

July 28, 1995

The Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review;
Initiative Regarding Minimum Wage

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on July 7, 1995. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. It must be stressed that, given the strict statutory timeframe in which this office must respond and the complexity of the legal issues raised in this petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only," and the petitioners are free to "accept or reject them in whole or in part."

BALLOT TITLE

Following the filing of the proposed initiative, our office will prepare short and long ballot titles. The ballot titles should impartially and succinctly state the purpose of the measure without being argumentative and without creating prejudice for or against the measure. While our office prepares the titles, if petitioners would like to propose language with these standards in mind, we would recommend that they do so and their proposed language will be considered.

MATTERS OF SUBSTANTIVE IMPORT

Idaho Code §§ 44-1501, *et seq.*, is the Idaho Minimum Wage Law ("IMWL"). This law regulates minimum wage and sets standards for hours worked similar to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.* The FLSA applies to employees of federal, state and local governments, employees engaged in or producing goods for interstate commerce, and employees in certain other enterprises. It does not apply to private employers who are not engaged in interstate commerce and who have annual gross sales of less than \$500,000.

The initiative would make essentially four (4) changes in the Idaho Minimum Wage Law. The initiative would raise the minimum hourly wage by fifty cents each year for four consecutive years, until the minimum wage would be six dollars and twenty-five

cents (\$6.25) per hour commencing on July 1, 2000. Presently, the IMWL states that employers subject to the IMWL must pay a minimum wage of four dollars and twenty-five cents (\$4.25) per hour.

In addition, the IMWL presently permits tips to be included in determining whether wages of employees receiving tips comply with the law. For example, if a tipped employee is paid at a rate of three dollars and twenty-five cents (\$3.25) per hour, the amount of tips actually received up to a maximum of one dollar and six cents (\$1.06) (*i.e.*, twenty-five percent of the applicable minimum wage of \$4.25), can be added to the existing hourly wage for purposes of compliance with the IMWL. The proposed initiative would repeal this provision.

The initiative would also delete from the law the exemptions relating to overtime pay. Presently, the IMWL has the same exemptions or exceptions for overtime/maximum work week requirements as provided under the FLSA, which are expressly incorporated in the IMWL. Thus, the IMWL overtime provisions would not apply to the classes of employees exempted under 29 U.S.C. § 213; nor does it apply to the classes of employers found at 29 U.S.C. § 203. For example, the IMWL overtime provisions currently do not apply to taxicab drivers who are exempted under 29 U.S.C. § 213(b)(17). The initiative would repeal such exemptions and require that all employers who fall within the purview of the Idaho Minimum Wage Law pay overtime for employment in excess of forty (40) hours per workweek.

Last, the initiative would repeal certain exemptions in Idaho Code § 44-1504, which contains a list of employees who are excepted from all of the provisions of the IMWL. The initiative would repeal the exemptions for: (1) agricultural labor; (2) domestic service; (3) outside salesmen; and (4) minors under the age of sixteen working part-time (unless engaged in odd jobs not exceeding a total of four (4) hours per day with any one (1) employer).

Upon review, it is the opinion of this office that there is no constitutional or statutory impediment to the petitioner's proposed changes to the Idaho Minimum Wage Law. Moreover, the FLSA has a specific savings clause which allows states to enact more generous minimum wage laws. 29 U.S.C. § 218 provides in relevant part:

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter.

Thus, Idaho may enact a more generous minimum wage and maximum workweek law which would not be preempted by the FLSA. Pacific Merchant Shipping Ass'n v. Aubry, 918 F.2d 1409, *cert. denied* 112 S. Ct. 2956, 119 L. Ed. 2d 578 (9th Cir. 1990); Baxter v. M.J.B. Investors, 876 P.2d 331 (Ore. Ct. App. 1994); and Berry v. KRTV Communications, Inc., 865 P.2d 1104 (Mont. 1993). The proposed initiative does not contravene state or federal statutory or constitutional law.

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style and matters of substantive import and that the recommendations set forth above have been communicated to petitioner Randy Ambuehl by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

ALAN G. LANCE
Attorney General

Analysis by:

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