

July 22, 2003

The Honorable Ben Ysursa  
Secretary of State  
**HAND DELIVERED**

Re: Certificate of Review  
Initiative to Amend Idaho's School Funding

Dear Secretary of State Ysursa:

An initiative petition was filed with your office on June 26, 2003. 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 time frame in which this office must respond and the complexity of the legal issues raised in this petition, this office's 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**

Petitioners have submitted the following:

We, the undersigned citizens and qualified electors of the State of Idaho, respectfully demand that the following proposed law, to-wit:

All public school districts in Idaho shall receive funding at a per pupil level greater than that of the lowest five percent (5%) of the public school districts in the entire United States.

shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular general election to be held on the 2<sup>nd</sup> day of November, A.D., 2004 . . . .

Although this is a proposal for a new law, it does not contain a title, a chapter or any other indication of where within the code it should be placed. This is problematic for organizational reasons within the Idaho Code.

## **I. The Proposed Initiative Appears Contrary to the Idaho Constitution**

The requirement that the legislature fund all school districts within Idaho “at a per pupil level greater than that of the lowest five percent (5%) of the public school districts in the entire United States” appears to be legally ineffective. The creation, destruction, expansion or contraction of school districts is a legislative function. Idaho Constitution, art. IX, § 1; art. III, § 1. The legislature has plenary power in such matters. In re Common School Dists. Nos. 18 and 21, 52 Idaho 363, 15 P.2d 732 (1932). Article VII of the Idaho Constitution outlines the system of finance and revenue for the State of Idaho. To be effective, any mandates upon the legislature must have a constitutional base.

Article VII, § 11 of the Idaho Constitution mandates a balanced budget. Specifically, passage of bills is governed by art. III of the Idaho Constitution. Article III, § 15, outlines the manner of passing bills. As provided for within the proposed initiative, the legislature would be restricted to funding on a per pupil basis at a minimum level set by external measure. The proposed initiative seeks to eliminate the legislature’s constitutional authority related to the setting of budgets for the state. A limitation such as this must be expressly provided for within the Idaho Constitution.

Article VII, § 13 of the Idaho Constitution requires that money expended from the treasury must be done by appropriations made according to law. The Idaho Constitution outlines a specific process for the passage of bills. Case law has defined an appropriation as the authority, from the legislature, given in legal form to the proper officers, to pay from the public moneys, a specific sum. McConnel v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931); Jackson v. Gallet, 39 Idaho 382, 228 P. 1068 (1924); Herrick v. Gallet, 35 Idaho 13, 204 P. 477 (1922). The proposed initiative’s improper infringement into the legislative authority to set appropriations, if effective, violates this provision of the Idaho Constitution.

## **II. Legislative Functions Cannot Be Delegated Elsewhere**

Article III, § 1 of the Idaho Constitution vests the legislative power of the state in the senate and house of representatives, and in the people through the initiative process. This legislative power cannot be delegated to any other governmental authority. State v. Nelson, 36 Idaho 713, 213 P. 358 (1923). In Idaho Savings & Loan Ass’n v. Roden, 82 Idaho 128, 350 P.2d 225 (1960), the legislature enacted a statute which, as a condition precedent of doing business, required all local savings and loans to comply with the regulations adopted by certain federal agencies, and abide by and conform with any amendment to Title 4 of the National Housing Act (12 U.S.C.A. §§ 1701, *et seq.*) which may become effective after the Idaho statute. The court struck down the Idaho statute

holding it was an unconstitutional delegation of authority contrary to art. III, § 1. The court held that all legislative power is vested in the legislature of the State of Idaho, and the legislature cannot delegate its authority to another government or agency in violation of the Idaho Constitution. 82 Idaho at 134, 350 P.2d at 228-30.

The same rationale applies to legislation enacted by the initiative process. Laws passed by initiative are on equal footing with legislation enacted by the legislature, and the two must comply with the same constitutional requirements. Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664 (1984). In short, an initiative cannot delegate a legislative function to another governmental entity, nor can it restrict the actions of future legislatures absent a constitutional mandate.

Here, the proposed initiative mandates funding at a “per pupil level greater than that of the lowest five percent (5%) of the public school districts in the entire United States.” It appears that by using this definition, the drafters of the initiative may be delegating the legislative function to another governmental body or some unnamed group in violation of art. III, § 1. No showing is made clarifying the standards of measurement, who will compile these results, how they will be tested for accuracy or any other specific data for creating this funding mechanism. The idea of allowing local school districts in other states to drive budget policy in Idaho is anathema to basic concepts of state sovereignty embodied in the Idaho Constitution and the Tenth Amendment to the U.S. Constitution. Absent more precise language, this proposed initiative represents little more than an overly broad policy statement, not a law. A court of competent jurisdiction would find all or part of the initiative, if enacted, to be either unconstitutional or unenforceable.

## CONCLUSION

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 Dennis Sonius by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

LAWRENCE G. WASDEN  
Attorney General

**Analysis by:**

BRIAN P. KANE  
Deputy Attorney General