

March 11, 2003

The Honorable Ben Ysursa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Initiative Regarding the Resort County Sales Tax

Dear Mr. Ysursa:

An initiative petition was filed with your office on February 12, 2003. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. I stress that, given the strict statutory time frame in which this office must respond, and the complexity of the issues raised in this petition, this review can only isolate areas of concern and cannot provide an 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, this 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 this office prepares the titles, if petitioners would like to propose language with these standards in mind, we recommend they do so and their proposed language will be considered.

MATTERS OF SUBSTANTIVE IMPORT

Entitled the "Resort County Sales Tax," the petition seeks to permit resort counties to impose a countywide sales tax, of which a portion of the revenue will be used for local property tax relief. This petition is an attempt to reinstate a local option county sales tax similar to one the Idaho Supreme Court struck down in 2002. In Concerned Citizens of Kootenai County v. Kootenai County, 137 Idaho 496 (2002), the court held unconstitutional the entirety of the Resort County Act (the "Act"), which generally provided that voters in resort counties could approve a local sales or use tax to accommodate the influx of tourists. The statute was held unconstitutional because the definition of "resort county" in the Act was drawn in such a way as to apply only to Kootenai County. This made the Act a local and special law in violation of art. III, § 19 of the Idaho Constitution. The petition's major features are outlined as follows:

1. The definition of “resort county” is modeled on language found in the City Property Tax Alternatives Act of 1978, codified in §§ 50-1043 through 50-1049, Idaho Code. This Act permits certain resort cities to impose a local sales tax. A resort county must have a population in excess of 17,000 and “derive a major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to that destination county for an extended period of time.” This definition appears to be sufficiently inclusive to avoid the flaw of being a local or special law. Blaine County, for example, meets the population requirement and, presumably, the other requirements as well.
2. The petition provides that county commissioners may implement a county sales and use tax if it is approved by 60% of county voters.
3. The petition establishes a county property tax relief fund into which must be placed a minimum of 50% of any revenue received from the county sales or use tax. The money in this fund is to be distributed to the county and cities in the county. Money not placed in the property tax relief fund shall be distributed to cities in the resort county in the manner approved by county voters. If a city in the resort county already has a city sales tax implemented pursuant to statute, it is not entitled to share in revenue received pursuant to the county sales or use tax. The county sales or use tax will not operate in any city that has a city sales tax.
4. The petition establishes certain requirements for the ordinance to be submitted to county voters. These requirements are largely modeled on the provisions of § 50-1047, Idaho Code.

This measure does not appear to present any legal issues.

CONCLUSION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style and matters of substantive import and that the matters set forth above have been communicated to petitioner Ron Rankin by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

Analysis by:

CARL E. OLSSON
Deputy Attorney General