

Opinion No. 2012-042

April 9, 2012

Peter G. Kumpe, Legal Counsel  
Nancy Todd's Poker Palace  
c/o Williams and 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 popular name and ballot title for a proposed constitutional amendment. You have previously submitted a similar measure, which this office rejected due to ambiguities in the text of the proposal. *See* Op. Att'y Gen. No. 2012-032. 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

AN AMENDMENT AUTHORIZING NANCY TODD'S POKER PALACE AND ENTERTAINMENT VENUES, LLC TO LICENSE UP TO FOUR CASINOS, ONE EACH IN CRITTENDEN, FRANKLIN, MILLER, AND PULASKI COUNTIES; GRANTING NANCY TODD'S POKER PALACE, LLC THE RIGHT TO OPERATE TABLE GAMES IN PULASKI COUNTY; AND PROVIDING FOR REGULATION AND TAXATION OF CASINOS AND TABLE GAMES

Ballot Title

A CONSTITUTIONAL AMENDMENT AUTHORIZING AND DEFINING CASINO GAMING AND TABLE GAMES AND PROVIDING FOR THEIR LICENSING, TAXATION AND

REGULATION; PERMITTING 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 ONE LICENSE FOR TABLE GAMES IN PULASKI COUNTY AND CONFERRING IT UPON NANCY TODD'S POKER PALACE, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY; PROVIDING NANCY TODD'S POKER PALACE AND ENTERTAINMENT VENUES, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY HAVING COMMON OWNERSHIP WITH NANCY TODD'S POKER PALACE, LLC, THE SOLE AND EXCLUSIVE RIGHT FOR A PERIOD OF TWENTY (20) YEARS TO NEGOTIATE AGREEMENTS FOR AND TO AUTHORIZE CASINO GAMING LICENSES TO BE ISSUED BY THE ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION ("DFA"); PROVIDING THAT AFTER EACH TWENTY (20) YEAR PERIOD, DFA 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 AGREEMENTS BETWEEN THE APPOINTEE AND THE LICENSE HOLDER; ALLOWING THE APPOINTEE TO DIRECT DFA TO TERMINATE A CASINO GAMING LICENSE FOR MATERIAL BREACH OF THE LICENSING AGREEMENT BETWEEN THE APPOINTEE AND THE LICENSEE; AUTHORIZING DFA TO DETERMINE THE SUITABILITY OF A LICENSEE PURSUANT TO REGULATIONS CONSISTENT WITH NEVADA STATUTES, REGULATIONS AND RULES AND TO TERMINATE A CASINO GAMING LICENSE PRIOR TO EXPIRATION OF ITS TERM IF THE LICENSEE IS FOUND GUILTY OF A FELONY VIOLATIONS OF ARKANSAS OR FEDERAL LAW OR PURSUANT TO REGULATIONS ESTABLISHED BY DFA UNDER THIS AMENDMENT; LIMITING THE TERM OF ANY

CASINO GAMING LICENSE TO NINETY-NINE (99) YEARS; CONFERRING UPON DFA SUCH POWERS AND AUTHORITY NECESSARY TO CARRY OUT ITS OBLIGATIONS UNDER THIS AMENDMENT; REQUIRING DFA TO REGULATE CASINO GAMING PURSUANT TO REGULATIONS CONSISTENT 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 REGULATIONS 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) TWELVE PERCENT (12%) TO THE COUNTY IN WHICH THE CASINO GAMING LICENSEE OPERATES, BASED ON NET GAMING REVENUE FROM OPERATIONS IN THAT COUNTY; (II) TWENTY-FIVE PERCENT (25%) 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; (VII) EIGHTEEN PERCENT (18%) TO ALL COUNTIES WITH NO CASINO GAMING, BASED ON THEIR POPULATION ACCORDING TO THE MOST RECENT CENSUS, AND (VIII) FIVE PERCENT (5%) TO DFA TO PAY EXPENSES INCURRED IN CARRYING OUT ITS OBLIGATION UNDER THIS AMENDMENT; 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).

Before specifying the ambiguities referenced in the preceding paragraph, I will summarize what I consider various salient points in your measure that bear on the ambiguities set forth below:

- Section (1) of your proposal authorizes the conduct of “casino gaming,” as defined in subsection (2)(b), in Pulaski, Miller, Franklin and Crittenden Counties. This section characterizes the conduct of such gaming as “an appropriate land use” in these counties. Subsection (2)(a) defines a “casino” as a “facility operated by a general casino licensee in which casino gaming takes place.”
- Under your proposal, “casino gaming” is subject to licensure. The term “casino gaming license” is defined in subsection (2)(d) as meaning “a general casino license and a table game license.” Subsection (2)(e) defines a “general casino license” as “a license to operate a casino.” Subsection (4)(f) further authorizes the conduct in Pulaski County of “table games” as defined in subsection (2)(b). Subsection (2)(f) defines the term “table game license” as “a license to operate table games.” Subsection (4)(g)(i) provides that Nancy Todd's Poker Palace, LLC (“NTPP”) “shall have a right to receive one (1) table game license.”

- Only a limited number of licenses may be issued under your proposal. Subsection (4)(e) restricts to four the number of “general casino licenses” that may be in effect at any given time. Subsection (4)(f) further provides that only one “table game licensee” may operate in Pulaski County.
- With respect to the issuance and revocation of licenses, your measure provides as follows. Subsection (4)(a)(i) authorizes and directs the Arkansas Department of Finance and Administration (“DF&A”) by appointment to invest Nancy Todd’s Poker Palace and Entertainment Venues, LLC (“NTPPEV”) “with the sole and exclusive right to negotiate and authorize casino gaming licenses.” This subsection further provides that, upon NTPPEV’s exercise of this right, any authorized license “shall be issued” by DF&A. Subsection (4)(a)(ii) provides that NTPPEV’s appointment to negotiate and authorize licensing will run for a term of 20 years, subject to renewal by DF&A. Subsection (4)(b) authorizes NTPPEV or any subsequent DF&A appointee to negotiate with prospective licensees for the payment directly to the appointee of a fee “upon the issuance of any license authorized herein.” Subsection (4)(c) provides that any such “licensing agreement” may run for a term up to and including 99 years. Subsection (4)(d) provides that a licensee may be terminated only if (1) the licensee is found guilty of an Arkansas or federal felony or (2) if, after the licensee “materially breaches a licensing agreement,” the appointee directs DF&A to terminate the license. In the latter instance, DF&A is obligated to terminate the “casino gaming license” within 30 days following notice to the licensee.
- With respect to the role of DF&A in the process of licensing and regulation, your measure provides as follows. Subsection (3)(a)(i) provides that DF&A “shall regulate casino gaming in Arkansas pursuant to regulations consistent with Nevada statutes, regulations and rules, to the extent such law does not frustrate the purpose of or is not otherwise inconsistent with this Amendment.” Section (4)(a)(i) further provides that DF&A “shall determine the suitability of each casino gaming licensee pursuant to regulations consistent

with Nevada statutes, regulations and rules.” Subsection (3)(b) provides that “neither the General Assembly nor any political subdivision of this State shall enact any legislation, rule or regulation limiting casino gaming as authorized in this Amendment.”

Against this backdrop, I refer to the following ambiguities:

1. Subsection (1)(a), which designates “casino gaming” as “an appropriate land use” in four designated counties, is ambiguous in that it fails to specify whether such use would be appropriate in any location a licensee selects or whether locations are subject to local control through such means as zoning regulations. Although subsection (3)(b) provides that “neither the General Assembly nor any political subdivision of this State shall enact any legislation, rule or regulation limiting casino gaming as authorized in this Amendment,” your measure is ambiguous in that it remains unclear what *is* “authorized in this Amendment” regarding such issues as the size and location(s) of licensed establishments. Without clarification, I am unable to summarize your proposal in a ballot title.<sup>1</sup>
2. More generally, subsection (3)(b) of your measure is ambiguous in that it is unclear what is meant by the proscription against any state or local controls “limiting casino gaming as authorized in this Amendment.” As noted below, your measure considered as a whole is confusing regarding the extent of regulatory control to be exercised by NTPPEV, on the one hand, and indirectly by Nevada authorities, on the other. This confusion renders it difficult to determine what regulations might be required by state or local officials to effect whatever ends might be contemplated in your measure. This difficulty is only aggravated by the inherent vagueness of the proscription against “limiting casino gaming” – a phrase that might be interpreted as precluding only some or all regulations located across a spectrum ranging from an outright ban

---

<sup>1</sup> I must note that the objection just raised is the same as one raised in my response to your previous submission. Please be aware that this office cannot address on multiple occasions the unexplained resubmission of provisions already rejected as ambiguous.

on gaming to the most minor controls on operations. Your measure, in short, fails sufficiently to address what substantive role, if any, state and local legislative and regulatory authorities will perform. Without clarification on this point, I am unable to summarize your proposal in a ballot title.

3. Subsection (1)(a) is further ambiguous in that it is unclear whether it would authorize the operation of establishments containing only table games in all four of the designated counties. Under the definition of "casino gaming" set forth in subsection (2)(c), "table games" are a subset of "casino gaming," meaning that table-game operations are presumably authorized in four counties under subsection (1)(a). However, subsection (4)(f)(i) provides that "table game licensees are permitted to operate only in Pulaski County." Subsection (4)(f)(ii) further provides that "[n]o more than one (1) table game licensee shall operate in Pulaski County." In light of this provision, it is unclear whether a "general casino licensee" could operate an establishment that contains only table games in a county other than Pulaski County. It is further unclear whether more than one operator could open an establishment devoted exclusively to table games in Pulaski County. Without clarification, I am unable to summarize your proposal in a ballot title.
4. Subsection (2)(e) of your measure defines the term "general casino license" as meaning "a license to operate a casino." This definition is ambiguous in that it is unclear whether the term "a casino" refers to a single "casino" or whether it authorizes the holder to operate any number of establishments that fall under the single designation "casino." This ambiguity extends to the provision of subsection (4)(e), which authorizes the issuance of four "general casino licenses" and designates that only one "general casino licensee" may operate in any one county at a given time. Left unclear is whether the referenced licensee may operate more than one establishment within his assigned territory. Although subsection (3)(d) refers in the singular to "*the* facility in which casino gaming takes place" (emphasis added), this reference might be either to a single authorized facility or to any one of several possibly authorized

facilities within the assigned territory. Without clarification, I am unable to summarize your proposal in a ballot title.

5. The definition in subsection (2)(f) of "table game license" as "a license to operate table games" is similarly ambiguous, in that it leaves unresolved whether a licensee may operate only one or more than one establishment within his assigned territory. The ambiguity is not resolved by subsection (4)(f)(ii), which provides only that "[n]o more than one (1) table game licensee shall operate in Pulaski County." Without clarification, I am unable to summarize your proposal in a ballot title.
6. Your measure is further ambiguous in that it is unclear whether the four general casino licenses authorized in subsection (4)(e)(i) might be held by the same entity. A voter might well have reasonable ground for reflection if it proves to be the case that a single entity might be granted monopoly control over casino gaming in the four counties authorized for a possibly renewable term running 99 years. Without clarification regarding whether this possibility exists, I cannot summarize your proposal in a ballot title.
7. Your measure is further ambiguous in that it is at most implied, rather than clearly stated, that the territorial scope of a general casino license is always only one of the four counties referenced in subsection (1)(a). Moreover, even assuming the territorial scope of a license is restricted to a single county, it is unclear whether a single entity might obtain an exclusive license to control casino gambling in each of the four counties. Without clarification on these points, I cannot summarize your proposal in a ballot title.
8. It is further unclear whether you intend in your measure constitutionally to grant NTPP only an entitlement to a table games license, thereby excluding it from further applying for a general casino license. Without clarification on this point, I cannot summarize your proposal in a ballot title.

9. Your measure is further ambiguous in that the role of NTPPEV in issuing licenses to NTPP is left unclear. Section (4)(a)(i) of your measure affords NTPPEV what appears wide discretion within certain parameters to grant licenses to any applicants for licensure. Subsection (4)(g), however, might be read as foreclosing altogether any exercise of discretion by NTPPEV with regard to the issuance of a table license to NTPP. Without clarification regarding the relationship between these provisions, I cannot summarize your proposal in a ballot title.
10. Your measure is further ambiguous in that it specifies no term during which NTPP must either exercise its entitlement to receive a table games license or relinquish that entitlement in favor of another applicant. Without clarification on this point, I cannot summarize your proposal in a ballot title.
11. Your measure is further ambiguous in that it fails to indicate whether NTPP's entitlement to hold a table games license pursuant to subsection (4)(g)(i) is subject to any temporal restrictions. Subsection (4)(c) provides that "[t]he term of any licensing agreement authorized by this Amendment *shall not exceed* ninety-nine (99) years." (Emphasis added.) It is unclear whether this potential time restriction applies to NTPP, which is apparently afforded an absolute entitlement to a license. It is further unclear whether NTPP is entitled to a renewal of its license upon demand. Indeed, it is unclear whether NTPPEV has any discretion to set the terms of NTPP's licensure pursuant to any negotiated "licensing agreement" of the sort referenced in subsection (4)(c). Without clarification on these points, I cannot summarize your proposal in a ballot title.
12. Your measure is further ambiguous in that it is unclear whether *any* licensing agreement is renewable. It is further unclear whether a licensee whose license has expired or been revoked is eligible to reapply. Without clarification on these points, I cannot summarize your proposal in a ballot title.

13. Subsection (4)(d) of your measure provides in pertinent part that NTPPEV or another DF&A "appointee" may direct DF&A to terminate a "casino gaming license" if, *inter alia*, the licensee "materially breaches a licensing agreement." This provision is ambiguous in that it is unclear who will determine that a "material breach" of the licensing agreement has occurred. Without clarification on this point, I cannot summarize your proposal in a ballot title.
14. Subsection (4)(d) further provides that DF&A will terminate a license based upon a "material breach" at any time "within thirty (30) calendar days after giving notice to the affected licensee." This provision is ambiguous in that it is unclear what purpose, if any, the notice is intended to serve. Your measure contains no provisions addressing what right, if any, a license holder has to appeal from a determination, however made, that it has "materially breached" the "licensing agreement." Without clarification on these points, I cannot summarize your proposal in a ballot title.
15. Given that the regulatory scheme contemplated in your measure would appear to be exhaustive, it is unclear what terms other than the cost of a license could possibly be negotiated with respect to any "licensing agreement" of the sort referenced in subsections (4)(a)(i) and (4)(c). Your measure contemplates that NTPPEV will negotiate such terms and, pursuant to subsection (4)(b), receive a fee therefor – a fee that, for unexplained reasons, may apparently vary from applicant to applicant "on a basis determined by negotiations" between NTPPEV and the applicant. Given the controlling influence over gaming activities of Nevada law as applied by DF&A, *see* subsections (3)(a)(i) and (4)(a)(i), it is unclear what "licensing agreement" provisions, other than the amount of NTPPEV's fee, would remain for NTPPEV and an applicant to "negotiate" as a basis for NTPPEV's ordering DF&A to issue a license. Without clarification, I am unable to summarize this proposed arrangement.

16. Your measure is further ambiguous with respect to the role that DF&A will play in the process of issuing licenses. Subsection (4)(a)(i) locates in NTPPEV “the sole and exclusive right to . . . authorize casino gaming licenses” and provides that “casino gaming licenses . . . shall be issued” by DF&A upon NTPPEV’s directive. However, this same subsection appears to mitigate this apparently absolute location of licensing authority in NTPPEV by providing as follows: “In connection with such issuance, the Arkansas Department of Finance and Administration shall determine the suitability of each casino gaming licensee pursuant to regulations consistent with Nevada statutes, regulations and rules.” Given these provisions, it is unclear whether DF&A might trump NTPPEV’s “sole and exclusive” licensing authority by making some preliminary determination of a candidate’s fitness under unspecified Nevada laws and regulations. Without clarification on this point, I am unable to summarize your proposal in a ballot title.
  
17. Your measure is further ambiguous regarding the extent to which Nevada law will restrict DF&A’s regulatory authority. Subsection (3)(a)(i) provides that DF&A “shall regulate casino gaming in Arkansas pursuant to regulations consistent with Nevada statutes, regulations and rules, to the extent such law does not frustrate the purpose of or is not otherwise inconsistent with this Amendment.” Subsection (3)(a)(ii) further purports to grant DF&A any “power necessary to carry out its obligations under this Amendment.” It is unclear, however, precisely what obligations DF&A has under your measure.

With respect to subsection (3)(a)(i), it is far from self-evident what sorts of legal restrictions, whether arising from Arkansas or Nevada law, might be deemed to “frustrate the purpose of” your measure. Given the ambiguities that inhere in your measure, determining its “purpose” is a vain enterprise, rendering it impossible to summarize in a ballot title the restriction on regulation you mean to impose. It is further unclear under subsection (3)(a)(i) whether if Nevada regulations are deemed to “frustrate the purpose” of your measure, Arkansas authorities will be free to impose their own regulations,

presumably consistent with the measure's "purpose." It is further unclear what entity will determine whether a "frustration" has occurred of whatever "purpose" your measure may be designed to achieve. Simply put, the standard set forth in this subsection is too nebulous to allow of summation in a ballot title.

Moreover, with respect to this same subsection, it is unclear what it means to suggest that Arkansas regulations will be "consistent" with Nevada law. Your measure provides no guidance regarding such crucial issues as whether "consistent" regulation must directly track Nevada law; who will determine whether DF&A is complying with this directive; whether Arkansas law is designed to track only current Nevada law or Nevada law as it morphs indefinitely over time; and whether DF&A or the Arkansas legislature might, without offending the state constitution, tailor Arkansas law to suit Arkansas needs.

In addition, even if your measure clearly indicated the extent to which DF&A would be bound by Nevada law, which it does not, the hurdle would remain of communicating to the voter in a ballot title what pertinent Nevada law provides. The average voter cannot be expected to know the substance of Nevada law with regard to gaming.

Finally, assuming, as seems likely, that Nevada law is relatively comprehensive in its regulation of its long-established gaming industry, a question exists whether your measure charges DF&A with anything more than a token ministerial authority. Compounding this concern is the fact that NTPPEV, by virtue of its "sole and exclusive right" to negotiate "licensing agreements," necessarily exerts an independent and indeterminate regulatory power. In both of these regards, it is unclear whether the reference in subsection (3)(a)(ii) to DF&A's "obligations under this Amendment" betokens anything more than the enforcement of a foreign jurisdiction's laws and/or of NTPPEV's directives.

Without clarification on these points, I am unable to summarize your proposal in a ballot title.

The ambiguities and omissions referenced above are not minor. I feel compelled to note in this regard that amending the constitution of a sovereign state is a grave enterprise not to be undertaken lightly. I am not suggesting that you are foreclosed from pursuing this effort, although I must remind you of your obligation to take care in crafting your measure. Once tightened, this knot will prove difficult to untie, requiring no less than another constitutional amendment, with all its attendant procedural hurdles.<sup>2</sup>

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). 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

---

<sup>2</sup> *See Arkansas Game and Fish Commission v. Edgmon*, 218 Ark. 207, 211, 235 S.W.2d 554 (1951) (noting that the legislature is without power to repeal any aspect of a constitutional amendment).

Peter G. Kumpe, Legal Counsel  
Nancy Todd's Poker Palace  
Opinion No. 2012-042  
Page 16

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)    Casino gaming is hereby authorized and shall be lawful and shall be an  
6    appropriate land use in the following counties: Pulaski County, Miller County, Franklin County,  
7    and Crittenden County.

8            (b)    Except as herein specifically provided, casino gaming is prohibited.

9    **Section 2:     Definitions**

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

12           (b)    The term “table games” means games that are played on a table and are operated  
13    by one or more live dealers, a croupier, or poker dealer and include but are not limited to  
14    Baccarat, Blackjack, Crazy 4 Poker, Craps, Roulette, Pai Gow, Pai Gow Poker, Let It Ride™,  
15    Stud Poker, 3 Card Poker, Casino War, Ultimate Texas Hold'em Poker, Big Six.

16           (c)    The term “casino gaming” means any game played with cards, dice, equipment,  
17    or any mechanical, electromechanical, or electronic device, or machine for money, property,  
18    checks, credit or any representative value, including, without limiting the generality of the  
19    foregoing, blackjack, poker, keno, baccarat, roulette, craps, slot machines, video poker or any  
20    other gaming, percentage game or any other game or device and includes “table games” as  
21    defined herein.

22           (d)    The term “casino gaming license” means a general casino license and a table  
23    game license.

24           (e)    The term “general casino license” means a license to operate a casino.

1 (f) The term “table game license” means a license to operate table games.

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

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

6 **Section 3: Regulation**

7 (a)(i) The Arkansas Department of Finance and Administration shall regulate casino  
8 gaming in Arkansas pursuant to regulations consistent with Nevada statutes, regulations and  
9 rules, to the extent such law does not frustrate the purpose of or is not otherwise inconsistent  
10 with this Amendment.

11 (ii) To the extent that the Arkansas Department of Finance and Administration lacks  
12 power necessary to carry out its obligations under this Amendment, this Amendment shall confer  
13 upon the Arkansas Department of Finance and Administration all such necessary additional  
14 power and authority.

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

18 (c) The games specified herein under the definition of “casino gaming” shall not be  
19 classified as a lottery or subject to any regulations under Article 19 as amended by Amendment  
20 87 to the Arkansas Constitution.

21 (d) Casino gaming licensees are subject to and shall comply with the rules and  
22 regulations of The Alcohol Beverage Control Board in the sale of alcohol beverages, beer, and  
23 wine. Notwithstanding any law, rule, or regulation to the contrary, all casino gaming licensees

1 shall be permitted to sell or to provide complimentary alcoholic beverages inside the facility in  
2 which casino gaming takes place during all hours they operate.

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

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

7 **Section 4: Licensing**

8 (a)(i) Within thirty (30) calendar days of the Effective Date, the Arkansas Department  
9 of Finance and Administration shall appoint Nancy Todd's Poker Palace and Entertainment  
10 Venues, LLC, an Arkansas limited liability company, with the sole and exclusive right to  
11 negotiate and authorize casino gaming licenses, which shall be issued by the Arkansas  
12 Department of Finance and Administration. In connection with such issuance, the Arkansas  
13 Department of Finance and Administration shall determine the suitability of each casino gaming  
14 licensee pursuant to regulations consistent with Nevada statutes, regulations and rules.

15 (ii) The appointment set forth in subsection (a)(i) shall be for a period of  
16 twenty (20) years. After the end of each twenty (20) year appointment period, the Arkansas  
17 Department of Finance and Administration shall either renew the appointment or appoint a  
18 different entity to negotiate and authorize casino gaming licenses.

19 (iii) If, prior to the end of any twenty (20) year appointment period, an  
20 appointee vacates or abandons its appointment or is unable or unwilling for any reason to serve  
21 as an appointee, the Arkansas Department of Finance and Administration shall appoint a  
22 different entity to negotiate and authorize casino gaming licenses.

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

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

6           (d) The Arkansas Department of Finance and Administration shall be authorized to  
7 terminate a casino gaming license prior to expiration of its term if a casino gaming licensee is  
8 found guilty of a felony violation of Arkansas or federal law, or in accordance with such  
9 regulations as established by the Arkansas Department of Finance and Administration pursuant  
10 to Section 3 herein. If a casino gaming licensee materially breaches a licensing agreement  
11 between it and the entity receiving an appointment pursuant to subsection (a), the appointee may  
12 direct the Arkansas Department of Finance and Administration to terminate the casino gaming  
13 license, and the Arkansas Department of Finance and Administration shall terminate the casino  
14 gaming license within thirty (30) calendar days after giving notice to the affected licensee.

15           (e)(i) No more than four (4) general casino licenses may be issued and outstanding at  
16 any one time.

17           (e)(ii) No more than one (1) general casino licensee shall operate in any one  
18 county.

19           (f)(i) Table game licensees are permitted to operate only in Pulaski County.

20           (ii) No more than one (1) table game licensee shall operate in Pulaski County.

21           (g)(i) Nancy Todd's Poker Palace, LLC, an Arkansas limited liability company, shall  
22 have a right to receive one (1) table game license.

1 (g)(ii) If Nancy Todd's Poker Palace, LLC elects not to accept a table game  
2 license pursuant to this subsection, or if Nancy Todd's Poker Palace, LLC abandons its table  
3 game license or has its table game license revoked, Nancy Todd's Poker Palace and  
4 Entertainment Venues, LLC or another appointee receiving an appointment pursuant to section  
5 4(a) shall have the right to negotiate with and authorize a different entity to receive a table game  
6 license.

7 **Section 5: Taxation**

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

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

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

- 17 (i) Twenty-five percent (25%) to fund all public schools in Arkansas;
- 18 (ii) Sixteen percent (16%) to the Arkansas Department of Veteran Affairs;
- 19 (iii) Eight percent (8%) to the Arkansas Children's Hospital;
- 20 (iv) Eight percent (8%) to the Medicaid Program Trust Fund;
- 21 (v) Eight percent (8%) to a senior care prescription drug benefit program.

1 (vi) Twelve percent (12%) to the counties in which a casino gaming licensee is  
2 located and operating, with each county's share based on net gaming revenue arising from  
3 operations in that county.

4 (vii) Eighteen percent (18%) to all counties with no casino gaming, with each  
5 county's share determined by the percentage that its population bears to the total population of  
6 all such counties, as reported in the most recent United States Census.

7 (viii) Five percent (5%) to the Arkansas Department of Finance and  
8 Administration to be used to pay its expenses incurred in carrying out its obligations under this  
9 Amendment, with any unutilized amounts to be paid as scholarships in accordance with the  
10 Arkansas Scholarship Lottery Act.

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

12 All shipments of gambling devices, including slot machines, into any county of this State  
13 within which casino gaming is authorized, the registering, recording, and labeling of which has  
14 been duly performed by the manufacturer or dealer thereof in accordance with Section 3 and 4 of  
15 that certain Act of Congress of the United States entitled "An act to prohibit transportation of  
16 gambling devices in interstate and foreign commerce," approved January 2, 1951, being ch.  
17 1194, 64 Stat. 1134, and also designated as 15 U.S.C. Sections 1171-1178, shall be deemed legal  
18 shipments thereof into any such county of this State within which casino gaming is authorized.

19 **Section 7: Severability**

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

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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

(POPULAR NAME)

AN AMENDMENT AUTHORIZING NANCY TODD’S POKER PALACE AND ENTERTAINMENT VENUES, LLC TO LICENSE UP TO FOUR CASINOS, ONE EACH IN CRITTENDEN, FRANKLIN, MILLER, AND PULASKI COUNTIES; GRANTING NANCY TODD’S POKER PALACE, LLC THE RIGHT TO OPERATE TABLE GAMES IN PULASKI COUNTY; AND PROVIDING FOR REGULATION AND TAXATION OF CASINOS AND TABLE GAMES.

(BALLOT TITLE)

A CONSTITUTIONAL AMENDMENT AUTHORIZING AND DEFINING CASINO GAMING AND TABLE GAMES AND PROVIDING FOR THEIR LICENSING, TAXATION AND REGULATION; PERMITTING 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 ONE LICENSE FOR TABLE GAMES IN PULASKI COUNTY AND CONFERRING IT UPON NANCY TODD’S POKER PALACE, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY; PROVIDING NANCY TODD’S POKER PALACE AND ENTERTAINMENT VENUES, LLC, AN ARKANSAS LIMITED LIABILITY COMPANY HAVING COMMON OWNERSHIP WITH NANCY TODD’S POKER PALACE, LLC, THE SOLE AND EXCLUSIVE

1 RIGHT FOR A PERIOD OF TWENTY (20) YEARS TO NEGOTIATE AGREEMENTS  
2 FOR AND TO AUTHORIZE CASINO GAMING LICENSES TO BE ISSUED BY THE  
3 ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION (“DFA”);  
4 PROVIDING THAT AFTER EACH TWENTY (20) YEAR PERIOD, DFA EITHER  
5 RENEW THE APPOINTMENT OR APPOINT A DIFFERENT ENTITY TO  
6 NEGOTIATE AND AUTHORIZE CASINO GAMING LICENSES; AUTHORIZING  
7 SUCH APPOINTEE TO COLLECT A FEE UPON THE ISSUANCE OF A CASINO  
8 GAMING LICENSE AND THEREAFTER BASED ON AGREEMENTS BETWEEN  
9 THE APPOINTEE AND THE LICENSE HOLDER; ALLOWING THE APPOINTEE  
10 TO DIRECT DFA TO TERMINATE A CASINO GAMING LICENSE FOR  
11 MATERIAL BREACH OF THE LICENSING AGREEMENT BETWEEN THE  
12 APPOINTEE AND THE LICENSEE; AUTHORIZING DFA TO DETERMINE THE  
13 SUITABILITY OF A LICENSEE PURSUANT TO REGULATIONS CONSISTENT  
14 WITH NEVADA STATUTES, REGULATIONS AND RULES AND TO TERMINATE  
15 A CASINO GAMING LICENSE PRIOR TO EXPIRATION OF ITS TERM IF THE  
16 LICENSEE IS FOUND GUILTY OF A FELONY VIOLATION OF ARKANSAS OR  
17 FEDERAL LAW OR PURSUANT TO REGULATIONS ESTABLISHED BY DFA  
18 UNDER THIS AMENDMENT; LIMITING THE TERM OF ANY CASINO GAMING  
19 LICENSE TO NINETY-NINE (99) YEARS; CONFERRING UPON DFA SUCH  
20 POWERS AND AUTHORITY NECESSARY TO CARRY OUT ITS OBLIGATIONS  
21 UNDER THIS AMENDMENT; REQUIRING DFA TO REGULATE CASINO  
22 GAMING PURSUANT TO REGULATIONS CONSISTENT WITH NEVADA  
23 STATUTES, REGULATIONS AND RULES, TO THE EXTENT SUCH LAW DOES

1 NOT FRUSTRATE THE PURPOSE OF OR IS NOT INCONSISTENT WITH THIS  
2 AMENDMENT; PROHIBITING THE GENERAL ASSEMBLY AND ANY  
3 POLITICAL SUBDIVISION OF THE STATE FROM ENACTING ANY  
4 LEGISLATION, RULE OR REGULATION LIMITING CASINO GAMING;  
5 PROVIDING THAT A CASINO GAMING LICENSEE SHALL BE SUBJECT TO  
6 TAXES LEVIED BY THE TAXING JURISDICTION WHERE A CASINO GAMING  
7 LICENSEE IS OPERATING AT THE SAME RATE AS FOR BUSINESSES  
8 GENERALLY AND THAT THE NET GAMING REVENUE (AS DEFINED) OF A  
9 CASINO GAMING LICENSEE BE SUBJECT TO AN ADDITIONAL TAX OF  
10 TWELVE AND ONE-HALF PERCENT (12.5%), WITH THE ADDITIONAL TAX  
11 PROCEEDS DISTRIBUTED: (i) TWELVE PERCENT (12%) TO THE COUNTY IN  
12 WHICH THE CASINO GAMING LICENSEE OPERATES, BASED ON NET  
13 GAMING REVENUE FROM OPERATIONS IN THAT COUNTY; (ii) TWENTY-FIVE  
14 PERCENT (25%) TO FUND PUBLIC SCHOOLS IN ARKANSAS; (iii) SIXTEEN  
15 PERCENT (16%) TO THE ARKANSAS DEPARTMENT OF VETERAN AFFAIRS;  
16 (iv) EIGHT PERCENT (8%) TO THE ARKANSAS CHILDREN'S HOSPITAL; (v)  
17 EIGHT PERCENT (8%) TO THE MEDICAID PROGRAM TRUST FUND; (vi) EIGHT  
18 PERCENT (8%) TO A SENIOR CARE PRESCRIPTION DRUG BENEFIT  
19 PROGRAM; (vii) EIGHTEEN PERCENT (18%) TO ALL COUNTIES WITH NO  
20 CASINO GAMING, BASED ON THEIR POPULATION ACCORDING TO THE  
21 MOST RECENT CENSUS, AND (viii) FIVE PERCENT (5%) TO DFA TO PAY  
22 EXPENSES INCURRED IN CARRYING OUT ITS OBLIGATIONS UNDER THIS  
23 AMENDMENT; PROHIBITING THE GENERAL ASSEMBLY OR ANY OTHER

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

15