



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-049

May 19, 2014

David A. Couch
Attorney at Law
1501 North University, Suite 228
Little Rock, Arkansas 72207

Dear Mr. Couch:

This is in response to your request for certification, pursuant to A.C.A. § 7-9-107 (Repl. 2013), of the popular name and ballot title for a proposed constitutional amendment. Three similar measures were rejected due to ambiguities in the text of the proposals. *See* Op. Att’y Gen. 2014-042, 2014-039 and 2014-030. You have made changes to the text of the measure and submitted your proposed popular name and ballot title, as follows:

Popular Name

THE ARKANSAS ALCOHOLIC BEVERAGE AMENDMENT

Ballot Title

An amendment proposed by the people to the Arkansas Constitution to provide, effective July 1, 2015, that the manufacture, sale, distribution and transportation of intoxicating liquors is permitted in every geographic area of each and every county of this state; that for purposes of the amendment, “intoxicating liquors” is defined as any beverage containing more than one-half of one percent of alcohol by weight; that the manufacture, sale, distribution and transportation of intoxicating liquors may be regulated but not prohibited by the General Assembly; and, that all laws, specifically including laws

providing for a local option election (wet-dry election) to determine whether intoxicating liquors may be sold or not sold, in conflict with this amendment are repealed to the extent they conflict with this amendment.

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, consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to law,”¹ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities. As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposed amendment.

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.²

¹ See *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

² 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.³ 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.⁴ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁵

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.⁶ 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."⁷ 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.⁸ 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.⁹ The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.¹⁰ The ballot title

³ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁴ *E.g.*, *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958).

⁵ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁶ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

⁷ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

⁸ *Id.* at 288, 884 S.W.2d at 944.

⁹ *Id.* 293, 884 S.W.2d at 946-47.

¹⁰ *Id.* at 284, 884 S.W.2d at 942.

must be honest and impartial,¹¹ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹²

Furthermore, the Court has 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.”¹³ The Court concluded that “internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.”¹⁴ 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.

Applying the above precepts, it is my conclusion that your proposed popular name is sufficient but that a more suitable, complete, and correct ballot title should be substituted for that proposed. The following is hereby certified in order to ensure that, when construed together, the popular name and ballot title accurately set forth the purpose of the proposed amendment:

Popular Name

THE ARKANSAS ALCOHOLIC BEVERAGE AMENDMENT

Ballot Title

A proposed amendment to the Arkansas Constitution to provide that, effective July 1, 2015, the manufacture, sale, distribution and transportation of intoxicating liquors is lawful within the entire

¹¹ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹² *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 245, 884 S.W.2d 605, 607 (1994) (internal quotations omitted).

¹³ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 383 (2000).

¹⁴ *Id.*

geographic area of each and every county of this state; that “intoxicating liquors” is defined for purposes of the amendment as any beverage containing more than one-half of one percent (0.5%) of alcohol by weight; that the manufacture, sale, distribution and transportation of intoxicating liquors may be regulated, but not prohibited, by the General Assembly; and that all laws which conflict with the amendment, including laws providing for a local option election (wet-dry election) to determine whether intoxicating liquors may be sold or not sold, are repealed to the extent that they conflict with the amendment.

In my view, the purpose of your proposed measure is sufficiently stated in the above revised ballot title to satisfy this office’s mandate under A.C.A. § 7-9-107.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin McDaniel". The signature is written in a cursive, flowing style.

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosures

Popular Name

The Arkansas Alcoholic Beverage Amendment

Ballot Title

AN AMENDMENT PROPOSED BY THE PEOPLE TO THE ARKANSAS CONSTITUTION TO PROVIDE, EFFECTIVE JULY 1, 2015, THAT THE MANUFACTURE, SALE, DISTRIBUTION AND TRANSPORTATION OF INTOXICATING LIQUORS IS PERMITTED IN EVERY GEOGRAPHIC AREA OF EACH AND EVERY COUNTY OF THIS STATE; THAT FOR PURPOSES OF THIS AMENDMENT, "INTOXICATING LIQUORS" IS DEFINED AS ANY BEVERAGE CONTAINING MORE THAN ONE-HALF OF ONE PERCENT OF ALCOHOL BY WEIGHT; THAT THE MANUFACTURE, SALE, DISTRIBUTION AND TRANSPORTATION OF INTOXICATING LIQUORS MAY BE REGULATED BUT NOT PROHIBITED BY THE GENERAL ASSEMBLY; AND, THAT ALL LAWS, SPECIFICALLY INCLUDING LAWS PROVIDING FOR A LOCAL OPTION ELECTION (WET-DRY ELECTION) TO DETERMINE WHETHER INTOXICATING LIQUORS MAY BE SOLD OR NOT SOLD, IN CONFLICT WITH THIS AMENDMENT ARE REPEALED TO THE EXTENT THEY CONFLICT WITH THIS AMENDMENT.

- Section 1. This is an Amendment to the Arkansas Constitution that shall be called "The Arkansas Alcoholic Beverage Amendment."
- Section 2. Effective July 1, 2015, the manufacture, sale, distribution and transportation of intoxicating liquors is lawful within the entire geographic area of each and every county of this State.
- Section 3. "Intoxicating liquors" is defined for purposes of this amendment as any beverage containing more than one-half of one percent (0.5%) of alcohol by weight.
- Section 4. The manufacture, sale, distribution and transportation of intoxicating liquors may be regulated, but not prohibited, by the General Assembly.
- Section 5. All laws which conflict with this amendment, including laws providing for a local option election (wet-dry election) to determine whether intoxicating liquors may be sold or not sold, are hereby repealed to the extent that they conflict with this amendment.