

Opinion No. 2012-032

March 21, 2012

Peter G. Kumpe, Esq.  
Williams & Anderson, PLC  
111 Center Street, 22<sup>nd</sup> Floor  
Little Rock, Arkansas 72201

Dear Mr. Kumpe:

This is 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

AN AMENDMENT AUTHORIZING NANCY TODD'S POKER PALACE, LLC TO OPERATE CASINO-STYLE TABLE GAMES IN CRITTENDEN, FRANKLIN, MILLER AND PULASKI COUNTIES; AUTHORIZING UP TO FOUR CASINOS TO OPERATE IN ARKANSAS, ONE EACH IN THE FOREGOING COUNTIES; AND AUTHORIZING A TOTAL OF TWO (2) LICENSEES, ONE EACH IN GARLAND COUNTY AND CRITTENDEN COUNTY, TO OPERATE UP TO SEVENTY-FIVE (75) TABLES OF CASINO-STYLE TABLE GAMES

Ballot Title

A CONSTITUTIONAL AMENDMENT AUTHORIZING AND DEFINING CASINO GAMING AND TABLE GAMES AND PROVIDING FOR THEIR LICENSING, TAXATION AND REGULATION; PERMITTING UP TO BUT NO MORE THAN FOUR (4) GENERAL CASINO LICENSES (AS DEFINED) TO BE OUTSTANDING AT ANY ONE TIME; AUTHORIZING CASINOS ONLY IN CRITTENDEN, FRANKLIN, MILLER AND PULASKI COUNTIES; PROHIBITING MORE THAN ONE (1)

CASINO IN A COUNTY; AUTHORIZING LICENSES FOR AN UNLIMITED NUMBER OF TABLES OF TABLE GAMES IN CRITTENDEN, FRANKLIN, MILLER, AND PULASKI COUNTIES; CONFERRING UPON NANCY TODD'S POKER PALACE, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY, THE RIGHT TO RECEIVE ONE (1) OR MORE TABLE GAME LICENSES; AUTHORIZING A TOTAL OF TWO (2) LICENSEES, ONE EACH IN GARLAND COUNTY AND CRITTENDEN COUNTY, TO OPERATE UP TO SEVENTY-FIVE (75) TABLES OF TABLE GAMES; PROVIDING NANCY TODD'S POKER PALACE AND ENTERTAINMENT VENUES, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY, THE SOLE AND EXCLUSIVE RIGHT FOR A PERIOD OF TWENTY (20) YEARS TO NEGOTIATE AND AUTHORIZE CASINO GAMING LICENSES TO BE ISSUED BY THE ARKANSAS LOTTERY COMMISSION; PROVIDING THAT AFTER EACH TWENTY (20) YEAR APPOINTMENT, THE LOTTERY COMMISSION EITHER RENEW THE APPOINTMENT OR APPOINT A DIFFERENT ENTITY TO NEGOTIATE AND AUTHORIZE CASINO GAMING LICENSES; AUTHORIZING SUCH APPOINTEE TO COLLECT A FEE UPON THE ISSUANCE OF A CASINO GAMING LICENSE AND THEREAFTER BASED ON NEGOTIATIONS BETWEEN THE APPOINTEE AND THE LICENSE HOLDER; ALLOWING THE APPOINTEE TO DIRECT THE LOTTERY COMMISSION TO TERMINATE A CASINO GAMING LICENSE FOR MATERIAL BREACH OF THE LICENSING AGREEMENT BETWEEN THE APPOINTEE AND THE LICENSE HOLDER; AUTHORIZING THE LOTTERY COMMISSION OTHERWISE TO TERMINATE A CASINO GAMING LICENSE PRIOR TO EXPIRATION OF ITS TERM ONLY IF A CASINO GAMING LICENSEE IS FOUND GUILTY OF A FELONY VIOLATION OF ARKANSAS OR FEDERAL LAW; LIMITING THE TERM OF ANY CASINO GAMING LICENSE TO NINETY-NINE (99) YEARS; CONFERRING UPON THE LOTTERY COMMISSION SUCH POWERS AND AUTHORITY NECESSARY TO CARRY OUT ITS OBLIGATIONS UNDER THIS AMENDMENT; REQUIRING

THE LOTTERY COMMISSION TO REGULATE CASINO GAMING IN ACCORDANCE WITH NEVADA STATUTES, REGULATIONS AND RULES, TO THE EXTENT SUCH LAW DOES NOT FRUSTRATE THE PURPOSE OF OR IS NOT INCONSISTENT WITH THIS AMENDMENT; PROHIBITING THE GENERAL ASSEMBLY AND ANY POLITICAL SUBDIVISION OF THE STATE FROM ENACTING ANY LEGISLATION, RULE OR REGULATION LIMITING CASINO GAMING; PROVIDING THAT A CASINO GAMING LICENSEE SHALL BE SUBJECT TO TAXES LEVIED BY THE TAXING JURISDICTION WHERE A CASINO GAMING LICENSEE IS OPERATING AT THE SAME RATE AS FOR BUSINESSES GENERALLY AND THAT THE NET GAMING REVENUE (AS DEFINED) OF A CASINO GAMING LICENSEE BE SUBJECT TO AN ADDITIONAL TAX OF TWELVE AND ONE-HALF PERCENT (12.5%) WITH THE ADDITIONAL TAX PROCEEDS DISTRIBUTED: (I) TWENTY-FOUR (24%) TO THE COUNTY IN WHICH THE CASINO GAMING LICENSEE OPERATES, BASED ON NET GAMING REVENUE FROM OPERATIONS IN THAT COUNTY; (II) TWENTY-FOUR PERCENT (24%) TO FUND PUBLIC SCHOOLS IN ARKANSAS; (III) SIXTEEN PERCENT (16%) TO THE ARKANSAS DEPARTMENT OF VETERAN AFFAIRS; (IV) EIGHT PERCENT (8%) TO THE ARKANSAS CHILDREN'S HOSPITAL; (V) EIGHT PERCENT (8%) TO THE MEDICAID PROGRAM TRUST FUND; (VI) EIGHT PERCENT (8%) TO A SENIOR CARE PRESCRIPTION DRUG BENEFIT PROGRAM; AND (VII) TWELVE PERCENT (12%) TO THE LOTTERY COMMISSION TO PAY EXPENSES INCURRED IN CARRYING OUT ITS OBLIGATIONS UNDER THIS AMENDMENT, WITH ANY REMAINING AMOUNT TO BE USED IN ACCORDANCE WITH THE ARKANSAS SCHOLARSHIP LOTTERY ACT; PROHIBITING THE GENERAL ASSEMBLY OR ANY OTHER POLITICAL SUBDIVISION OF THIS STATE FROM LEVYING ANY OTHER TAX ON CASINO GAMING LICENSEES; AUTHORIZING A CASINO GAMING LICENSEE TO OPERATE FOR ANY PORTION OF ANY DAY AND TO SELL OR PROVIDE

COMPLIMENTARY ALCOHOLIC BEVERAGES DURING ALL HOURS OF OPERATION BUT OTHERWISE REQUIRING ADHERENCE TO ALL ALCOHOL BEVERAGE CONTROL BOARD REGULATIONS; PROHIBITING PERSONS UNDER THE AGE OF TWENTY-ONE (21) TO ENGAGE IN CASINO GAMING; PERMITTING SHIPMENT OF GAMBLING DEVICES FOR PURPOSES OF FEDERAL LAW; RENDERING THE PROVISIONS OF THE AMENDMENT SEVERABLE; DECLARING INAPPLICABLE ALL STATE CONSTITUTIONAL PROVISIONS AND LAWS TO THE EXTENT THEY CONFLICT WITH THIS PROPOSAL BUT NOT OTHERWISE REPEALING, SUPERSEDING, AMENDING OR AFFECTING AMENDMENTS 84 (BINGO) AND 87 (STATEWIDE LOTTERY) TO THE ARKANSAS CONSTITUTION

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 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. 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 I must reject your proposed popular name and ballot title due to ambiguities in the *text* of your proposed measure. A number of additions or changes to your ballot title are, in my view, necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the ambiguities. I am therefore unable to substitute and certify a more suitable and correct popular name and ballot title pursuant to A.C.A. § 7-9-107(b).

As background to the following recitation of ambiguities contained in your measure, I will offer the following summary of certain provisions. Section 4, which deals with casino gaming licensing, directs the Arkansas Lottery Commission (“ALC”) to “appoint . . . with the sole and exclusive right to negotiate and authorize casino gaming licenses” an organization called Nancy Todd’s Poker Palace and Entertainment Venues, LLC (“NTPPEV”). It further directs the ALC to issue such licenses upon NTPPEV’s direction to do so. The category of “casino gaming license” includes three subcategories: “general casino license,” “table game license” and “limited table game license.” The measure grants NTPPEV the authority to order the issuance of four general casino licenses – one in each of four counties. NTPPEV may apparently further order the issuance of an unlimited number of table game licenses, at its sole discretion, within those same four counties. The measure in one provision authorizes the issuance of a single limited table game license in one county. At another point, it authorizes the issuance of another such license in a second county. Without any reference to licensing, the measure at one point authorizes an organization called Nancy Todd’s Poker Palace, LLC (“NTPP”) to operate table games in the same four Arkansas counties. At another point, without any reference to NTPPEV’s possible discretion in issuing licenses, the measure further authorizes NTPP to receive one or more table game licenses.

Against this backdrop, I will identify the following ambiguities in your measure:

1. Subsection (1)(a) of your measure provides as follows:

Nancy Todd's Poker Palace, LLC ["NTPP"], an Arkansas limited liability company, is hereby authorized to operate table games in the following counties: Pulaski County, Miller County, Franklin County, and Crittenden County. The operation of table games shall be lawful and shall be an appropriate land use in these enumerated counties.

This subsection is ambiguous in that it is unclear whether all of NTPP's table-game operation(s) under this provision would be pursuant to license. This ambiguity is not resolved by subsection (4)(i), which provides that NTPP "shall have a right to receive one (1) or more table game licenses." It is unclear whether NTPP would be obliged to obtain licenses for the activities referenced in subsection (1)(a) or whether the authorization referenced in subsection (4)(i) would be for additional operations. Your measure fails to explain why, if subsection (1)(a) affords NTPP an absolute right to engage in table gaming operations, it would even need one or more licenses. Stated differently, it is unclear why your measure contains both subsections (1)(a) and (4)(i). Without clarification, I consequently cannot summarize your proposal in a ballot title.

2. Your measure is further ambiguous in that the role of NTPPEV in issuing licenses to NTPP is left unclear. Section (4) of your measure affords NTPPEV what appears wide discretion within certain parameters to grant licenses to any applicants for licensure. Subsection (4)(i), however, appears to foreclose altogether any exercise of discretion by NTPPEV with regard to the issuance of one or multiple licenses to NTPP. Without clarification, I cannot summarize your proposal in a ballot title.
3. It is further unclear whether subsection (1)(a) is designed to restrict NTPP to the operation only of "table games" or whether NTPP might further seek license approval from NTPPEV to conduct additional types of "casino gaming" in the same four counties. Subsection (4)(i) is similarly ambiguous in that it says nothing about whether NTPP is permitted further to apply for other varieties of casino gaming licenses. Without clarification, I consequently cannot summarize your proposal in a ballot title.

4. Subsection (1)(a) is further ambiguous in that one cannot determine the scope of the unelaborated proposition that NTPP's exercise of its right "to operate table games" in four counties will constitute "an appropriate land use in these enumerated counties." Your measure fails to address whether this provision would allow NTPP to open as many table gaming establishments as it chooses, wherever it chooses, apparently irrespective of any local zoning laws in any of the four counties. Without clarification on this point, I cannot summarize your proposal in a ballot title.
5. Ambiguities further exist regarding the relative roles in the licensing process played by the ALC, on the one hand, and the NTPPEV and its possible successors, on the other.

The scope of NTPPEV's control over licensing under your measure is noteworthy. Subsection (4)(a)(i) invests NTPPEV, upon what would be its renewable, constitutionally mandated 20-year "appointment" by the ALC, with "the sole and exclusive right to negotiate and authorize casino gaming licenses." The referenced "negotiation" will apparently consist primarily of NTPPEV and an applicant agreeing by private contract to a fee to be awarded NTPPEV for approving the license. Subsection (4)(b).<sup>1</sup> Under subsection (4)(a)(i), the ALC, upon NTPPEV's authorization, issues such licenses in what appears to be a purely ministerial capacity. Under subsection (4)(d), NTPPEV is further invested with total control over the termination of a license "[i]f a casino gaming licensee materially breaches a licensing agreement between it and the entity receiving an appointment [i.e., NTPPEV]."<sup>2</sup> It is unclear what, other than failing to pay the license issuer for its own account, might constitute a material breach.

In light of these measures, it is unclear what regulatory control remains for the ALC to exercise. Subsection (4)(a)(iii) provides that "[e]ach appointee

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<sup>1</sup> This fee, it would appear, could vary from one applicant to the next based upon NTPPEV's unilateral negotiations with applicants. Under subsection (4)(c), again apparently at NTPPEV's sole discretion, the term of any particular license could run for a period up to 99 years, presumably subject to renewal.

<sup>2</sup> The only other recited basis for terminating a license is conviction of a felony under Arkansas or federal law. *Id.*

shall exercise its authority in accordance with regulations promulgated by the Arkansas Lottery Commission.” Your measure contains no provisions, however, setting forth the scope of this regulatory control. On the contrary, the measure appears more intent on restricting the ALC’s regulatory oversight. As noted above, under the measure, NTPPEV alone determines who will be issued a license. The ALC is apparently *obligated* to issue a license upon NTPPEV’s directive to do so. The ALC further appears to have no control over the terms of what the measure characterizes as a *private contractual relationship* (“a licensing agreement”) between NTPPEV – a private corporation – and each licensee.<sup>3</sup> Without clarification of the nature and scope of the ALC’s regulatory control, I am consequently unable to summarize your proposal in a ballot title.<sup>4</sup>

6. Subsection (4)(h) further provides that “[t]able game licensees are permitted to operate in any county in which casino gaming is authorized pursuant to Section (1)(a) of this Amendment.” This provision is ambiguous because it is unclear whether the reference to “Section (1)(a)” is accurate or whether the intended reference is to subsection (1)(b), which in fact authorizes “casino gaming” in four counties.<sup>5</sup> Subsection (1)(a) merely

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<sup>3</sup> This variety of “license,” which a private party may award at its discretion and for its own profit to an apparently unrestricted number of applicants, obviously differs from, say, a state-issued liquor license – a difference that will need to be made clear to the voters in a ballot title should you elect to resubmit your measure.

<sup>4</sup> Although I am rejecting your measure based upon ambiguities contained in the text, I will note that your measure appears to raise troubling possibilities that, if contained in any subsequent submission, would need to be acknowledged in a ballot title. The authority that might or might not be granted to NTPPEV under the provisions just summarized raises several possibilities that might give a reasonable voter serious ground for reflection. The first is that NTPPEV, in an effort to maximize its own corporate revenues, might in effect auction off gaming licenses to the highest bidder without significant oversight. The second is that NTPPEV, in the exercise of its apparent freedom to award licenses to any or no applicants, might award licenses only to one entity, thus in effect granting a monopoly over gaming operations in the state for a period falling one year shy of a century. (In considering the possibility of this actually occurring, I cannot avoid reflecting on the fact that NTP and NTPPEV’s corporate names jointly acknowledge one “Nancy Todd” as namesake, suggesting a bond between the two entities that might be significant in the mind of a voter.) The third is that NTPPEV might forbear issuing table gaming licenses altogether, meaning that, under one plausible reading of subsection (1)(a), NTPP would be effectively granted perpetual monopoly control over table gaming in four Arkansas counties.

<sup>5</sup> If, as I suspect, this is indeed the intended reading, I can only note that such internal errors in reference should be avoided in any resubmission of your proposed constitutional amendment.

authorizes NTPP to operate the subcategory of “table games” in those counties.

7. Within the context of your measure, your definition of “limited table games” in subsection (2)(c) as “up to no more than [sic: repetitive] seventy-five (75) table games” is ambiguous. The term “table games” is defined, in pertinent part, in subsection (2)(c) as “any game that is played on a table . . . .”<sup>6</sup> Given this definition, the derivative definition in subsection (2)(c) would appear to apply only to the number of different types of games allowed in a particular establishment, not to the number of tables upon which games might be played. I am by no means certain, however, that your intention is not actually to limit the number of tables allowed per establishment. Without clarification, I am consequently unable to summarize this provision in a ballot title.
8. Your definition of “casino gaming” in subsection (2)(d) is confusing in that it expressly includes “table games” but does not expressly include “limited table games.” This omission may reflect your assumption that “limited table games” are merely a subset of “table games,” *see* comment 11, *infra*. However, this does not explain the express inclusion of “table games,” which are themselves a subset of “casino games.” Without clarification, I am unable to summarize the scope of the definition in a ballot title.
9. Your definition of “casino gaming” is further ambiguous in its exclusion from that term of the undefined categories “a race book, pari-mutuel wagering, a sports book, or a sports pool.” Without clarification, I cannot summarize and the voters may have difficulty understanding, the scope of your proposal.
10. Your measure appears to contradict itself regarding the geographical areas in which the conduct of “limited table games” would be permitted. Subsection (1)(c) authorizes the conduct of such games in Garland County. Subsection (4)(g)(i) authorizes the conduct of such games in Garland and Crittenden Counties.

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<sup>6</sup> With regard to this definition, I feel constrained to point out that, in matters of constitutional gravity, it is more than just preferred practice to use the plural in defining a plural term.

11. "Limited table games" appears to be a subset of "table games." Given that Crittenden County is included in the group of four counties in which "table games" are allowed, it is unclear why it is further included among the counties in which "limited table games" are allowed. It would appear to be axiomatic that establishments permitted to operate table games could opt to operate only limited table games. Without clarification, I cannot summarize your proposal in a ballot title.
12. Subsection (4)(a)(ii) invests the ALC with authority to "either renew the appointment or appoint a different entity to negotiate and authorize casino gaming licenses" upon the expiration "of each twenty (20) year appointment period." However, your measure contains no provision regarding the replacement of an appointee who vacates the position prior to the expiration of a term. Without clarification, I cannot summarize in a ballot title what your measure anticipates in the event of a vacancy.
13. Subsection (5)(a) of your measure provides as follows: "Casino gaming licensees shall be subject to the taxes levied by all of the taxing jurisdictions where a casino gaming licensee is located on the same basis and at the same rate as for businesses generally." Assuming subsection (1)(a) indeed authorizes NTPP to operate table games without obtaining a license, this provision is ambiguous in that it provides no guidance regarding the taxation of NTPP's revenues realized through such unlicensed operations. Without clarification, I cannot summarize the effects of this provision in a ballot title.
14. Because it is unclear whether NTPP's operations will be subject to licensure, it is likewise unclear whether any tax revenues realized from its operations would be subject to the distributions set forth in your measure. Without clarification on this point, I cannot summarize your measure in a ballot title.
15. Subsection (5)(b) classifies amounts realized from the 12.5% tax imposed on the net revenues of casino gaming licensees as "cash funds held in trust separate and apart from the State treasury" subject to the distribution scheme specified. Standing alone, this provision is ambiguous in that it

fails to indicate what trustee(s) will hold and distribute these funds. In what may be an attempt to address this issue, subsection (5)(c) provides as follows: “To the extent that the funds and programs referenced in subsection (b) do not currently exist, this Amendment confers upon the Arkansas Lottery Commission the power and the obligation to create and operate such funds and programs.” This attempted clarification is unhelpful. For one thing, the suggestion that certain of “the funds and programs referenced in subsection (b) do not currently exist” is confusing at best, since the referenced “funds and programs” listed as potential recipients definitely exist.<sup>7</sup> This confusion merely compounds the lack of clarity regarding whether the ALC is to act as trustee of the funds received. I consequently cannot summarize this provision in a ballot title.

I cannot begin to certify a ballot title for your proposed amendment in the face of the ambiguities noted above. You must remedy these confusing and ambiguous points before I can perform my statutory duty.

My office, in the certification of ballot titles and popular names, does not concern itself with the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in A.C.A. § 7-9-107 and my duty is to the electorate. I am not your counsel in this matter and cannot advise you as to the substance of your proposal.

At the same time, however, the Arkansas Supreme Court, through its decisions, has placed a practical duty on the Attorney General, in exercising his statutory duty, to include language in a ballot title about the effects of a proposed measure on current law. *See, e.g., Finn v. McCuen, supra.* Furthermore, the Court has recently confirmed that a proposed amendment cannot be approved if “[t]he text of the proposed amendment itself contribute[s] to the confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.” *Roberts v. Priest*, 341 Ark. 813, 20 S.W.3d 376 (2000).

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<sup>7</sup> They consist of the following: (1) the counties in which the gaming will occur; (2) Arkansas public schools; (3) the Arkansas Department of Veteran Affairs; (4) Arkansas Children’s Hospital; (5) the Medicaid Program Trust Fund; (6) “a senior care prescription drug benefit program”; and (7) the ALC.

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The Court concluded: “[I]nternal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.” *Id.* Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without clarification of the ambiguities.

My statutory duty, under these circumstances, is to reject your proposed ballot title, stating my reasons therefor, and to instruct you to “redesign” the proposed measure and ballot title. *See* A.C.A. § 7-9-107(c). You may, after clarification of the matters discussed above, resubmit your proposed amendment, along with a proposed popular name and ballot title, at your convenience. I anticipate, as noted above, that some changes or additions to your submitted popular name and ballot title may be necessary. 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

Enclosure

1           CONSTITUTIONAL AMENDMENT PROPOSED BY PETITION OF THE PEOPLE

2  
3    Be it enacted by the people of the State of Arkansas:

4    **Section 1:     Authorization of Casino Gaming**

5           (a)     Nancy Todd’s Poker Palace, LLC, an Arkansas limited liability company, is  
6    hereby authorized to operate table games in the following counties: Pulaski County, Miller  
7    County, Franklin County, and Crittenden County. The operation of table games shall be lawful  
8    and shall be an appropriate land use in these enumerated counties.

9           (b)     Casino gaming is hereby authorized and shall be lawful and shall be an  
10   appropriate land use in the following counties: Pulaski County, Miller County, Franklin County,  
11   and Crittenden County.

12          (c)     The operation of limited table games is hereby authorized and shall be lawful and  
13   shall be an appropriate land use in Garland County.

14          (d)     Except as herein specifically provided, casino gaming is prohibited.

15   **Section 2:     Definitions**

16          (a)     The term “casino” means any facility operated by a general casino licensee in  
17   which casino gaming takes place.

18          (b)     The term “table games” means any game that is played on a table and is operated  
19   by one or more live dealers, a croupier, or poker dealer and includes but is not limited to  
20   Baccarat, Blackjack, Crazy 4 Poker, Craps, Roulette, Pai Gow, Pai Gow Poker, Let It Ride™,  
21   Stud Poker, 3 Card Poker, Casino War, Ultimate Texas Hold’em Poker, Big Six.

22          (c)     The term “limited table games” means up to but no more than seventy-five (75) table  
23   games.

1 (d) The term “casino gaming” means any game played with cards, dice, equipment,  
2 or any mechanical, electromechanical, or electronic device, or machine for money, property,  
3 checks, credit or any representative value, including, without limiting the generality of the  
4 foregoing, blackjack, poker, keno, baccarat, roulette, craps, slot machines, video poker or any  
5 other gaming, percentage game or any other game or device and includes “table games” as  
6 defined herein. The term “casino gaming” shall not include, however, a race book, pari-mutuel  
7 wagering, a sports book, or a sports pool.

8 (e) The term “casino gaming license” means a general casino license, a table game  
9 license, and a limited table game license.

10 (f) The term “general casino license” means a license to operate a casino.

11 (g) The term “table game license” means a license to operate table games.

12 (h) The term “limited table game license” means a license to operate limited table  
13 games.

14 (i) The term “effective date” means the date on which this Amendment takes effect.

15 (j) The term “net gaming revenue” means the total, measured on an annual basis, of  
16 money received by a casino gaming licensee from wagers less the total money paid out by the  
17 casino gaming licensee to patrons.

### 18 **Section 3: Regulation**

19 (a)(i) The Arkansas Lottery Commission shall regulate casino gaming in Arkansas in  
20 accordance with Nevada statutes, regulations and rules, to the extent such law does not frustrate  
21 the purpose of or is not otherwise inconsistent with this Amendment.

1           (ii) To the extent that the Arkansas Lottery Commission lacks power  
2 necessary to carry out its obligations under this Amendment, this Amendment shall confer upon  
3 the Arkansas Lottery Commission all such necessary additional power and authority.

4           (b) Unless otherwise specifically provided herein, neither the General Assembly nor  
5 any political subdivision of this State shall enact any legislation, rule or regulation limiting  
6 casino gaming as authorized in this Amendment.

7           (c) The games specified herein under the definition of “casino gaming” shall not be  
8 classified as a lottery or subject to any regulations under Article 19 as amended by Amendment  
9 87 to the Arkansas Constitution.

10          (d) Casino gaming licensees are subject to and shall comply with the rules and  
11 regulations of The Alcohol Beverage Control Board in the sale of alcohol beverages, beer, and  
12 wine. Notwithstanding any law, rule, or regulation to the contrary, all casino gaming licensees  
13 shall be permitted to sell or to provide complimentary alcoholic beverages inside the facility in  
14 which casino gaming takes place during all hours they operate.

15          (e) Casino gaming licensees shall be permitted to operate any day and for any portion  
16 of a twenty-four (24) hour day.

17          (f) No person under the age of twenty-one (21) shall be allowed to engage in casino  
18 gaming.

19 **Section 4: Licensing**

20          (a)(i) Within thirty (30) calendar days of the Effective Date, the Arkansas Lottery  
21 Commission shall appoint Nancy Todd’s Poker Palace and Entertainment Venues, LLC, an  
22 Arkansas limited liability company, with the sole and exclusive right to negotiate and authorize  
23 casino gaming licenses, which shall be issued by the Arkansas Lottery Commission.

1           (ii)    The appointment set forth in subsection (a)(i) shall be for a period of  
2 twenty (20) years. After the end of each twenty (20) year appointment period, the Arkansas  
3 Lottery Commission shall either renew the appointment or appoint a different entity to negotiate  
4 and authorize casino gaming licenses.

5           (iii)   Each appointee shall exercise its authority in accordance with regulations  
6 promulgated by the Arkansas Lottery Commission.

7           (b)    Each entity receiving an appointment pursuant to subsection (a) is hereby  
8 authorized to charge and collect a fee upon the issuance of any license authorized herein and  
9 thereafter on a basis determined by negotiations between such entity and the license holder.

10          (c)    The term of any licensing agreement authorized by this Amendment shall not  
11 exceed ninety-nine (99) years.

12          (d)    The Arkansas Lottery Commission shall be authorized to terminate a casino  
13 gaming license prior to expiration of its term only if a casino gaming licensee is found guilty of a  
14 felony violation of Arkansas or federal law. If a casino gaming licensee materially breaches a  
15 licensing agreement between it and the entity receiving an appointment pursuant to subsection  
16 (a), the appointee may direct the Arkansas Lottery Commission to terminate the casino gaming  
17 license, and the Arkansas Lottery Commission shall terminate the casino gaming license within  
18 thirty (30) calendar days.

19          (e)    Up to but not more than four (4) general casino licenses may be issued and  
20 outstanding at any one time.

21          (f)    No more than one (1) general casino licensee shall operate in any one county.

22          (g)(i) Limited table game licensees are authorized to operate only in Garland County  
23 and Crittenden County.

1                   (ii)    No more than one (1) limited table game licensee shall operate in any one  
2 county.

3                   (h)    Table game licensees are permitted to operate in any county in which casino  
4 gaming is authorized pursuant to Section (1)(a) of this Amendment.

5                   (i)    Nancy Todd’s Poker Palace LLC, an Arkansas limited liability company, shall  
6 have a right to receive one (1) or more table game licenses.

7 **Section 5:    Taxation**

8                   (a)    Casino gaming licensees shall be subject to the taxes levied by all of the taxing  
9 jurisdictions where a casino gaming licensee is located on the same basis and at the same rate as  
10 for businesses generally.

11                  (b)    The net gaming revenue of a casino gaming licensee shall be subject to an  
12 additional tax at the rate of twelve and one-half percent (12.5%). Proceeds from this additional  
13 tax shall not be subject to appropriation by the General Assembly and are specifically declared to  
14 be cash funds held in trust separate and apart from the State treasury and shall be distributed as  
15 follows:

16                   (i)    Twenty-four percent (24%) to the counties in which a casino gaming  
17 licensee is located and operating, with each county’s share based on net gaming revenue arising  
18 from operations in that county.

19                   (ii)   Twenty-four percent (24%) to fund all public schools in Arkansas;

20                   (iii)  Sixteen percent (16%) to the Arkansas Department of Veteran Affairs;

21                   (iv)   Eight percent (8%) to the Arkansas Children’s Hospital;

22                   (v)    Eight percent (8%) to the Medicaid Program Trust Fund;

23                   (vi)   Eight percent (8%) to a senior care prescription drug benefit program.

1 (vii) Twelve percent (12%) to the Arkansas Lottery Commission to be used to  
2 pay its expenses incurred in carrying out its obligations under this Amendment, with any  
3 remaining amounts to be used in accordance with the Arkansas Scholarship Lottery Act; and

4 (c) To the extent that the funds and programs referenced in subsection (b) do not  
5 currently exist, this Amendment confers upon the Arkansas Lottery Commission the power and  
6 the obligation to create and operate such funds and programs.

7 (d) Neither the General Assembly nor any political subdivision of this State shall levy  
8 any taxes on casino gaming licensees except as specifically set forth in this Amendment.

9 **Section 6: Legal Shipment of Gambling Devices Into State**

10 All shipments of gambling devices, including slot machines, into any county of this State  
11 within which casino gaming is authorized, the registering, recording, and labeling of which has  
12 been duly performed by the manufacturer or dealer thereof in accordance with Section 3 and 4 of  
13 that certain Act of Congress of the United States entitled "An act to prohibit transportation of  
14 gambling devices in interstate and foreign commerce," approved January 2, 1951, being ch.  
15 1194, 64 Stat. 1134, and also designated as 15 U.S.C. Sections 1171-1178, shall be deemed legal  
16 shipments thereof into any such county of this State within which casino gaming is authorized.

17 **Section 7: Severability**

18 If any provision of this Amendment, or the application of any such provision to any  
19 person or circumstance is held invalid, the validity of any other provision of this Amendment, or  
20 the application of such provision to other persons and circumstances, shall not be affected  
21 thereby, and to this end the provisions of this Amendment are declared to be severable.

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1 **Section 8: Inconsistent Provisions Inapplicable**

2 All provisions of the Constitution of this State and statutes of the State, including but not  
3 limited to laws forbidding the judicial enforcement of gambling debts and statutes declaring  
4 gambling to be crimes, to the extent inconsistent or in conflict with any provision of this  
5 Amendment are expressly declared null and void and do not to apply to any provision of this  
6 Amendment. However, this Agreement does not repeal, supersede, amend or otherwise affect  
7 Amendments 84 and 87 to the Arkansas Constitution or games of bingo, raffles, or the state  
8 lottery permitted therein.

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(POPULAR NAME)

AN AMENDMENT AUTHORIZING NANCY TODD’S POKER PALACE, LLC TO OPERATE CASINO-STYLE TABLE GAMES IN CRITTENDEN, FRANKLIN, MILLER, AND PULASKI COUNTIES; AUTHORIZING UP TO FOUR CASINOS TO OPERATE IN ARKANSAS, ONE EACH IN THE FOREGOING COUNTIES; AND AUTHORIZING A TOTAL OF TWO (2) LICENSEES, ONE EACH IN GARLAND COUNTY AND CRITTENDEN COUNTY, TO OPERATE UP TO SEVENTY-FIVE (75) TABLES OF CASINO-STYLE TABLE GAMES.

(BALLOT TITLE)

A CONSTITUTIONAL AMENDMENT AUTHORIZING AND DEFINING CASINO GAMING AND TABLE GAMES AND PROVIDING FOR THEIR LICENSING, TAXATION AND REGULATION; PERMITTING UP TO BUT NO MORE THAN FOUR (4) GENERAL CASINO LICENSES (AS DEFINED) TO BE OUTSTANDING AT ANY ONE TIME; AUTHORIZING CASINOS ONLY IN CRITTENDEN, FRANKLIN, MILLER AND PULASKI COUNTIES; PROHIBITING MORE THAN ONE (1) CASINO IN A COUNTY; AUTHORIZING LICENSES FOR AN UNLIMITED NUMBER OF TABLES OF TABLE GAMES IN CRITTENDEN, FRANKLIN, MILLER, AND PULASKI COUNTIES; CONFERRING UPON NANCY TODD’S POKER PALACE, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY, THE RIGHT TO RECEIVE ONE (1) OR MORE TABLE GAME

1 LICENSES; AUTHORIZING A TOTAL OF TWO (2) LICENSEES, ONE EACH IN  
2 GARLAND COUNTY AND CRITTENDEN COUNTY, TO OPERATE UP TO  
3 SEVENTY-FIVE (75) TABLES OF TABLE GAMES; PROVIDING NANCY TODD'S  
4 POKER PALACE AND ENTERTAINMENT VENUES, LLC, AN ARKANSAS  
5 LIMITED LIABILITY COMPANY, THE SOLE AND EXCLUSIVE RIGHT FOR A  
6 PERIOD OF TWENTY (20) YEARS TO NEGOTIATE AND AUTHORIZE CASINO  
7 GAMING LICENSES TO BE ISSUED BY THE ARKANSAS LOTTERY  
8 COMMISSION; PROVIDING THAT AFTER EACH TWENTY (20) YEAR  
9 APPOINTMENT, THE LOTTERY COMMISSION EITHER RENEW THE  
10 APPOINTMENT OR APPOINT A DIFFERENT ENTITY TO NEGOTIATE AND  
11 AUTHORIZE CASINO GAMING LICENSES; AUTHORIZING SUCH APPOINTEE  
12 TO COLLECT A FEE UPON THE ISSUANCE OF A CASINO GAMING LICENSE  
13 AND THEREAFTER BASED ON NEGOTIATIONS BETWEEN THE APPOINTEE  
14 AND THE LICENSE HOLDER; ALLOWING THE APPOINTEE TO DIRECT THE  
15 LOTTERY COMMISSION TO TERMINATE A CASINO GAMING LICENSE FOR  
16 MATERIAL BREACH OF THE LICENSING AGREEMENT BETWEEN THE  
17 APPOINTEE AND THE LICENSE HOLDER; AUTHORIZING THE LOTTERY  
18 COMMISSION OTHERWISE TO TERMINATE A CASINO GAMING LICENSE  
19 PRIOR TO EXPIRATION OF ITS TERM ONLY IF A CASINO GAMING LICENSEE  
20 IS FOUND GUILTY OF A FELONY VIOLATION OF ARKANSAS OR FEDERAL  
21 LAW; LIMITING THE TERM OF ANY CASINO GAMING LICENSE TO NINETY-  
22 NINE (99) YEARS; CONFERRING UPON THE LOTTERY COMMISSION SUCH  
23 POWERS AND AUTHORITY NECESSARY TO CARRY OUT ITS OBLIGATIONS

1 UNDER THIS AMENDMENT; REQUIRING THE LOTTERY COMMISSION TO  
2 REGULATE CASINO GAMING IN ACCORDANCE WITH NEVADA STATUTES,  
3 REGULATIONS AND RULES, TO THE EXTENT SUCH LAW DOES NOT  
4 FRUSTRATE THE PURPOSE OF OR IS NOT INCONSISTENT WITH THIS  
5 AMENDMENT; PROHIBITING THE GENERAL ASSEMBLY AND ANY  
6 POLITICAL SUBDIVISION OF THE STATE FROM ENACTING ANY  
7 LEGISLATION, RULE OR REGULATION LIMITING CASINO GAMING;  
8 PROVIDING THAT A CASINO GAMING LICENSEE SHALL BE SUBJECT TO  
9 TAXES LEVIED BY THE TAXING JURISDICTION WHERE A CASINO GAMING  
10 LICENSEE IS OPERATING AT THE SAME RATE AS FOR BUSINESSES  
11 GENERALLY AND THAT THE NET GAMING REVENUE (AS DEFINED) OF A  
12 CASINO GAMING LICENSEE BE SUBJECT TO AN ADDITIONAL TAX OF  
13 TWELVE AND ONE-HALF PERCENT (12.5%), WITH THE ADDITIONAL TAX  
14 PROCEEDS DISTRIBUTED: (i) TWENTY-FOUR PERCENT (24%) TO THE  
15 COUNTY IN WHICH THE CASINO GAMING LICENSEES OPERATES, BASED ON  
16 NET GAMING REVENUE FROM OPERATIONS IN THAT COUNTY; (ii) TWENTY-  
17 FOUR PERCENT (24%) TO FUND PUBLIC SCHOOLS IN ARKANSAS; (iii)  
18 SIXTEEN PERCENT (16%) TO THE ARKANSAS DEPARTMENT OF VETERAN  
19 AFFAIRS; (iv) EIGHT PERCENT (8%) TO THE ARKANSAS CHILDREN'S  
20 HOSPITAL; (v) EIGHT PERCENT (8%) TO THE MEDICAID PROGRAM TRUST  
21 FUND; (vi) EIGHT PERCENT (8%) TO A SENIOR CARE PRESCRIPTION DRUG  
22 BENEFIT PROGRAM; AND (vii) TWELVE PERCENT (12%) TO THE LOTTERY  
23 COMMISSION TO PAY EXPENSES INCURRED IN CARRYING OUT ITS

1 OBLIGATIONS UNDER THIS AMENDMENT, WITH ANY REMAINING AMOUNT  
2 TO BE USED IN ACCORDANCE WITH THE ARKANSAS SCHOLARSHIP  
3 LOTTERY ACT; PROHIBITING THE GENERAL ASSEMBLY OR ANY OTHER  
4 POLITICAL SUBDIVISION OF THIS STATE FROM LEVYING ANY OTHER TAX  
5 ON CASINO GAMING LICENSEES; AUTHORIZING A CASINO GAMING  
6 LICENSEE TO OPERATE FOR ANY PORTION OF ANY DAY AND TO SELL OR  
7 PROVIDE COMPLIMENTARY ALCOHOLIC BEVERAGES DURING ALL HOURS  
8 OF OPERATION BUT OTHERWISE REQUIRING ADHERENCE TO ALL  
9 ALCOHOL BEVERAGE CONTROL BOARD REGULATIONS; PROHIBITING  
10 PERSONS UNDER THE AGE OF TWENTY-ONE (21) TO ENGAGE IN CASINO  
11 GAMING; PERMITTING SHIPMENT OF GAMBLING DEVICES FOR PURPOSES  
12 OF FEDERAL LAW; RENDERING THE PROVISIONS OF THE AMENDMENT  
13 SEVERABLE; DECLARING INAPPLICABLE ALL STATE CONSTITUTIONAL  
14 PROVISIONS AND LAWS TO THE EXTENT THEY CONFLICT WITH THIS  
15 PROPOSAL BUT NOT OTHERWISE REPEALING, SUPERSEDING, AMENDING  
16 OR AFFECTING AMENDMENTS 84 (BINGO) AND 87 (STATEWIDE LOTTERY)  
17 TO THE ARKANSAS CONSTITUTION.