



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 14, 2005

VIA HAND DELIVERY

The Honorable Ben Ysursa
Idaho Secretary of State
Statehouse

Re: Certificate of Review
Proposed Initiative to Amend Provisions Relating to Property Tax
(Idaho Code Title 63, various Chapters 1 through 40)

Dear Secretary of State Ysursa:

An initiative petition was filed with your office on August 18, 2005. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and 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." The petitioners are free to "accept or reject them in whole or in part." The opinions expressed in this review are only those that may affect the legality of the initiative. This office offers no opinion with regard to the policy issues raised by this proposed initiative.

BALLOT TITLE

Following the filing of the proposed initiative, our office will prepare short and long 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. 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 in our preparation of the titles.

MATTERS OF SUBSTANTIVE IMPORT

The petition, as submitted, amends, repeals, or adds several dozen sections of the Idaho Code and consists of over 6,500 lines of text. The text raises a number of issues of substantive import upon which § 34-1809, Idaho Code, requires we comment. These issues are of varying significance and complexity. Thus, in the sections that follow, we have categorized our comments under two headings. The first, labeled "overarching issues," addresses matters of potential constitutional concern or matters that render the initiative inoperable should it become law in its present form. The second, labeled "general comments," attempts to organize various concerns or recommendations into those applicable to the text as a whole or those from various parts of the initiative that are similar.

Overarching Issues

1. **One percent limitation.** The initiative imposes, in three different proposed sections, a one percent limitation on the total annual amount of property tax imposed on property. These are proposed §§ 63-801,¹ 63-802,² and 63-1313,³ Idaho Code. An

¹ In the initiative the proposed section reads as follows:

63-801 ANNUAL STATE PROPERTY TAX LEVY

(1) The county commissioners in each county in this state must meet on the second Monday of September in each year to ascertain the tax rate necessary to be levied on each dollar of the valuation of all the taxable property in the county for such year in order to raise the amount of state taxes apportioned to such county by the state tax commission. The total of all levies must be within the limits prescribed by the laws of this state

(2) In any period during which a sales tax is in force in this state, there shall be no levy of the general state property tax permitted by section 9, article VII, of the constitution of the state of Idaho.

(3) Any period of the combined taxing districts and State Property tax shall not exceed 1% of Market Value.

² The proposed section provides:

(1) Taxing districts shall not certify a budget request to finance an annual budget that exceeds 1% of market value as defined in section 63-1313 Idaho Code:

³ The proposed section provides:

63-1313. LIMITATION ON PROPERTY TAXES -- VALUE OF REAL AND PERSONAL PROPERTY -- SPECIAL TAX LEVIES

(1) (a) Except as provided in section 63-802, Idaho Code, during any one (1) tax year, the maximum amount of all property taxes from all sources on any property subject to appraisal, valuation, and property taxation within the state of Idaho shall not exceed one percent (1%) of the market value of such property, including the actual cost of all improvements, notwithstanding any exemption of a portion of such values from property taxation.

initial problem is that these three sections do not express the same one percent limitation. In § 63-801, Idaho Code, the limit is simply one percent of "Market Value." The definition of "market value" in § 63-201(11) limits that value to a value "as determined by the county commissioners sitting as a board of valuation during the last week of November 2004 through the first week of December 2005 and subsequently added to the tax rolls January 2005." Section 63-802, Idaho Code, adopts a different definition of "market value" that is found in § 63-1313, Idaho Code. That definition adds "the actual cost of all improvements," which adds values not included under the one percent calculation in § 63-801, Idaho Code, and requires that market value include "any exemption of a portion of such values from property taxation" which also adds values not included under the one percent calculation in § 63-801, Idaho Code. Further, proposed § 63-1313(2) permits "property" (though not necessarily value) to increase up to eight-tenths of one percent annually, although what event or occurrence authorizes the increase is not stated. Finally, the limitation in proposed § 63-802, Idaho Code, may be overridden by an election⁴, while the limitation in proposed § 63-801, Idaho Code, cannot. These conflicting definitions of "market value" create critical inconsistencies that we recommend be harmonized.

An even more serious problem is one previously discussed in opinions issued by this office in regard to other proposals to limit the total amount of property tax imposed on a single property. The Attorney General's Office, under the administrations of three different Attorneys General, has issued three opinions addressing similar proposed limitations.⁵ The conclusions expressed in those opinions concerning the previously proposed one percent limitations are equally applicable to the similar limitation in the currently proposed initiative. They conclude the requirement that property "tax shall not exceed 1% of Market Value" is inoperable because neither existing law nor the proposed initiative provide state or local governments with authority or instructions for adjusting the budget funded by property tax otherwise certified pursuant to statute to comply with the one percent limitation. The problem, as summarized in the 1991 opinion and reaffirmed in the 1996 opinion, is applicable to the current proposal:

The basic problem here is that the drafters of the proposed One Percent Initiative frame a standard that is, at bottom, only a slogan: "Taxation within the State of Idaho not exceed one percent (1%) of the actual market value of such property." However, they

⁴ See proposed § 63-802(5):

(5) All provisions of this section, for annual budgets, shall not exceed 1% of market value as detailed in section 63-1313, Idaho Code unless such increases are approved by sixty-six and two-thirds percent (66 2/3rds %) or more of those voting at the election.

⁵ Two of these Opinions may be found on the Attorney General's website: See 1991 Idaho Attorney General's Opinion 91-9 at http://www2.state.id.us/ag/ops_guide_cert/1991/op91-09.pdf and Idaho Attorney General's Opinion 96-3 at http://www2.state.id.us/ag/ops_guide_cert/1996/op96-03.pdf. See also Idaho Attorney General's Opinion 78-37 Published in 1978 Idaho Attorney General's Annual Report, p. 148.

fail to provide any entity with authority to adjust tax levies to meet this standard. They also fail to provide any procedural mechanism to carry out their proposal.

We conclude that neither the existing statutes nor any provision of the One Percent Initiative expressly grants authority to the State Tax Commission to adjust levies and apportion taxes. Neither the Idaho Constitution nor the Idaho Code would permit imposition of such a duty on the courts. Finally, any attempt to centralize such authority in the boards of county commissioners would make the boards into local taxing czars and virtually destroy all the other independent taxing districts that now answer to the local electorate.

It follows that the One Percent Initiative cannot be implemented as written. It is our opinion that a reviewing court faced with the options of striking down the One Percent Initiative or upholding the initiative by creating from whole cloth a new tax apportionment system for the State of Idaho would choose the former option.⁶

Whatever method of implementing the one percent tax limitation the petitioners choose, the resulting tax levies must conform to the requirement of the Idaho Constitution that "All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax,"⁷ This means that each taxing district's levy (whether it is a levy by a county, city, school district or other local government authorized to levy property taxes) must apply equally to all taxable property in each district. The tax owed is calculated by multiplying this uniform levy rate times the value of the individual property, however that value is determined. As explained by the Idaho Supreme Court:

A constitutional rule of uniform ad valorem taxation forbids legislative classifications of property for the purpose of imposing a greater burden of ad valorem taxation on one class than on another; that is, all property not exempt from taxation must be assessed at a uniform percentage of actual cash value, and a single fixed rate of taxation must apply against all taxable property.⁸

See the discussion under "Question 4" of Opinion 91-9 for one possible mechanism that is consistent with the requirement for a uniform levy.⁹

⁶ See footnote 5

⁷ Art. 7 § 5, Idaho Constitution, see footnote 18.

⁸ *Idaho Telephone Co. v. Baird*, 91 Idaho 425 (1967)

⁹ See also 1995 Idaho Attorney General's Opinion 95-03 at http://www2.state.id.us/ag/ops_guide_cert/1995/op95-03.pdf

2. **Limitations on value.** The initiative as proposed attempts to limit the amount of value to which the levy rate is applied. Several sections have this effect. First, the definition of "market value" in proposed § 63-201(11) is amended.¹⁰ (Our earlier comments about the inconsistencies about the definition of "market value" are also applicable here.) We understand the effect of this language to be that property present on the existent property tax rolls at the end of 2004 is to retain that value on future rolls unless other provisions of the initiative authorize a changed value.¹¹ Second, the initiative adds a new definition of "true market value" in proposed §63-201(26), Idaho Code.¹² There is a third proposed definition of "value" in proposed § 63-201(27).¹³ Proposed § 63-803, Idaho Code, provides that the levy rate is to be computed on "taxable value" which is defined using the terms similar to the definitions found in subsections (11) and (26) of proposed section 63-201.¹⁴ Throughout the initiative,

¹⁰ As amended the subsection would read:

(11) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. As determined by the county commissioners sitting as a board of valuation during the last week of November 2004 through the first week of December 2005 and subsequently added to the tax rolls January 2005. The tax rolls of January 2005 shall be the determining factor of all property within the state. New purchases, builds or improvements shall be considered at "true market value".

¹¹ Our understanding may or may not be correct. The fragmentary phrase beginning "As determined" is an incomplete sentence lacking a subject. Exactly what value is meant is ambiguous. For purposes of this discussion of the overarching issues related to limitations on values, we treat the language as if were effective to accomplish the petitions evident (but not unambiguous) intent.

Another issue relating to this definition is the fact that operating property (mostly property of public utilities and railroads) is not valued by county commissioners but by the State Tax Commission pursuant to Chapter 4, Title 63, Idaho Code. This definition appears to exclude operating property from the meaning of market value. The implications of this exclusion are unknown. It might result in the exemption of all operating property from tax or it may result in assessment of operating property at current market value – a result that at least in the case of railroads likely violates federal law. See 49 U.S.C.A. § 11501 (Prohibiting tax discrimination against rail transportation property).

¹² The proposed definition is:

"True market value" the sum at which a piece of property has changed hands or cost of building such property which includes the land that such building resides

¹³ It reads:

"Value" is the total of all considerations, expressed in dollars, which defines the price at which a willing seller and a willing buyer agree to transfer title.

¹⁴ The initiative appears to omit a critical step in the valuation and levying process it describes. It repeals current § 63-301, Idaho Code, requiring the assessor to enter the market value of property on the

numerous provisions relating to the equalization of property tax assessments are repealed. These changes appear to be intended to limit the taxable value on which property tax levies are computed to the values on the property tax rolls as of January 1, 2005, or to the purchase price or construction cost of property purchased or constructed after that date.

The initiative process in Idaho is limited to proposing and adopting changes in statutory law.¹⁵ Statutes adopted by initiative are subject to the same constitutional requirements and constraints as other statutes.¹⁶ Thus, for the initiative to ultimately succeed in its goal of reforming the property tax, its provisions must comport with the provisions of the Idaho Constitution relating to property taxation. The Idaho Constitution, in Art 7, §§ 2¹⁷ and 5,¹⁸ requires that property taxes be uniform and in proportion to value. The Idaho Supreme Court has interpreted these provisions to mean the tax must be based on the property's current market value. Two examples illustrate the Court's understanding of these provisions:

In our opinion the valuation of taxable property for assessment purposes must reasonably approximate the fair market value of the property in order to effectuate the policy embodied in Id. Const. Art. 7, § 5. *I.e.*, that each taxpayer's property bear the just proportion of the property tax burden Although different types of property are by their nature more amenable to

county assessment roll. There appears to be no new equivalent to the repealed section that tells the assessor exactly what value is to be entered on the roll.

¹⁵ See Chapter 18, Title 34, Idaho Code.

¹⁶ *Westerberg v Andrus*, 114 Idaho 401 (1988)

¹⁷ Art 7, § 2 provides:

Revenue to be provided by taxation The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax, both upon natural persons and upon corporations, other than municipal, doing business in this state; also a per capita tax: provided, the legislature may exempt a limited amount of improvements upon land from taxation.

¹⁸ Art 7, § 5 provides:

Taxes to be uniform -- Exemptions. All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the state: provided further, that duplicate taxation of property for the same purpose during the same year, is hereby prohibited

valuation by one method of appraisal than another *the touchstone in the appraisal of property for ad valorem tax purposes is the fair market value of that property, and fair market value must result from application of the chosen appraisal method.* An arbitrary valuation is one that does not reflect the fair market value or full cash value of the property and cannot stand. [Emphasis added.]¹⁹

We interpret the language of Art. VII, § 2 - 'every person * * * shall pay a tax in proportion to the value of his, her, or its property * * *' - as meaning that every property owner shall receive equal treatment under the ad valorem tax laws; for example, if owner A possesses \$100.00 of property which is taxed \$1.00, then owner B with \$400.00 of taxable property shall be taxed in the same proportion, or \$4.00.²⁰

The inevitable effect of the valuation system proposed by the initiative will be an impermissible discrimination in valuation between property subject to tax on its "market value" (based on the limited definition quoted above²¹) and property taxed based on its "true market value."²² This office has, in previous opinions about property tax initiatives, noted that value limitations similar to the limits in this proposal should be offered by means of a constitutional amendment, not by statutory changes. As a result, we advised that "[t]he only sensible and certain safeguard is that of deleting the distinction made in Sect Two²³ of the initiative between property purchased, newly constructed or subjected to change of ownership on the one hand and property which has not experienced any of those circumstances on the other hand."²⁴ Nothing in Idaho's Constitution or in the development of our constitutional jurisprudence counsels any different recommendation today.

The initiative's system can also result in property being valued and taxed in the future for amounts greater than would occur if the initiative were not enacted. Since the value of property is "as determined by the county commissioners sitting as a board of valuation during the last week of November 2004 through the first week of December

¹⁹ *Merris v. Ada County*, 100 Idaho 59, 63 (1979).

²⁰ *Idaho Telephone Co. v. Baird*, 91 Idaho 425 (1967)

²¹ See footnote 10.

²² See footnote 12.

²³ The reference is to section 2 of "Initiative 1" passed at the general election of November 7, 1978, "Restricting Governmental Ability to Change Property Valuations or Taxes" on file at the Office of the Idaho Secretary of State.

²⁴ AG Opinion 78-37 pg 155 *supra* at footnote 5

2005 and subsequently added to the tax rolls January 2005",²⁵ there is no authorization for adjusting the value of property downward to reflect losses from depreciation, obsolescence or damage. This systemic overvaluation of property may be as violative of the constitution as the valuation limitations discussed in this section.

In a separate letter addressed to the Attorney General, the petitioners take issue with our often-expressed constitutional conclusions that property taxes must be levied uniformly in proportion to value. The letter states, "We have heard from the press that our initiative may fail because of Constitutional problems with equal value. We take issue with that statement, because the Constitution does not define 'value'. The term 'value' will and should relate to any product and as such we have incorporated the standard term for 'value' into our changes to Title 63." The difficulty with this position is that, as the foregoing discussion makes evident, the Idaho Supreme Court has defined "value" as that term is used in §§ 5 & 5 of Art 7 of the Idaho Constitution. The Supreme Court is the "final arbiter" of the meaning of terms in the Constitution.²⁶

GENERAL COMMENTS

The comments and observations contained in the following sections of this certificate are offered despite the conclusions expressed in the previous section regarding the unimplementability and questionable constitutionality of the initiative and do not change those conclusions. The order in which our comments and observations are presented in this certificate has no implication about their relative importance.

1. The form of the petition is questionable in ways that may raise substantive problems. Section 34-1801A, Idaho Code, contemplates that the text of the proposal is to be set out in the body of the petition. This petition includes in the body only a list of sections amended, repealed, or added. The text of the proposal is attached to the petition. If the listing of sections and the attachment are perfectly identical, this may (or may not) be harmless error. But if they are not identical, the differences raise potentially serious questions about exactly what has been enacted should the initiative become law.

2. For some code sections, the text used as the language from which amendments are proposed, is the statutory language as it existed in 2004. Sometimes, but not always, legislative actions taken to amend code sections in 2005 are not recognized. The initiative should amend the current statutory language. Especially significant are the legislative amendments made in 2005 to Chapter 17, Title 63, Idaho Code, regarding taxation of timberland.²⁷

²⁵ See footnote 10.

²⁶ *State, Dept. of Parks v. Idaho Dept. of Water Administration*, 96 Idaho 440 (1974).

²⁷ See 2005 Idaho Session Laws 73.

3. The initiative needs a specific effective date. Under current law, the annual property tax assessment and levy process begins in January and culminates in the collection of taxes in December of that year and June of the next year. If the initiative should become law as a result of the 2006 general election in November, it would be impossible to implement for taxes due in December 2006.

4. The proposed § 63-802(7)²⁸ details the formula for computing each tax levy by taxing districts within the county based upon each district's budget. The initiative adds a sentence requiring "Any such tax must be approved by sixty-six and two thirds percent (66 2/3rds%) or more of those voting on the question at an election called for that purpose and held on the May or November dates provided by law." In 2004, more than 800 of Idaho's more than 1,000 taxing districts actually imposed at least one property tax levy. This election requirement will require conducting an election each year to approve levies by each of these districts – regardless of whether the computed levy exceeds any of the initiative's contemplated limitations. If the election fails the requisite majority, the district may levy no property tax for the year to which the election relates. If the petitioner's intent is otherwise, such as elections to override one or more of the initiative's limitations, this language needs revision.

5. The initiative deletes all references to the "county board of equalization" and to the "state board of equalization." It substitutes a "county board of valuation" and a "state board of valuation" with limited duties. Provisions relating to the equalization of values for property tax (and school equalization) are deleted from the Title 63, Idaho Code.²⁹ However, both the county boards of equalization and the State Tax Commission's roll as the state board of equalization are constitutionally established.³⁰

²⁸ We note that the subsection is misnumbered since the section has two subsections numbered (5).

²⁹ "Equalization" refers to the processes by which, under current law, the State Tax Commission and county officials, especially the assessor and county commissioners, ensure property is assessed equally with other similar property to create uniform effective tax rates and proper distribution of public school funding. These processes are the methods of oversight and enforcement by which the constitutional mandates of Art 7, §§ 2 and 5 for uniform taxation in proportion to value are assured.

³⁰ Art. 7, § 12 of the Idaho Constitution provides in relevant part:

There shall be a state tax commission consisting of four (4) members The duties heretofore imposed upon the state board of equalization by the Constitution and laws of this state shall be performed by the state tax commission and said commission shall have such other powers and perform such other duties as may be prescribed by law, including the supervision and coordination of the work of the several county boards of equalization. The board of county commissioners for the several counties of the state, shall constitute boards of equalization for their respective counties, *whose duty it shall be to equalize the valuation of the taxable property in the county*, under such rules and regulations of the state tax commission as shall be prescribed by law. (Emphasis added.)

Substituting boards of valuation for the constitutionally established boards of equalization and depriving the boards of the “duty . . . to equalize valuation for taxable property”³¹ may violate not only Art 7, § 12 but also §§ 2 and 5, as well. The legislature (and therefore proposals adopted by initiative³²) may not prevent a Constitutional officer from performing his constitutional duties.³³

6. The initiative changes several of the dates by which events relating to the annual property tax process must be accomplished. Petitioners need to carefully review the sequence of events and required dates for each. In at least one instance, the draft requires acts be done before the necessary antecedent actions are completed.³⁴

7. Throughout its text, the initiative changes the term “assess” or its various forms (e.g., assessment”) to “value” or its forms (e.g., valuation), but some forms of the term “assess” still appear throughout the text of the proposal. Neither term is defined, so the presumed difference in meaning is undeterminable. In two instances,³⁵ the term “special assessment” as used to describe charges against property that are not measured by the value of the property is never-the-less changed to “special valuations.”

8. The initiative repeals § 63-301, Idaho Code, which imposes on county assessors the fundamental duty to create and submit the annual property rolls. However, the initiative contains repeated references to the property rolls in its text. Without some replacement for the repealed section, no state or local official is expressly vested with the power or assigned the duty to prepare the property rolls.

9. Repealing § 63-301, Idaho Code also repeals the specific valuation and lien date for property tax assessment. That conflicts with other references in the statute to the valuation and lien date that are retained in the initiative. Lack of a clear valuation date is potentially prejudicial to other creditors of the property owner because it confuses the priority of secured debts – particularly under the federal Bankruptcy Code.

³¹ *Id.*

³² *Westerberg v. Andrus*, 114 Idaho 401 (1988) holding that initiative legislation is on equal footing with the legislation enacted by the state and must comply with the same constitutional requirements as legislation enacted by the Idaho legislature.

³³ *Williams v. State Legislature of Idaho*, 111 Idaho 156 (1986). “The legislature may not usurp the power of a constitutionally created executive agency . . .”

³⁴ Proposed § 63-308(4), Idaho Code requires that the subsequent property roll must be delivered to the county auditor by the last Monday in October; however proposed § 63-501(2), Idaho Code, gives the board of valuation has until November 1st to finish appeals relating to values on that roll

³⁵ Proposed section 63-201(21) & (28), Idaho Code.

10. The initiative makes a number of changes in the property tax statutes in Title 63, Idaho Code, that implicate statutes outside that title, but the initiative makes no effort to make the necessary coordinating changes. There are three particularly important examples:

- The Local Economic Development Act³⁶ provides for revenue allocation financing of activities within a revenue allocation area of an urban renewal project. The extensive changes made by the initiative sever many of the necessary connections between the Local Economic Development Act and the property tax laws. The initiative needs corresponding changes to that Act or it will not function properly, if at all.

- The initiative repeals § 63-315, Idaho Code, requiring that the State Tax Commission conduct an annual ratio study of property by school district. Based on the results of this study the State Tax Commission certifies equalized property values to the State Board of Education. These values are applied in accordance with the school financing provisions of Chapter 10, Title 33, Idaho Code. Lack of an amendment to § 33-802, Idaho Code, means that the Department of Education remains mandated to assume that each school district levied its maintenance and operations levy at the currently authorized three tenths of one percent. Only some school districts may be able to do this (depending on the method of reducing overall levies to one percent) but others likely will not. Thus, there will be little or no connection between the amount of property tax the district can levy and the district's distribution of state aid. That chapter needs changes corresponding to those made by the initiative.³⁷

- The authority of most taxing districts to levy taxes is granted, not in Title 63, Idaho Code, but rather in the statute creating the type of district vested with the power to impose a property tax. For example, cities are authorized to "levy taxes for general revenue purposes not to exceed nine-tenths percent (.9%) of the market value for assessment purposes on all taxable property within the limits of the city" ³⁸ The initiative's limited definition of "market value" applies only to the term when it is "used for

³⁶ Chapter 29, Title 50, Idaho Code

³⁷ We also note that any such changes must comport with the requirement of Art 9, § 1, Idaho Constitution. It provides:

Legislature to establish system of free schools The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.

An opinion from this office in 1995, examining the effect of a similar limitation on property taxes, observes that the resulting "cut in school funding might well be found to violate the requirement in art. 9 sec. 5 of the Idaho Constitution that all Idaho students be provided a 'uniform' and 'through' education." *Supra* at footnote 9.

³⁸ § 50-235, Idaho Code

property tax purposes in title 63, chapters 1 through 23, Idaho Code.³⁹ Thus, the term “market value,” when used in the statutes governing cities’ power to tax appears to be unrestrained by the definition provided by the initiative. This leaves a city’s authority to levy a tax essentially undeterminable. If the limit is 0.9% of the full market value, that number is unknowable due to the initiative’s limited definition of market value in Title 63, Idaho Code. If the definition in proposed § 63-201(11), Idaho Code, is made to apply to the levy authority statute, then the taxable property not included within the limited definition, e.g., the property included in the initiative’s definition of “true market value” in proposed § 63-201(26) is excluded from the measure of the city’s levying authority. Which of these two results is applicable under the initiative is indeterminable. More than 125 separate Idaho Code sections authorize various property tax levies by counties, cities, and taxing districts. Only a half dozen of these appear in Title 63, Idaho Code. All of the rest present the same or similar dilemma.

11. We strongly recommend a careful review of the entire text of the initiative by an independent proofreader. During our review we noticed several apparently inadvertent errors of grammar, syntax and numbering.⁴⁰ A proofreader should also check the correctness of every statutory cross-reference.⁴¹ While undoubtedly inadvertent, such errors can create serious difficulties in the administration and enforcement of the tax. The proofreader should:

- Review for errors in syntax and grammar

³⁹ Quoted *supra* at footnote 10.

⁴⁰ For example, in the proposed section 63-602CC(1), the second sentence of the current law reads:

This exemption shall be granted only if the list of all taxable personal property as described in section 63-302, Idaho Code, is submitted by the property owner or the agent thereof to the assessor not later than March 15 of each year.

The initiative amends the sentence to read:

This exemption shall be granted only if the property owner or the agent thereof to the assessor as described in section 63-302, Idaho Code, submits the list of all taxable personal property not later than March 15 of each year.

A more significant example is found in § 63-1313(c), Idaho Code, imposing a duty to report certain transactions to the county assessor. The section states:

Failure to report the transaction or to falsify such costs, which shall include any exchanges of property, will be considered a felony punishable by up to five (5) years in prison and fines not to exceed the actual value of the transaction.

Read literally this language means that only by submitting a false report may a person avoid a felony charge. (“Failure . . . to falsify” is a felony. Thus, a false report is not illegal)

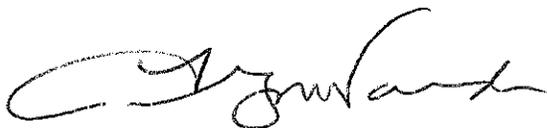
⁴¹ For example, § 63-507(4), Idaho Code, references § 63-201(22), which is a non-existent subsection due to a numbering error in the latter section.

- Verify every cross reference, both within and outside Title 63, to and from sections amended, repealed
- Check for inconsistencies in numbering.

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 the petitioner, Charles (Chuck) Cline, by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,



LAWRENCE G. WASDEN
Attorney General

Analysis by:

Theodore V. Spangler, Jr.
Deputy Attorney General