



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 24, 2014

Representative Tina Kotek
Speaker of the House
900 Court Street NE Rm 269 Rm 269
Salem OR 97301

Re: Ballot title for SB 833 (2013)

Dear Speaker Kotek:

You asked us to address two questions with respect to a ballot title set forth in the -3 amendments to House Bill 4054 (2014):

(1) Does the Legislative Assembly have the legal authority to replace a ballot title that was drafted by the Attorney General for an Act that was referred by the people?

(2) Does the ballot title set forth in the HB 4054 -3 amendments leave the legal framework for creating ballot titles unchanged, while providing a one-time exception to this process?

We believe that the answer to both questions is yes.

Background

The Legislative Assembly passed Senate Bill 833 during the 2013 regular session. After the Act's passage, the people gathered sufficient signatures to exercise their right under Article IV, section 1 (3), of the Oregon Constitution, to vote on whether to approve or reject SB 833 at the November 4, 2014, general election. On the basis of authority granted under ORS 250.065, the Attorney General prepared a draft ballot title for the pending referendum on SB 833.

You requested that we draft the -3 amendments to HB 4054. These amendments replace the current HB 4054 with a legislatively drafted ballot title for enrolled SB 833. The specific language for this ballot title was supplied by your office. If enacted, the ballot title contained in the HB 4054 -3 amendments will replace the ballot title for SB 833 that was drafted by the Attorney General.

Discussion

The Legislative Assembly Has the Authority to Replace the Attorney General's Ballot Title

We believe that the Legislative Assembly has the legal authority to rescind the ballot title for the referendum on SB 833 that was drafted by the Attorney General and to replace it with the

ballot title contained in the HB 4054 -3 amendments. The powers of the Legislative Assembly are plenary, meaning that it may take any legislative action not prohibited by the United States or Oregon Constitution.

There is no constitutional guarantee of a ballot title, much less of a ballot title that is drafted by the Attorney General. Rather, it is only because of specific laws enacted by the Legislative Assembly that ballot titles are required and that the Attorney General may, in certain circumstances, draft a ballot title. As all legal requirements relating to ballot titles are statutory, the Legislative Assembly has the authority to modify or preempt these laws at any time and in any manner it chooses, as long as its action does not violate other rights enshrined in the United States or Oregon Constitution. In particular, the Legislative Assembly may either change the overall legal framework governing ballot titles, or exempt a particular Act or Acts from the having to comply with generally applicable ballot title requirements.

In this regard, we note that the Legislative Assembly frequently exercises its authority to draft ballot titles for Acts that it refers to the people.¹ The exercise of this authority includes instances in which the Legislative Assembly has replaced a ballot title drafted by the Attorney General with its own ballot title.² While we are not aware of any instance in which the Legislative Assembly has done this with respect to a bill referred by the people, rather than by the assembly itself, we strongly believe that the assembly has the legal authority to take this action.

The HB 4054 -3 Amendments Do Not Alter the General Process for Ballot Titles

The legal procedure governing ballot titles for state measures in Oregon is set forth in ORS chapter 250.³ As noted above, the Legislative Assembly has the legal authority to either alter the overall ballot title procedure or to exempt a particular Act or Acts from this procedure. As detailed below, the HB 4054 -3 amendments do the latter.

Section 1 of the -3 amendments to HB 4054 simply states that the provided language will constitute the ballot title for the referendum on SB 833. It does not discuss or alter the general statutory framework for ballot titles.

Section 2 (1) of the -3 amendments first reaffirms that the language in section 1 of the amendments will be the only ballot title for the referendum on SB 833. It then notes that this is the case “notwithstanding ORS 250.035, 250.065, 250.067 and 250.085.” The listed ORS sections are the statutory provisions that generally apply to the preparation and judicial review of the ballot title for a state measure referred by the people. The use of “notwithstanding” in this subsection means that these statutory provisions continue to exist unchanged, but that they do not apply to this particular ballot title.

Section 2 (2) of the -3 amendments states that the specific ballot title for SB 833 that was drafted and certified by the Attorney General is void and may not be used at the referendum. It also states that any review by the Supreme Court of the ballot title for SB 833 that was drafted by the Attorney General is now moot and must be terminated. While this

¹ See, e.g., chapter 714, Oregon Laws 2009 (Enrolled House Bill 2414) (prescribing ballot titles and explanatory statements for House Joint Resolution 7 (2009) and House Joint Resolution 13 (2009)); chapter 750, Oregon Laws 2007 (Enrolled House Bill 2640) (prescribing election procedures, ballot titles, explanatory statements and fiscal impact estimates for eight legislatively referred measures).

² See, e.g., chapter 5, Oregon Laws 2002 Second Special Session (Enrolled House Bill 4038).

³ The primary statutes for ballot titles for various types of state measures are ORS 250.035, 250.036, 250.037, 250.038, 250.062, 250.065, 250.067, 250.075 and 250.085.

subsection references ORS 250.065, 250.067 (2) and 250.085, it makes clear that these citations refer solely to the SB 833 ballot title drafted by the Attorney General and in no way alter the content or applicability of these statutes for other ballot titles.

Section 3 of the -3 amendments is an emergency clause.

Conclusion

Based on this analysis, we believe that: (1) the Legislative Assembly has the authority to draft its own ballot title to replace the ballot title for SB 833 that was drafted by the Attorney General; and (2) the -3 amendments to HB 4054 accomplish this, while leaving the overall legal framework for drafting and challenging ballot titles unchanged.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dexter A. Johnson", with a long horizontal flourish extending to the right.

Dexter A. Johnson
Legislative Counsel