



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-014

February 6, 2015

David A. Couch
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 following popular name and ballot title for a proposed initiated act:

Popular Name

An Act Concerning Local Option (Wet-Dry) Elections

Ballot Title

A proposed act to change the number of signatures required to call a local option (wet-dry) election from 38% of the qualified electors (registered voters) in the county, township, municipality, ward or precinct to 25% of the total number of votes cast for the office of governor in the last preceding general election in the county, township, municipality, ward or precinct.

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, if practicable, substitute and certify a more suitable and correct popular name and ballot title. Or, if the proposed popular name and ballot title are sufficiently misleading, the Attorney General 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 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.²

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

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).

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).

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 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.

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.

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.*

Having analyzed your proposed act, 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 an ambiguity in the *text* of your proposed measure. Certain 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 ambiguity. 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).

The ambiguity pertains to qualified signers on petitions for local option elections under your proposed initiated act. This aspect of your proposal is not summarized in the ballot title you have submitted. Your ballot title accurately summarizes the proposed change regarding the basis for computing the number of signatures required to call a local option election. But it contains no information concerning what signatures would count in testing the sufficiency of a petition for a local option election.

The current law requires that petitions be signed by a 38% of “qualified electors.”¹⁵ The term “qualified elector” is defined in the Election Code.¹⁶ Under your proposed act, petitions must be signed by 25% of “legal voters.” The term “legal voters” is undefined under your measure. Nor does state law define the term.¹⁷ It was formerly defined under the general election law governing initiatives and referenda.¹⁸ But a 2013 amendment to that body of law replaced the term “legal voter” with “registered voter.”¹⁹

¹⁵ A.C.A. § 3-8-205(a)(1) (Supp. 2013).

¹⁶ A.C.A. § 7-1-101(32) (Supp. 2013) (“Qualified elector means a person who holds the qualifications of an elector and who is registered pursuant to Arkansas Constitution, Amendment 51.”). *See also Allred v. McLoud*, 343 Ark. 35, 40, 31 S.W.3d 836 (2000).

¹⁷ Article 5, section 1 of the Arkansas Constitution provides that state-wide and local initiative petitions must be signed by “legal voters,” but does not define “legal voter.” In any event, a local option petition is not an initiative petition within the meaning of Ark. Const. art. 5, § 1. *Armstrong v. Sturch*, 235 Ark. 571, 361 S.W.2d 77 (1962); *Yarbrough v. Beardon*, 206 Ark. 553, 177 S.W.2d 38 (1944).

¹⁸ A.C.A. § 7-9-101(5) (Repl. 2011) (“Legal voter” means a person who is registered at the time of signing the petition pursuant to Arkansas Constitution, Amendment 51.”).

¹⁹ A.C.A. § 7-9-101(9) (Supp. 2013) (codification of Acts 2013, No. 1413, § 2).

Some uncertainty thus arises regarding which signatures would count in testing the sufficiency of a petition following the changes proposed by your measure. The issue of qualified signatures is undoubtedly a significant matter for the voters' consideration. Without clarification of the above ambiguity, however, this significant point cannot be accurately summarized for the voters in a ballot title.

My office in the certification of ballot titles and popular names does not address 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.

Based on what has been submitted, my statutory duty is to reject your proposed ballot title for the foregoing reason and instruct you to redesign the proposed measure and ballot title.²⁰ You may resubmit your proposed act along with a proposed popular name and ballot title at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Rutledge', is written over a horizontal line.

LESLIE RUTLEDGE
Attorney General

LR/cyh

Enclosure

²⁰ A.C.A. § 7-9-107(c).

Popular Name

AN ACT CONCERNING LOCAL OPTION (WET-DRY) ELECTIONS

Ballot Title

A PROPOSED ACT TO CHANGE THE NUMBER OF SIGNATURES REQUIRED TO CALL A LOCAL OPTION (WET-DRY) ELECTION FROM 38% OF THE QUALIFIED ELECTORS (REGISTERED VOTERS) IN THE COUNTY, TOWNSHIP, MUNICIPALITY, WARD OR PRECINCT TO 25% OF THE TOTAL NUMBER OF VOTES CAST FOR THE OFFICE OF GOVERNOR IN THE LAST PRECEDING GENERAL ELECTION IN THE COUNTY, TOWNSHIP, MUNICIPALITY, WARD OR PRECINCT.

Stricken language would be deleted from and underlined language would be added to the law as it existed.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS:

§3-8-205 Determination of sufficiency of petition -- Calling of election.

(a) (1) When ~~thirty eight percent (38%) of the qualified electors~~ twenty-five percent (25%) of the legal voters shall file petitions with the county clerk of any county within this state praying that an election be held in a designated county, township, municipality, ward, or precinct to determine whether or not licenses shall be granted for the manufacture or sale or the bartering, loaning, or giving away of intoxicating liquor within the designated territory, the county clerk within ten (10) days thereafter shall determine the sufficiency of the petition.

(2) ~~The total number of voters registered as certified by the county clerk to the Secretary of State by the first of June of each year pursuant to Arkansas Constitution, Amendment 51 shall be the basis upon which the number of signatures of qualified electors on petitions shall be computed.~~ The total number of votes cast for the office of Governor in the last preceding general election shall be the basis upon which the number of signatures of legal voters on petitions shall be computed.

(3) A person shall be a registered voter at the time of signing the petition.

(b) If it is found that ~~thirty eight percent (38%) of the qualified electors~~ twenty-five percent (25%) of the legal voters have signed the petition, the county clerk shall certify that finding to the county board of election commissioners, and the question shall be placed on the ballot in the county, township, municipality, ward, or precinct at the next biennial general election as provided in 3-8-101.