

Opinion No. 2012-015

February 14, 2012

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

Dear Mr. White:

You have requested my certification, pursuant to A.C.A. § 7-9-107 (Repl. 2007), of the following popular name and ballot title for a proposed constitutional amendment. You have previously submitted a similar measure which was rejected due to your failure to submit the actual text of the proposed measure. *See* Op. Att’y Gen. 2011-160. You have made changes in the text of your proposal since your last submission and have now submitted the following proposed popular name and ballot title for my certification:

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%) TO BE  
EFFECTIVE JANUARY 1, 2013

Ballot Title

TO AMEND THE ARKANSAS CONSTITUTION CONCERNING  
THE TAX BURDEN PLACED ON THE CITIZEN 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

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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%); PROVIDING THIS AMENDMENT SHALL BE EFFECTIVE JANUARY 1, 2013

## RESPONSE

The Attorney General is 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 amendments before the petitions are circulated for signature. The law provides that the Attorney General may substitute and certify a more suitable and correct popular name and ballot title, if he can do so, or if the proposed popular name and ballot title are sufficiently misleading, may reject the entire petition. **Neither certification nor rejection of a popular name and ballot title reflects my view of the merits of the proposal. This Office has been given no authority to consider the merits of any measure.**

In this regard, A.C.A. § 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, following Arkansas Supreme Court precedent, this office will not address the constitutionality of proposed measures in the context of a ballot title review unless the measure is "clearly contrary to law." *Kurrus v. Priest*, 342 Ark. 434, 29 S.W.3d 669 (2000); *Donovan v. Priest*, 326 Ark. 353, 931 S.W.2d (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992). Consequently, this review has been limited to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the proposed

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popular name and ballot title accurately and impartially summarize the provisions of your proposed amendment or act.

**The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.** See *Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

The popular name is primarily a useful legislative device. *Pafford v. Hall*, 217 Ark. 734, 233 S.W.2d 72 (1950). It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal. *Chaney v. Bryant*, 259 Ark. 294, 532 S.W.2d 741 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958). The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency. *Id.*

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented. *Hoban v. Hall*, 229 Ark. 416, 417, 316 S.W.2d 185 (1958); *Becker v. Riviere*, 270 Ark. 219, 223, 226, 604 S.W.2d 555 (1980). According to the court, if information omitted from the ballot title is an "essential fact which would give the voter serious ground for reflection, it must be disclosed." *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938 (1994), citing *Finn v. McCuen*, 303 Ark. 418, 798 S.W.2d 34 (1990); *Gaines v. McCuen*, 296 Ark. 513, 758 S.W.2d 403 (1988); *Hoban v. Hall*, *supra*; and *Walton v. McDonald*, 192 Ark. 1155, 97 S.W.2d 81 (1936). At the same time, however, a ballot title must be brief and concise (*see* A.C.A. § 7-9-107(b)); otherwise voters could run afoul of A.C.A. § 7-5-522's five minute limit in voting booths when other voters are waiting in line. *Bailey v. McCuen*, *supra*. The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke. *Plugge v. McCuen*, *supra*. The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring. *Id.* A ballot title must convey an intelligible idea of the scope and significance of a proposed change in the law. *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 884 S.W.2d 605 (1994). It has been stated that the ballot title must be: 1) intelligible, 2) honest, and 3) impartial. *Becker v.*

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*McCuen*, 303 Ark. 482, 798 S.W.2d 71 (1990), citing *Leigh v. Hall*, 232 Ark. 558, 339 S.W.2d 104 (1960).

Having analyzed your proposed amendment as well as your proposed popular name and ballot title under the above precepts, it is my conclusion that your proposed ballot title is sufficient as submitted. It is therefore hereby approved as submitted. With regard to the popular name, a minor change is in my opinion necessary to make it more suitable and correct. The following popular name is hereby substituted and certified in order to ensure that, when construed together, the popular name and ballot title accurately set forth the purpose of the proposed amendment:

Popular Name

A PROPOSED CONSTITUTIONAL AMENDMENT TO AMENDMENT 75  
REDUCING THE EXCISE TAX RATE FROM ONE-EIGHTH OF ONE PERCENT  
(1/8 OF 1%) TO ONE-FOURTEENTH OF ONE PERCENT (1/14 OF 1%)  
TO BE EFFECTIVE JANUARY 1, 2013

Pursuant to A.C.A. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Constitution and of the penalties imposed for violations of this act. Enclosed herewith, over the signature of the Attorney General, are instructions that should be incorporated in your petition prior to circulation.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

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Enclosure

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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%) TO BE  
EFFECTIVE JANUARY 1, 2013.

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%);  
PROVIDING THIS AMENDMENT BE EFFECTIVE JANUARY 1, 2013.

**Amendment 75.  
Environmental Enhancement Funds.**

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

1  
2 SECTION 1. Section 1 of Amendment 75 to the Arkansas Constitution is amended to read as follows:

3 **1. Statement of purpose.**

4 The people of the State of Arkansas find that fish, wildlife, parks, tourism and natural heritage constitute a  
5 major economic and natural resource of the state and they desire to provide additional funds to the  
6 ~~Arkansas Game and Fish Commission~~, the Department of Parks and Tourism, the Department of Heritage  
7 and Keep Arkansas Beautiful.  
8

9 SECTION 2. Section 2 of Amendment 75 to the Arkansas Constitution is amended to read as follows:

10 **2. Excise tax levied.**

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

16 (b) There is hereby levied an additional excise tax of ~~one-eighth~~ one-fourteenth of one percent (~~1/8~~ 1/14  
17 of 1%) upon all tangible personal property subject to the tax levied by the Arkansas Compensating Tax Act  
18 (Arkansas Code § 26-53-101 et seq.), and such tax shall be collected, reported, and paid in the same  
19 manner and at the same time as is prescribed by law for the collection, reporting and payment of  
20 Arkansas compensating taxes.  
21

22 SECTION 3. Section 3 of Amendment 75 to the Arkansas Constitution is amended to read as follows:

23 **3. Use of proceeds.**

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

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

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

35 ~~(d)~~ ~~(c)~~ One Two percent (~~1~~ 2%) of all monies collected from the tax levied herein shall be deposited in the  
36 State Treasury as special revenues and credited to the Keep Arkansas Beautiful Fund Account, which is  
37 hereby created on the books of the State Treasurer, State Auditor and the Chief Fiscal Officer of the State,  
38 to be used exclusively by Keep Arkansas Beautiful, as appropriated by the General Assembly.  
39

40 **4. Administrative procedures.**

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

43 (b) Unless the General Assembly provides another procedure by law, the provisions of the Arkansas Tax  
44 Procedure Act, Sections 26-18-101 et seq., shall so far as practicable be applicable to the tax levied by this  
45 amendment and the reporting, remitting and enforcement of the tax.  
46

47 SECTION 4. Section 4 of Amendment 75 to the Arkansas Constitution is amended to read as follows:

48 (c) This Amendment is effective January 1, 2013.  
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