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VIA FIRST CLASS MAIL

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Re: Proposed Initiated Constitutional Amendment to Allow Casino Gambling

Dear Committee Member Curlis:

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 March 12, 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 fell on March 22, 2009, which means that, under Section 1.14 of the Ohio Revised Code, I have until today to complete my examination.

Since this is my first occasion to carry out this responsibility, a brief comment is in order on my understanding of the proper legal standard applicable to this task. In carrying out this duty, neither I nor this office makes any comment on the merits of the proposed measure. Instead, I simply stand in the shoes of the reasonable citizen to determine whether the summary presented to me accurately states the substance of the proposed change in the law so that the significance of its provisions are clear and intelligible to the voting public that must ultimately decide whether to sign the petitions that will be circulated to place this matter on the statewide

William Curlis
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ballot. If the summary is unfair or untruthful in any material respects, then it will mislead the public and impair a considered judgment about whether to approve or disapprove the proposed change in the law or even to put it before the voters in the first place. It is worth noting that there are two prongs to the standard we must apply: the summary must be both "fair" and "truthful." Mere repetition in the proposed summary of legalese from the text of the proposed change in the law, though "truthful," does not necessarily meet the "fair" prong of the test if it does not clarify or highlight any significant changes in the law that are contained in the proposal, which would likely be material to a reasonable voter's evaluation and assessment of the proposal. As the Ohio Supreme Court has described the issue at stake when it overruled an earlier challenge to the Attorney General's rejection of a summary presented in connection with another proposed constitutional amendment, the summary is supposed to be a concise statement that "will properly advise those who are asked to either sign the petition or to support the amendment at the polls of the character and purport of the amendments without the necessity of perusing them at length." State ex rel. Hubbell v. Bettman, 124 Ohio St. 24, 27-28 (1931). In sum, the primary objective here is to clear the way for Ohio voters to make an informed judgment about how they wish to set the direction of public policy in governing this State, which they do expressly and personally in acting on all proposed constitutional amendments.

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, Section 9(a) through (d) of the proposed constitutional amendment is very precise in stating exactly where the proposed casinos would be located in each of the four cities named, down to using specific parcel numbers. In contrast, the summary simply states that the proposed amendment would "[a]uthorize a single casino at a designated location within each of the cities of Cincinnati, Cleveland, Columbus, and Toledo." 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 casinos, since your amendment has already predetermined those locations by providing specified parcel numbers. It is not necessary or advisable for your amendment to repeat those parcel numbers, but a fair and truthful summary would provide a physical description of the casino's location and make it clear to the voters that these decisions have already been made and will not be subject to local control or determination through some public process in the future. For example, and by way of hypothetical illustration only, I believe that a fair and truthful description would necessarily state that the casino in city A would be located at the southwest corner of the interchange of State Route A and City Road B.

This type of a description would allow Ohio citizens generally, and residents of the county and city where the proposed casinos 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 in Columbus, Cleveland, Toledo, and Cincinnati may be positively or

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March 23, 2009

negatively affected by knowing the predetermined location of the casinos, and thus should know where the casinos 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.” Your summary states that “[n]o other casino gaming-related fees, taxes, or other charges may be imposed upon gross casino revenue, casino operators, their operations, their owners, their property, or their patrons.” While this provision of the proposed 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 any of the four proposed casinos 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.

Sincerely,



RICHARD CORDRAY
Ohio Attorney General