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OPINION NO. 86-366

September 2, 1986

The Honorable W.J. "Bill" McCuen
Secretary of State
State Capitol
Little Rock, AR 72201

STATE MESSENGER

Dear Bill:

You have requested an official opinion on the following questions:

1. Past practice has been to designate the issues on the ballot as "Proposed Constitutional Amendment No. X." Is it permissible to instead designate the issues on the ballot as "1986 Proposed Constitutional Amendment No. 1",---No. 2,---No. 3, etc, and then assign an actual amendment number to those issues which are certified as adopted after the election?
2. These issues, depending on their nature, must be published once a month as legal notices either 4 or 6 times prior to the election in a newspaper of general circulation in a newspaper of general circulation in each county. Many counties have more than one qualified newspaper. Is it permissible to rotate these monthly publications between the newspapers within a county or must the entire cycle of notices appear in the same newspaper?

As you know, Amendment 7 to the Arkansas Constitution of 1874 sets out the method for proposing constitutional amendments. The Secretary of State has several functions enumerated in Amendment 7; among them determining sufficiency of petitions presented to be placed on the ballot. After the petitions meet all legal requirements, the measures are to be submitted to the people for voting. Amendment 7 provides:

In submitting measures to the people, the Secretary of State. . .shall be guided by the general election laws. . .until additional legislation is provided therefore.

Legislation has been provided at Ark. Stat. Ann. §2-201 et. seq. (Repl. 1976) to implement Amendment 7. According to §2-209, the Governor, Secretary of State and State Comptroller (a position abolished by the Legislature in 1967 and generally replaced by the Director of the Department of Finance and Administration) are "directed and empowered to fix and declare the number. . .by which each amendment to the Constitution of Arkansas, and each initiated. . .measure shall be designated".

The crux of case law on this subject is that nothing in a measure submitted to the people should be misleading to the voter, including its designated number. See, e.g. Fletcher v. Bryant, 243 Ark. 862, 871-872, 422 S.W.2d 698 (1968).

Since in this particular year, a proposed constitutional amendment has been designated "64" it will be within the discretion of the enumerated officials of §2-209 to determine whether it would mislead the voter to designate subsequent proposals as "No. 1", etc. But, in the future, it is my opinion that the statute allows such proposed numbering system.

As to your second question, Ark. Stat. Ann. §2-212 (Repl. 1976) mandates that notice of proposed measures "shall be published. . .in some newspaper in each county as is provided by law".

In Chaney v. Bryant, 259 Ark. 294, 297, 532 S.W.2d 741 (1976), Justice Fogelman refers to the language of §2-209 requiring publication "in a newspaper in each county". Presumably, the §2-212 reference to a newspaper "as is provided by law" refers to a legal newspaper as provided in Ark. Stat. Ann. §15-101 et. seq. (Repl. 1979). Since the language of §2-209 itself requiring publication in "some" newspaper is not further expanded other than in §15-101 et. seq., it is my opinion that the answer to your second question is that such publication may be rotated.

The foregoing opinion, which I hereby approve, was prepared by Special Counsel to the Attorney General R.B. Friedlander.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Clark".

STEVE CLARK
Attorney General

SC/RBF/mo