



**STATE OF ARKANSAS**  
**THE ATTORNEY GENERAL**  
**LESLIE RUTLEDGE**

Opinion No. 2015-026

March 30, 2015

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

Dear Mr. Couch:

**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.**

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 initiated act. You previously submitted similar measures, which this office rejected pursuant to section 7-9-107(c).<sup>1</sup> You have changed the text of your proposal and have now submitted the following popular name and ballot title for my certification:

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 in the county, township, municipality, ward or precinct to 20% of the qualified electors in the county, township, municipality, ward or precinct.

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<sup>1</sup> See Op. Att'y Gen. Nos. 2015-025; 2015-014.

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.

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,”<sup>2</sup> 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.**<sup>3</sup>

The popular name is primarily a useful legislative device.<sup>4</sup> 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.<sup>5</sup> The popular name is to be considered together with the ballot title in determining the ballot title’s sufficiency.<sup>6</sup>

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<sup>2</sup> 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).

<sup>3</sup> See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

<sup>4</sup> *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

<sup>5</sup> 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).

The ballot title must include an impartial summary of the proposed act that will give the voter a fair understanding of the issues presented.<sup>7</sup> 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.”<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.<sup>11</sup> The ballot title must be honest and impartial,<sup>12</sup> and it must convey an intelligible idea of the scope and significance of a proposed change in the law.<sup>13</sup>

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.”<sup>14</sup> 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.”<sup>15</sup> Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible

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<sup>6</sup> *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

<sup>7</sup> *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

<sup>8</sup> *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

<sup>9</sup> *Id.* at 288, 884 S.W.2d at 944.

<sup>10</sup> *Id.* 293, 884 S.W.2d at 946–47.

<sup>11</sup> *Id.* at 284, 884 S.W.2d at 942.

<sup>12</sup> *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

<sup>13</sup> *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 245, 884 S.W.2d 605, 607 (1994) (internal quotations omitted).

<sup>14</sup> *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 383 (2000).

<sup>15</sup> *Id.*

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 the popular name is sufficient as proposed 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 act:

Popular Name

AN ACT CONCERNING LOCAL OPTION (WET-DRY) ELECTIONS

Ballot Title

An act to reduce the number of signatures required to call a local election on the question of the manufacture or sale of alcoholic beverages from 38% of the qualified electors in the county, township, municipality, ward or precinct to 20% of the qualified electors in the county, township, municipality, ward or precinct.

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

Sincerely,

  
LESLIE RUTLEDGE  
Attorney General

LR/cyh

Enclosures

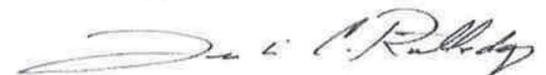
## Instructions to Canvassers and Signers

1. The Arkansas Constitution gives Arkansas citizens the power to (a) initiate legislation by petition of 8% of the legal voters or constitutional amendments by petition of 10% of legal voters, or (b) order the referendum against any general act or any item of an appropriation bill or measure passed by the General Assembly by petition of 6% of legal voters. A proposed measure must be submitted at a regular election; referendum petitions may be referred at special elections on petition of 15% of the registered voters. Any measure submitted to the people becomes law when approved by a majority of the votes cast on the measure.
2. Only registered voters may sign. All signatures must be in the signer's own handwriting and in the presence of the person circulating the petition. The petition should contain only the signatures of voters residing in a single county.
3. Printed name, date of birth, residence, city or town of residence, and date of signing must be given as an aid to verification. If a petition signer needs assistance with this information due to disability, another person may print the signer's information and that person shall sign and print their name in the margin of the petition.
4. Do not attach additional sheets to this petition unless they contain the full language of the petition. The signature section of the petition must be formatted as prescribed by the Secretary of State.
5. Pursuant to section 5-55-601(b) of the Arkansas Code, each of the following activities constitutes "petition fraud," which is a Class A misdemeanor and is punishable by a fine of up to \$1,000 and imprisonment for up to one year:

A person commits the offense of petition fraud:

- (1) If the person knowingly:
  - (A) Signs a name other than his or her name to a petition;
  - (B) Signs his or her name more than one (1) time to a petition; or
  - (C) Signs a petition when he or she is not legally entitled to sign the petition;
- (2) If the person acting as a canvasser, notary, sponsor as defined under § 7-9-101, or agent of a sponsor:
  - (A) Signs a name other than his or her own to a petition;
  - (B) Prints a name, address, or birth date other than his or her own to a petition unless the signor requires assistance due to disability and the person complies with § 7-9-103;
  - (C) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;
  - (D) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;
  - (E) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as a canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601; or
  - (F) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition;
- (3) If the person acting as a canvasser knowingly makes a false statement on a petition verification form; [or]  
\* \* \*
- (5) If the person acting as a sponsor files a petition or a part of a petition with the official charged with verifying the signatures knowing that the petition or part of the petition contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

The Attorney General is by law required to certify the sufficiency of the popular name and ballot title of all initiative or referendum petitions. This certification does not necessarily indicate the approval or disapproval of the contents thereof.



LESLIE RUTLEDGE  
Attorney General of the State of Arkansas

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 IN THE COUNTY, TOWNSHIP, MUNICIPALITY, WARD OR PRECINCT TO 20% OF THE QUALIFIED ELECTORS 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%)~~ twenty percent (20%) of the qualified electors 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.

(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%)~~ twenty percent (20%) of the qualified electors 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.