

November 5, 1999

Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Proposed Initiative Regarding Amendment to Idaho Code § 67-6525

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on November 3, 1999, that would amend Idaho Code § 67-6525. Pursuant to Idaho Code § 34-1809, this office has reviewed the proposed initiative 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 proposed initiative, 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 TITLES

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

The proposed initiative would amend Idaho Code § 67-6525 in the following manner:

Prior to annexation of an unincorporated area, a city council shall request and receive a recommendation from the planning and zoning commission, or the planning commission and the zoning commission, on the proposed plan and zoning ordinance changes for the unincorporated area. Each commission and the city council shall follow the notice and hearing procedures provided in section 67-6509, Idaho Code. Annexation shall not take place until a favorable concurrence of the majority of affected property owners within the unincorporated area is established. Concurrently

or immediately following the adoption of an ordinance of annexation, the city council shall amend the plan and zoning ordinance.

(Proposed language underlined.) If enacted by the voters, the new language would appear to limit a city's ability to annex unincorporated land by conditioning annexation on approval by property owners within the area proposed for annexation. This proposal raises a number of potential legal problems.

First, annexation is currently governed by Idaho Code §§ 50-222 through 50-233. These provisions establish a detailed procedure for municipalities to follow when annexing adjacent and nonadjacent territory. In particular, Idaho Code § 50-222(1) currently authorizes "forced annexation" under certain circumstances:

[A]ny land lying contiguous or adjacent to any city in the state of Idaho, or to any addition or extension thereof may be annexed by the city only if the land is lying in the area of city impact as determined by procedures contained in section 67-6526, Idaho Code, and the land is laid off into blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority, has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres.

Section 50-222(1) does not condition annexation on voter approval. Therefore, section 50-222(1) and the amendment proposed by the initiative could be in direct conflict with each other. The proposed amendment should be revised to resolve the potential conflict with Idaho Code § 50-222(1).

Next, the reference in the proposed language to a "favorable concurrence of the majority of affected property owners" appears to contemplate some type of election. However, the proposed initiative does not specify how that election would occur or who would bear the cost of such an election. The proposed initiative should probably be modified to set out a procedure for holding the elections that appear to be anticipated. In addition, the initiative should specify how the election will be funded. This is particularly important since the proposed initiative appears to anticipate some type of election in an unincorporated area. Currently, such an election would be unlawful.

Finally, the "favorable concurrence" that is incorporated into the proposed initiative is limited to "affected property owners within the unincorporated area." The Idaho Constitution specifically prohibits nearly all restrictions on voting based on property ownership. Art. I, § 20 of the Idaho Constitution states:

No property qualifications shall ever be required for any person to vote or hold office except in school elections, or elections creating indebtedness, or in irrigation district elections, as to which last-named elections the legislature may restrict the voters to land owners.¹

Since the proposed initiative would limit voting to “property owners within the unincorporated area,” a reviewing court is likely to determine that the proposed initiative is invalid because it violates Art. I, § 20 of the Idaho Constitution.

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 William H. Thomas 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

¹ The Idaho Supreme Court invalidated the exception for school district elections in Muench v. Paine, 94 Idaho 12, 480 P.2d 196 (1971).