TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2024-031

February 27, 2024

Mr. David E. Dinwiddie
8608 Princeton Pike
Pine Bluff, Arkansas 71602

Dear Mr. Dinwiddie:

I am writing in response to your request, made under A.C.A. § 7-9-107, that I certify the popular name and ballot title for a proposed initiated act.

My decision to certify or reject a popular name and ballot title is unrelated to my view of the proposed measure's merits. I am not authorized to consider the measure's merits when considering certification.

1. Request. Under A.C.A. § 7-9-107, you have asked me to certify the following popular name and ballot title for a proposed initiated act:

Popular Name

> A Bill to remove additional excise taxes on tobacco and tobacco products, other than those imposed by Tobacco Products Act of 1977.

Ballot Title

> A Bill to remove additional excise taxes on tobacco and tobacco products, other than those imposed by Tobacco Products Act of 1977.

2. Rules governing my review. Arkansas law requires sponsors of statewide initiated measures to "submit the original draft" of the measure to the Attorney General.[1] An "original draft" includes the full text of the proposed measure along with its ballot title and popular name.[2] Within ten business days of receiving the sponsor's original draft, the Attorney General must respond in one of three ways:

[1] A.C.A. § 7-9-107(a).

[2] A.C.A. § 7-9-107(b).

- First, the Attorney General may approve and certify the ballot title and popular name in the form they were submitted.[3]
- Second, the Attorney General may "substitute and certify a more suitable and correct ballot title and popular name."[4]
- Third, the Attorney General may reject both the popular name and ballot title "and state his or her reasons therefor and instruct" the sponsors to "redesign the proposed measure and the ballot title and popular name."[5] This response is permitted when, after reviewing the proposed measure, the Attorney General determines that "the ballot title or the nature of the issue" is (1) "presented in such manner" that the ballot title would be misleading or (2) "designed in such manner" that a vote for or against the issue would actually be a vote for the outcome opposite of what the voter intends.[6]

3. Rules governing the popular name. The popular name is primarily a useful legislative device.[7] While it need not contain detailed information or include exceptions that might be required of a ballot title, the popular name must not be misleading or partisan.[8] And it must be considered together with the ballot title in determining the ballot title's sufficiency.[9]

4. Rules governing the ballot title. The ballot title must summarize the proposed act. The Court has developed general rules for what must be included in the summary and how that information must be presented. Sponsors must ensure their ballot titles impartially summarize the measure's text and give voters a fair understanding of the issues presented.[10] The Court has also disapproved the use of terms that are "technical and not readily understood by voters."[11] Ballot titles that do not define such terms may be deemed insufficient.[12]

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[3] A.C.A. § 7-9-107(d)(1).

[4] *Id*.

[5] A.C.A. § 7-9-107(e).

[6] *Id*.

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

[8] *E.g., Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 414–15, 316 S.W.2d 207, 208–09 (1958).

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

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

[11] *Wilson v. Martin*, 2016 Ark. 334, *9, 500 S.W.3d 160, 167 (citing *Cox v. Daniels*, 374 Ark. 437, 288 S.W.3d 591 (2008)).

[12] *Id.*

Additionally, sponsors cannot omit material from the ballot title that qualifies as an "essential fact which would give the voter serious ground for reflection."[13] Yet the ballot title must also be brief and concise lest voters exceed the statutory time allowed to mark a ballot.[14] The ballot title is not required to be perfect, nor is it reasonable to expect the title to address every possible legal argument the proposed measure might evoke.[15] The title, however, must be free from any misleading tendency—whether by amplification, omission, or fallacy—and it must not be tinged with partisan coloring.[16] The ballot title must be honest and impartial,[17] and it must convey an intelligible idea of the scope and significance of a proposed change in the law.[18] The ballot title need not summarize existing law though.[19] The court has held that a statement that a measure "will repeal inconsistent laws" is sufficient to inform the voters "that all laws which are in conflict will be repealed."[20]

Finally, the Court has held that a ballot title cannot be approved if the text of the proposed amendment itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the measure.[21] Where the effects of a proposed measure on current law are unclear or ambiguous, I am unable to ensure the popular name and ballot title accurately reflect the proposal's contents until the sponsor clarifies or removes the ambiguities in the proposal itself.

4. Application. Having reviewed the text of your proposed initiated act, as well as your proposed popular name and ballot title, I have concluded that I must reject your proposed ballot title as misleading because it makes no attempt to summarize the measure's text in a way that complies with the above law. As my predecessors and I have noted many times, although the Attorney General is authorized to "modify a proposed ballot title to render it a more accurate summary" of

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

[14] A.C.A. §§ 7-9-107(d)(2) (requiring the ballot title "submitted" to the Attorney General or "supplied by the Attorney General" to "briefly and concisely state the purpose the proposed measure"); 7-5-309(b)(1)(B) (allowing no more than ten minutes); *see Bailey*, 318 Ark. at 288, 884 S.W.2d at 944 (noting the connection between the measure's length and the time limit in the voting booth).

[15] *Plugge v. McCuen*, 310 Ark. 654, 658, 841 S.W.2d 139, 141 (1992).

[16] *Bailey*, 318 Ark. at 284, 884 S.W.2d at 942 (internal citations omitted); *see also Shepard v. McDonald*, 189 Ark. 29, 70 S.W.2d 566 (1934).

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

[18] *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

[19] *Armstrong v. Thurston*, 2022 Ark. 167, 10, 652 S.W.3d 167, 175.

[20] *Richardson v. Martin*, 2014 Ark. 429, 9, 444 S.W.3d 855, 861.

[21] *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

the underlying measure, the Attorney General is "not authorized to craft a ballot title that amounts to an independent product."[22]

Although the foregoing issue is a sufficient basis to reject your proposed ballot title, I have also noted the following additional issues with your text and ballot title that would need to be corrected so that, if you choose to submit a revised proposal, a ballot title could be drafted properly:

- **Programs funded by excise taxes.** Your ballot title does not list the multiple programs that are supported by these taxes or explain that voting for the proposal will cut funding for the programs. This information qualifies as an "essential fact which would give the voter serious ground for reflection." Without this information, your ballot title is misleading by omission.

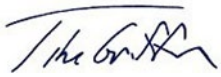
- **What taxes will remain.** Arkansas has a substantial history of taxing tobacco, tobacco products, and tobacco-related products, and the Arkansas Tobacco Products Act of 1977 ("TPA") is one law in that history. Do you intend the proposal to remove all excise taxes in effect before the TPA was passed? Or to eliminate all excise taxes enacted since the TPA? Or both? Because this information is missing, your proposal and ballot title are ambiguous. And the answers to these questions would give a voter "serious ground for reflection."

- **Cigarette papers.** Your proposed measure also eliminates excise taxes on cigarette papers, which are not tobacco or tobacco products. By omitting this information from the ballot title, your ballot title is misleading.

This is not an exhaustive list. Additional deficiencies may be discovered upon review of subsequent proposals.

Assistant Attorney General Jodie Keener prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN
Attorney General

[22] *See*, *e.g.*, Ark. Att'y Gen. Ops. 2023-098, 2018-112, 2013-112.