

Opinion No. 99-355

November 10, 1999

Mr. Barry Emigh
1720 Arrowhead Rd., Apt. O
North Little Rock, AR 72118

Dear Mr. Emigh:

You have requested certification, pursuant to A.C.A. § 7-9-107 (Repl. 1993), of the following popular name and ballot title for a proposed amendment to the Constitution of the State of Arkansas:

POPULAR NAME

PROVIDE THE PURCHASE PRICE OF PROPERTY TO BE THE ASSESSED VALUE NOT TO CHANGE; UNTIL, THE TITLE IS AGAIN TRANSFERRED

BALLOT TITLE

AMENDMENT TO PROVIDE THE PURCHASE PRICE OF REAL PROPERTY TO BE THE AD VALOREM ASSESSMENT OF REAL PROPERTY UPON TRANSFER OF REAL PROPERTY TITLE FOR THE PURPOSE OF TAXATION ON REAL PROPERTY AND THE ASSESSED VALUE ON THE PURCHASE PRICE SHALL NOT CHANGE; UNTIL, THE REAL PROPERTY TITLE IS AGAIN TRANSFERRED; TO PROVIDE FOR AN AD VALOREM REASSESSMENT OF REAL PROPERTY VALUE TO BE ASSESSED ON THE ACTUAL COST OF CONTRACTED WORK ON REAL PROPERTY REQUIRING AN ISSUED CONSTRUCTION PERMIT FROM A STATE OR LOCAL AUTHORITY; TO EXCLUDE REAL PROPERTY TITLED IN THE NAME OF A NON PROFIT

ORGANIZATION FROM THIS AMENDMENT; TO EXCLUDE REAL PROPERTY NOT TITLED IN THE NAME OF A PERSON OR PERSONS LIVING FROM THIS AMENDMENT; TO PROVIDE FOR THE REPEAL OF PRIOR CONSTITUTIONAL AND STATUTORY PROVISIONS INCONSISTENT WITH THIS AMENDMENT, AND TO PROVIDE SEVERABILITY

You have previously submitted popular names and ballot titles for similar proposed measures. I rejected those submissions on the grounds of certain ambiguities in the text of the proposed measures. *See* Ops. Att’y Gen. Nos. 99-337; 99-266. The popular name and ballot title under consideration here appear to be a resubmission of those that were rejected in Ops. Nos. 99-337 and 99-266.

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.

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. 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 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 measure. *See Arkansas Women’s Political Caucus v. Riviere*, 282 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 measure 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*, 310 Ark. 654, 841 S.W.2d 139 (1992). 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 measure, as well as your proposed popular name and ballot title under the above precepts, it is my conclusion that I must again reject both your proposed popular name and ballot title due to certain unresolved ambiguities in the *text* of your proposed measure. I cannot fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of these ambiguities. I am therefore unable at this time to substitute and certify a more suitable and correct ballot title under A.C.A. § 7-9-107(b).

The proposed measure contains various ambiguities. I will give examples of some specific areas of concern; however, it must be understood that my discussion of these areas of concern is not exhaustive.

The following ambiguities must be clarified in your measure before I can perform my statutory duty:

(1) Section Five of the proposed measure provides that property “that cannot be assessed on the value of the purchase price” is to be assessed “at an appraised market value.” It is unclear which property would be governed by this provision. Because the measure is to be self-executing, it is also unclear how it will be determined that any given piece of property “cannot be assessed on the value of the purchase price.” It is also unclear how this provision will interact with Section Two of the proposed measure, which provides that property can be reassessed only for the purpose of determining the cost of contracted work that was done on the property.

(2) Section Four of the proposed measure provides that property that is “not titled in the name of a person or persons living” is to be excluded from the provisions of the amendment. It is unclear, first, what property is to be governed by this provision, and whether such property would include property titled in the name of a corporation or other entity. Second, because of the general repealer clause of the proposed measure, it is unclear what law would govern such property. Finally, because the measure is to be self-executing, it is again unclear how it will be determined which property is to be governed by this provision.

Unless the foregoing ambiguities are resolved, I will be unable to summarize your proposed amendment effectively. I reiterate that I do not purport to have set out an exhaustive list of possible problems with the proposed measure. For this reason, I recommend that you consult with legal counsel of your choice, or with a person who is skilled in the drafting of legislation.

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*, 303 Ark. 418, 793 S.W.2d 34 (1990). 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 popular name and 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 issues discussed above, resubmit your proposed amendment, along with a new proposed popular name and ballot title, at your convenience. I anticipate that some changes or additions to your submitted ballot title may be necessary to reflect adequately the clarified language of the proposed amendment. I will be pleased to perform my statutory duties in this regard in a timely manner after resubmission.

Sincerely,

MARK PRYOR
Attorney General