCENT (1/8 OF 1%)
BE REDUCED TO ONE-FOURTEENTH OF ONE PERCENT (1/14 OF 1%);
PROVIDING THAT THE ARKANSAS STATE GAME AND FISH COMMISSION BE REMOVED
FROM THE AGENCIES RECEIVING A PORTION OF THE EXCISE TAX;
PROVIDING THAT THE PORTION OF THE EXCISE TAX FOR THE DEPARTMENT OF PARKS
AND TOURISM BE INCREASED FROM FORTY-FIVE PERCENT (45%) TO EIGHTY-TWO
PERCENT (82%);
PROVIDING THAT THE PORTION OF THE EXCISE TAX FOR THE DEPARTMENT OF
HERITAGE BE INCREASED FROM NINE PERCENT (9%) TO SIXTEEN PERCENT (16%);
PROVIDING THAT THE PORTION OF THE EXCISE TAX FOR KEEP ARKANSAS BEAUTIFUL BE
INCREASED FROM ONE PERCENT (1%) TO TWO PERCENT (2%).

Amendment 75.

Environmental enhancement funds.

Section:

1. Statement of purpose.
2. Excise tax levied.
3. Use of proceeds.
4. Administrative procedures.

1. Statement of purpose.

The people of the State of Arkansas find that ~~fish, wildlife,~~ parks, tourism and natural heritage constitute a major economic and natural resource of the state and they desire to provide additional funds to ~~the Arkansas Game and Fish Commission,~~ the Department of Parks and Tourism, the Department of Heritage and Keep Arkansas Beautiful.

2. Excise tax levied.

(a) There is hereby levied an additional excise tax of ~~one-eighth~~ one-fourteenth of one percent (~~1/8~~ 1/14 of 1%) upon all taxable sales of property and services subject to the tax levied by the Arkansas Gross Receipts Act (Arkansas Code § 26-52-101 et seq.), and such tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of all other Arkansas gross receipts taxes.

(b) There is hereby levied an additional excise tax of ~~one-eighth~~ one-fourteenth of one percent (~~1/8~~ 1/14 of 1%) upon all tangible personal property subject to the tax levied by the Arkansas Compensating Tax Act (Arkansas Code § 26-53-101 et seq.), and such tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of Arkansas compensating taxes.

3. Use of proceeds.

(a) Notwithstanding any provision of Amendment 35 or any other provision of the Arkansas Constitution to the contrary, ~~forty-five percent (45%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Game Protection Fund to be used exclusively by the Arkansas Game and Fish Commission, as appropriated by the General Assembly.~~

~~(b)~~ (b) ~~eighty-two percent (45-~~ 82%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Department of Parks and Tourism Fund Account to be used by the Department of Parks and Tourism for state park purposes, as appropriated by the General Assembly.

~~(c)~~ (b) ~~Nine~~ sixteen percent (~~9~~ 16%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Arkansas Department of Heritage Fund Account to be used exclusively by the Department of Heritage as appropriated by the General Assembly.

~~(d)~~ (c) ~~One~~ Two percent (~~1~~ 2%) of all monies collected from the tax levied herein shall be deposited in the State Treasury as special revenues and credited to the Keep Arkansas Beautiful Fund Account, which is hereby created on the books of the State Treasurer, State Auditor and the Chief Fiscal Officer of the State, to be used exclusively by Keep Arkansas Beautiful, as appropriated by the General Assembly.

4. Administrative procedures.

(a) The General Assembly shall provide for the proper administration and enforcement of this amendment by law.

(b) Unless the General Assembly provides another procedure by law, the provisions of the Arkansas Tax Procedure Act, Sections 26-18-101 et seq., shall so far as practicable be applicable to the tax levied by this amendment and the reporting, remitting and enforcement of the tax.