

February 25, 1998

The Honorable Pete T. Cenarrusa
Secretary of State

HAND DELIVERED

Re: Certificate of Review
Initiative Regarding Minimum Wage Law

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on February 12, 1998. 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 two changes to the current version of Idaho Code § 44-1502. First, the initiative would add a new clause to Idaho Code § 44-1502(1) that would set the minimum wage at \$10.00 per hour, commencing on December 1, 2000. Second,

the initiative would change the introductory training wage provision contained in Idaho Code § 44-1502(4) by lowering the age of applicability from twenty (20) to eighteen (18) and raising the minimum training wage to \$7.50 per hour during the first ninety days of employment, commencing on December 1, 2000. The initiative would add certain safeguards to section 44-1502(4) to prevent existing employees from being replaced by employees receiving the lower introductory training wage.

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 that 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.

Thus, Idaho may enact a more generous minimum wage and maximum workweek law that would not be preempted by the FLSA. Pacific Merchant Shipping Ass'n. v. Aubry, 918 F.2d 1409 (9th Cir.), *cert. denied* 112 S. Ct. 2956, 119 L. Ed. 2d 578 (1990); Baxter v. M.J.B. Investors, 876 P.2d 331 (Ore. Ct. App. 1994); Berry v. KRTV Communications, Inc., 865 P.2d 1104 (Mont. 1993). If enacted, the proposed initiative would 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 Thomas M. Sanner by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

ALAN G. LANCE
Attorney General

Analysis by:

MATTHEW J. MCKEOWN
Deputy Attorney General