

Image Not
Available

OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

March 14, 2000

The Honorable Major B. Harding
Chief Justice, and
Justices of The Supreme Court
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Harding and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Office of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On February 17, 2000, the Secretary of State submitted to this office an initiative petition seeking to amend the Florida Constitution to provide for a statewide high speed monorail, fixed guideway or magnetic levitation system. The full text of the proposed amendment states:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article X, Section 19, Florida Constitution, is hereby created to read as follows:

High Speed Ground Transportation System.

To reduce traffic congestion and provide alternatives to the traveling public, it is hereby declared to be in the public interest that a high speed ground transportation system consisting of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 miles per hour, be developed and operated in the State of Florida to provide high speed ground transportation by innovative, efficient and effective technologies consisting of dedicated

The Honorable Major B. Harding
Page Two

rails or guideways separated from motor vehicular traffic that will link the five largest urban areas of the State as determined by the Legislature and provide for access to existing air and ground transportation facilities and services. The Legislature, the Cabinet and the Governor are hereby directed to proceed with the development of such a system by the State and/or by a private entity pursuant to state approval and authorization, including the acquisition of right-of-way, the financing of design and construction of the system, and the operation of the system, as provided by specific appropriation and by law, with construction to begin on or before November 1, 2003.

The ballot title for the proposed amendment is "Florida Transportation Initiative for statewide high speed monorail, fixed guideway or magnetic levitation system." The summary for the proposed amendment states:

To reduce traffic and increase travel alternatives, this amendment provides for development of a high speed monorail, fixed guideway or magnetic levitation system linking Florida's five largest urban areas and providing for access to existing air and ground transportation facilities and services by directing the state and/or state authorized private entity to implement the financing, acquisition of right-of-way, design, construction and operation of the system, with construction beginning by November 1, 2003.

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161(1), Florida Statutes, provides in relevant part:

Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance

of such amendment . . . shall be printed in clear
and unambiguous language on the ballot The
substance of the amendment . . . shall be an

The Honorable Major B. Harding
Page Three

explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

This Court has stated on several occasions "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986); *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991). However, the ballot must give the voter fair notice of the decision he must make. *Askew v. Firestone*, *supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that the voters are advised of the true meaning of an amendment.

The chief purpose of this initiative is to authorize the development of a high speed ground transportation system within the State of Florida. The ballot title and summary appear to express this chief purpose. The title, however, states that the initiative proposes a statewide system. In fact, the amendment directs the state to develop a system that links the five largest urban areas of the state as determined by the Legislature. A question exists as to whether the use of the term "statewide" would mislead voters into believing that the initiative provides for a system encompassing all parts of the state. Further, the summary does not reflect that the determination of the five largest urban areas, a term that is not defined within the initiative, will be made by the Legislature.

Therefore, I respectfully request this Honorable Court's opinion as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161, Florida Statutes.

The Honorable Major B. Harding
Page Four

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General's Office, within 30 days after receipt of the proposed amendment

to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution.

Article XI, section 3, Florida Constitution, provides in relevant part:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994). *And see, Advisory Opinion to the Attorney General--Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

This Court has stated, however, that an initiative that affects multiple branches of government does not necessarily violate the single subject requirement, provided it does not substantially alter or perform the functions of those branches. *Advisory Opinion to the Attorney General--Limited*

Casinos, 644 So. 2d 71, 74 (Fla. 1994), *citing, Advisory Opinion to the Attorney General English--The Official Language of Florida*, 520 So. 2d 11 (Fla. 1988).

The Honorable Major B. Harding
Page Five

The proposed amendment provides that the Legislature shall determine the five largest urban areas of the state and directs the Legislature, the Cabinet and the Governor to proceed with the development of the statewide high speed ground transportation system. In addition, the initiative contemplates that the Legislature will appropriate funds for the development and maintenance of this project, with construction to begin on or before November 1, 2003. As noted in *Advisory Opinion to the Attorney General--Requirement for Adequate Public Education Funding*, 703 So. 2d 446, 449 (Fla. 1997), while the Legislature has the power of appropriation under the Florida Constitution, the Governor also has a significant function with respect to appropriations. Pursuant to Article III, section 8, Florida Statutes, the Governor is provided with a line-item veto as to appropriations.

Moreover, the initiative contains no direction regarding implementation of the high speed system. The proposed amendment creates a responsibility for the Legislature and the Governor and Cabinet to develop a high speed transportation system with little direction other than that such a system is to be a mono-rail, fixed guideway or magnetic levitation system capable of speeds in excess of 120 miles per hour that serves the five largest urban areas of the state and that construction is to begin on or before November 1, 2003. With such a lack of specifics as to the implementation of the proposed system, it is difficult to conceive how a remedy could be fashioned by a court, should the Legislature or Governor and Cabinet fail to act, without the court performing legislative or executive functions.

The initiative thus affects the functions of the legislative and executive branches of state government. Whether such interference is substantial enough to invoke the proscriptions of Article XI, section 3, Florida Constitution, or whether the amendment only incidentally alters or performs the functions of the legislative or executive branches, however, is a matter that this office presents to this Honorable Court for

resolution.

Therefore, I respectfully urge this Honorable Court to consider whether the constitutional amendment, proposed by initiative

The Honorable Major B. Harding
Page Six

petition, complies with Article XI, section 3, Florida
Constitution.

Sincerely,
Robert A. Butterworth
Attorney General

RAB/tgk