

July 7, 1997

The Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Initiative Regarding Incremental Property Tax Relief

Dear Mr. Cenarrusa:

A proposed initiative petition was filed with your office on June 12, 1997. 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 recommend that they do so and their proposed language will be considered.

MATTERS OF SUBSTANTIVE IMPORT

The proposed initiative has two sections that this certificate must address separately.

Section 1 would adopt a new Idaho Code § 33-801B. It would phase out the property tax levy for maintenance and operation of schools (the "School M & O Levy") over a period of three years.

By way of background, public schools in Idaho receive funding from a variety of sources. The two of interest to understanding the proposed initiative are the property tax levy for maintenance and operation of schools authorized by Idaho Code § 33-802(2) and the monies from the state general fund appropriated annually by the legislature. Idaho

Code § 33-802(2) currently authorizes school districts to levy up to three-tenths of one percent (0.3%) of the market value for assessment purposes of the taxable property within the district. The annual public schools' appropriation of money from the state general fund is distributed to local school districts through the educational support program set out in Idaho Code § 33-1002. The largest source of revenue to the state general fund is money raised pursuant to the Idaho Income Tax Act and the Idaho Sales Tax Act.

Section 1 of the proposed initiative would require that the maximum School M & O Levy be two-tenths of one percent (0.2%) in 1999, one-tenth of one percent (0.1%) in 2000, and zero after that year. It also contains a nonbinding preference that the legislature "should" provide funding for the maintenance and operation of public schools from state sales tax revenues. Thus, although the proposed initiative, if enacted, would require reduction and eventual repeal of the School M & O Levy, it does not guarantee that the revenues lost to the districts would be replaced. Replacement would be dependent upon the legislature's ability and willingness to divert or increase (or both) general fund revenues to public schools.

We suggest adding in proposed Idaho Code § 33-801B a reference to Idaho Code § 33-802(2), the section that sets the maximum School M & O Levy. This will insure that the proposed initiative could not be construed as applying to any other levy, such as the supplemental maintenance and operation levy authorized in Idaho Code § 33-802(4). Such a reference will make clear precisely what proposed Idaho Code § 33-801B is to effect.

We note that the proposed initiative cannot affect charter school districts. Amendments to the districts' individual charters must accomplish any mandated change affecting those districts. *See Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942); *Howard v. Independent School Dist. No. 1*, 17 Idaho 537, 106 P. 692 (1910).

We also note that the proposal to eliminate the School M & O Levy may have an undetermined effect on the theoretical underpinning of the state's education support program set forth in Idaho Code § 33-1002. This program is also known as the school funding formula. In creating the school funding formula, the legislature recognized that a school district with high aggregate property values tends to be able to spend more money per student than a district with a lower property tax base. The school funding formula is designed to equalize the disparity in funding per student that otherwise might exist between districts. If the funds raised by the School M & O Levy are replaced with nonproperty tax funds, then, depending upon how the nonproperty tax funds are distributed to the districts, the rationale for the current school funding formula may no longer be valid. Because the proposed initiative does not mandate replacement funding,

let alone discuss how it is to be distributed, predicting the effect on the rationale for the school funding formula is not possible.

Section 2 contains only a nonbinding recommendation. If adopted, Section 2 of the proposed initiative would have no legal effect. Its only effect is political, not legal. The political effect is that the voters adopting the proposed initiative may be presumed to have asked the legislature to consider adopting certain provisions of a specific legislative proposal, *i.e.*, sections 2 through 9 of draft legislation identified as RS07175. This could be no more than a presumption, because it would be impossible to determine from election returns if the majority voting for the proposed initiative would have voted for section 2 alone or whether the coupling of section 2 with the operative provisions of section 1 resulted in its passage. In either case, section 2 creates no legally enforceable rights or duties. It is most unlikely that any party could prevail in a legal action alleging violation of section 2 of the proposed initiative.

CONCLUSION

Because the proposed initiative, if adopted, would not enact the provisions of RS07175, we have not undertaken an analysis of the substantive import of that draft legislation.

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 Laird Maxwell by mailing him a copy of this certificate of review.

Sincerely,

ALAN G. LANCE
Attorney General

Analysis by:
TED SPANGLER
CARL OLSSON
Deputy Attorneys General