

July 16, 1997

The Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Initiative Regarding Teachers' Freedom to Negotiate

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on June 30, 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

This office previously prepared a certificate of review for an identical initiative proposal on July 14, 1995. *See* 1995 Idaho Att'y Gen. Ann. Rpt. 169. Neither the law nor the circumstances surrounding the proposed initiative have changed appreciably since the issuance of this office's previous certificate.

The substantive provision of the proposed initiative is brief and straightforward. The initiative would change Idaho Code § 33-1271 by substituting the word "may" for "shall," as indicated below:

33-1271. School districts—Professional employees—Negotiation agreements.—The board of trustees of each school district, including

specially chartered districts, or the designated representative(s) of such district, is hereby empowered to and ~~shall~~ may upon its own initiative or upon the request of a local education organization representing professional employees, enter into a negotiation agreement with the local education organization or the designated representative(s) of such organization and negotiate with such party in good faith on those matters specified in any such negotiation agreement between the local board of trustees and the local education organization. A request for negotiations may be initiated by either party to such negotiation agreement. Accurate records or minutes of the proceedings shall be kept, and shall be available for public inspection at the offices of the board of education during normal business hours. Joint ratification of all final offers of settlement shall be made in open meetings.

Importantly, there is no constitutional or statutory prohibition against the amendment of § 33-1271 as contemplated by the initiative. However, for practical purposes, such an amendment would leave the negotiating process between school districts and professional employees unclear, and may not fulfill the stated intent of the initiative drafters to allow teachers in Idaho “to have a negotiating agency of their choice represent their interests.”

The Attorney General’s statutory duty to review proposed initiatives includes the obligation to “recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate.” Idaho Code § 34-1809. As stated above, because of other statutes, the single word change in Idaho Code § 33-1271 from “shall” to “may” may not accomplish the “legislative intent” of the proposed change, *i.e.*, that through the amendment, “teachers in Idaho will be allowed to have a negotiating agency of their choice represent their interests.”

Idaho Code § 33-1273 provides that the local education organization “shall be the exclusive representative for all professional employees in that district for purposes of negotiations.” “Local education organization” is defined to mean:

any local district organization duly chosen and selected by a majority of the professional employees as their representative organization for negotiations under this act.

Idaho Code § 33-1272(2) (emphasis added).

It is clear that the initiative would make negotiations with a local education organization optional. However, if such negotiations were to occur, the local education organization approved by a majority of the professional employees would still be the representative of such employees, because of the language of § 33-1273. Under the

initiative, teachers would not be allowed to have a negotiating agency of their choice represent their interests as contemplated. Rather, the school district would have the option to negotiate with a local education organization, but, if such negotiations occurred, only one representative of such professional employees would be allowed to engage in such negotiations.

If the school district chose not to negotiate with such a group, the procedure would be unclear. On its face, it would appear that the school district could negotiate with each individual professional employee. However, § 33-1273 states that the local education association is the “exclusive” representative of professional employees of the school district for purposes of negotiation. Such language suggests that any negotiations would have to occur through such a group, rather than on the individual level, regardless of whether the school district was required by law to negotiate with them. In other words, if the language in Idaho Code § 33-1273 remains intact, the school district would still be forced to negotiate with a local education organization by de facto operation of law.

CONCLUSION

In conclusion, in order for the initiative to accomplish the stated intent, we would recommend that Idaho Code § 33-1273 or the definition of “local education organization” found in Idaho Code § 33-1272, or both, also be amended to more specifically provide that more than one group can represent the interests of professional employees. This recommendation is made solely for the purpose of assisting the petitioner, as required by Idaho Code § 34-1809, and is not meant to reflect a position either in favor of or against the proposed initiative by the Office of the Attorney General.

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:

MATTHEW J. MCKEOWN
Deputy Attorney General