



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

May 1, 2009

VIA FIRST CLASS MAIL

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Re: Proposed Initiated Constitutional Amendment to Allow Casino Gambling

Dear Committee Members:

In accordance with the provisions of Section 3519.01(A) of the Ohio Revised Code, a written petition proposing to amend Article XV, Section 6 of the Ohio Constitution was submitted for my examination on April 24, 2009. Under this statute, my explicit duty is to opine whether the submitted summary of this proposed change in the law “is a fair and truthful statement of the proposed law or constitutional amendment.” *Id.* If I find that the summary is a “fair and truthful statement,” then I am to “so certify and then forward the submitted petition to the Ohio ballot board for its approval” in accordance with other specified statutory provisions. *Id.* The statute specifies that I am to “conduct an examination of the summary” within “ten days” after receiving it. In this instance, the tenth day falls on May 4, 2009.

After reviewing your submission, I have concluded that I am unable at this point to certify your summary as a fair and truthful statement of the measure to be referred. In particular, I am rejecting your submission for the following two reasons.

First, the proposed location of the casino is not described with particularity. The text of the proposed Constitutional Amendment at (C)(1) lists the specific street address as 8409 National Road. While the Title of the Amendment includes this address, the Summary does not. It simply states that the casino would be located in Etna Township.

In order for the summary to be a fair and truthful representation of the proposed amendment, I believe that your summary must include a fuller description of the exact location of the casino, since your amendment has already predetermined the location by providing a specific address. A fair and truthful summary would make it clear to the voters that the location has already been chosen and will not be subject to local control or determination through some public process in the future.

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This type of a description would allow Ohio citizens generally, and residents of the county and city where the proposed casino would be located in particular, to decide in a more informed manner whether they support your proposal if they are asked to sign a petition. Individuals who reside near the proposed location at 8409 National Road may be positively or negatively affected, and thus should know where the casino would be located before they make their decision whether to sign the petition.

Second, I must reject your proposed summary because I do not believe that it fairly summarizes the last sentence of Section (2) of your proposed amendment. Specifically, that sentence provides that “[e]xcept as otherwise provided in Section 6(C), no other casino gaming-related state or local fees, taxes, or other charges (however measured, calculated, or otherwise derived) may be directly or indirectly, applied to, levied against, or otherwise imposed upon gross casino revenue, casino operators, their operations, their owners, their property, or their patrons.” While the corresponding provision of the summary does reflect the language contained in the proposed amendment, it also contains a substantial change in Ohio law with respect to the taxation of certain casino revenues that is not explained or highlighted, and thus I do not believe that it fairly summarizes the effective consequences of the proposed amendment to the average citizen.

Under current Ohio law, the winnings a person derives from gambling are taxable by the State as ordinary income. O.R.C. 5747.01(A). However, based upon the language used in your proposed amendment, it appears that gambling winnings would not be taxable as income by the State. I reach this conclusion by focusing on the language in your amendment stating that “no taxes or other charges may be imposed upon ... their patrons.” This would bring about a major change in current tax law in Ohio. Because such a change would seem to be material to an average voter, I conclude that the summary must specifically inform potential signors of the petition that the proposed amendment would exempt income from taxation that is currently subject to both the Ohio state income tax and some municipal income taxes. As stated earlier, the failure to include any acknowledgement of this material change prohibits me from finding your summary to be “a fair statement” of the proposed constitutional amendment as required by law. Instead, a fair and truthful summary would include language specifically notifying voters that the winnings accruing to any individual at the proposed casino would be entirely exempted from any state or local income tax.

For the foregoing reasons, I am unable to certify the summary as “fair and truthful” and reject it pursuant to my duties under Section 3519.01(A) of the Ohio Revised Code. Please be advised that if you intend to revise and resubmit a new Summary and Proposed Constitutional Amendment, each part-petition should contain signatures of electors of only one county. In other words, if you obtain signatures from more than one county, those signatures must appear on separate part petitions.

Sincerely,



RICHARD CORDRAY
Ohio Attorney General