

December 13, 1999

Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Proposed Initiative Regarding Small Stakes Video Machine Gaming

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on November 22, 1999, that would add a new section to chapter 9, title 23, Idaho Code. 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 create a new provision titled, "Small Stakes Video Machine Gaming," as Idaho Code § 23-929. Section one of the contemplated statute would make it lawful to "make available for public play only, up to five (5) video, bingo, keno, blackjack, draw poker, reel or other approved gaming machines" in establishments holding a liquor license. The remainder of the contemplated statute establishes limits on prizes and creates various regulatory duties for the director of the Department of Law Enforcement.

Article 3, § 20 of the Idaho Constitution prohibits all forms of gambling, except the types of gambling specifically enumerated in subsections 1(a) through 1(c). Article 3, § 20, subsection 2, specifically prohibits "any form of casino gambling including, but not

limited to, blackjack, craps, roulette, poker, baccarat, keno and slot machines.” This prohibition includes “any electronic or electromechanical imitation or simulation of any form of casino gambling.”

The proposed initiative is an attempt to legalize a method of casino gambling that is specifically prohibited by art. 3, § 20 of the Idaho Constitution. Legislation that is passed via citizen initiative has the same force and effect as legislation passed by the legislature. *See, e.g., Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988). As a result, a reviewing court will invalidate legislation passed via citizen initiative that directly conflicts with a constitutional requirement. *See, e.g., Simpson v. Cenarrusa*, 130 Idaho 609, 944 P.2d 1372 (1997) (prohibiting the secretary of state from implementing certain ballot legend requirements promulgated via citizen initiative because those requirements violated constitutional provisions). Therefore, this office concludes that a reviewing court will invalidate the proposed initiative because it directly conflicts with Art. 3, § 20 of the Idaho Constitution.

Sincerely,

ALAN G. LANCE
Attorney General

Analysis by:

MATTHEW J. MCKEOWN
Deputy Attorney General