March 11, 1997

Honorable Pete T. Cenarrusa
Secretary of State
STATEHOUSE MAIL

Re: Certificate of Review—Initiative to Limit ad Valorem Taxation on Real Property to One Percent of Assessed Value

Dear Mr. Cenarrusa:

An initiative petition that would limit ad valorem taxation on real property to one percent of assessed value was filed with your office on February 11, 1997. Idaho Code § 34-1809 requires the Office of the Attorney General to review the proposed initiative for matters of substantive import. Because of the strict statutory timeframe established by Idaho Code § 34-1809, this office can highlight areas of concern, but is unable to provide in-depth analysis of each issue that may present problems. This office prepared a comprehensive opinion reviewing a similar version of the one percent initiative on May 16, 1996 (to be published as Attorney General Opinion 96-3). Pursuant to Idaho Code § 34-1809, the recommendations contained in this certificate are "advisory only" and "the petitioner may accept or reject them in whole or in part."

Once the petitioner has filed the proposed initiative, this office will prepare a short and long ballot title. According to Idaho Code § 34-1809, the ballot titles must "give a true and impartial statement of the purpose of the measure," must not contain any argument and should not "create prejudice either for or against the measure."

MATTERS OF SUBSTANTIVE IMPORT

The latest version of the one percent initiative is similar to previous versions. A number of specific changes have been made in response to criticism of the prior initiative proposal. However, the overall structure and intent of the one percent initiative remains unchanged.

A. Statement of Intent

Among other things, the statement of intent for the initiative states that it will "provide uniform state funding for public schools." It further states that the initiative will "guarantee essential public health and safety service." The operative language of the initiative, however, does not set out a mechanism to ensure uniform state funding for public schools. Likewise, the initiative does nothing to guarantee essential public health and safety service.

The statement of intent also purports to replace the existing language of Idaho Code § 63-923 with the language in the initiative. As an initial matter, the operative language of the initiative does not specifically repeal Idaho Code § 63-923. In addition, because the tax code has been recodified, Idaho Code § 63-923 no longer exists. The language that used to be contained in Idaho Code § 63-923 is now located in Idaho Code § 63-1313. The operative language of the initiative should specifically repeal Idaho Code § 63-1313. All other references to Idaho Code § 63-923 should be changed to Idaho Code § 63-1313.

B. Section 1.1

The analysis of a prior version of section 1.1 concluded that it is "not self-executing. If the Initiative passes, the implementation requires that the legislature extensively revise [the initiative's] text, the existing property tax laws, or both." Atty. Gen. Op. 96-3 at 14. The last sentence of section 1.1 has been changed as follows:

> The maximum amount of tax on property subject to assessment and taxation within the state of Idaho shall not exceed one percent (1%) of the assessed value of such property, after all statutory exemptions applying to such property have been applied. The one percent (1%) shall be collected by the counties <u>and apportioned to the taxing districts within the counties, using a formula to be developed by the legislature's enabling legislation for this act.</u>

(new language underlined). While the new language acknowledges that additional legislation is necessary to implement the one percent initiative, that language is left to future legislatures to develop. As this office has pointed out previously, legislation such as the one percent initiative cannot bind the actions of future legislatures. There is no guarantee that the legislature will promulgate enabling legislation for the one percent initiative. Simply put, the new language does not alter this office's conclusion that the initiative cannot be implemented in its present form.

C. Section 1.2

This office has previously concluded that section 1.2 limits increases in the entire annual budget of cities, counties and taxing districts even if the budget increase is the result of a grant or other source of funding. Atty. Gen. Op. 96-3 at 16. The final sentence of section 1.2 has been changed to clarify that "grants on new construction and/or annexation are exempt" from the one percent limit. It is uncertain what is meant by "grants on new construction and/or annexation." What is clear, however, is that while the previous language of section 1.2 permitted an exception to the budget limitation for

any money generated by new construction or annexation, now only taxes, fees or grants generated by new construction or annexation are exempt from the budget limitation.

D. Section 2

In order to be implemented, section 2 would have to provide a system of centralizing the budgetary authority of every local taxing district into one unit. This would require a reorganization of Idaho's ad valorem tax system as well as the structure of local governments throughout the state. Once again, since the initiative provides no mechanism to overcome these problems, it is incapable of implementation as it is currently written.

E. Sections 4 and 5

Sections 4 and 5 forbid the legislature from repealing or reducing existing exemptions to property taxes. Sections 4 and 5 also require the legislature to fund all public school education exclusively from general fund or other state and federal resources.

As this office has explained on a number of occasions, these sections will not bind the legislature in any legal sense. The only limitations placed on the power of the legislature to enact legislation are those contained in the United States and Idaho Constitutions. One legislature has no authority to limit or restrict the power of subsequent legislatures. *See, e.g.,* Johnson v. Deifendorf, 56 Idaho 620, 636, 57 P.2d 1068 (1936) ("[a] legislative session is not competent to deprive future sessions of powers conferred on them, or reserved to them, by the constitution"). The same limit applies to legislation by citizen initiative. Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943). The only way to bind the legislature as is intended by sections 4 and 5 would be to amend the Idaho Constitution.

This office previously concluded that "the courts would not construe section 5.1 of the Initiative to apply to community colleges." Atty. Gen. Op. 96-3 at 11. New language has been added to section 5.1 to clarify that community colleges are included in the requirement to fund all public education with revenue from the "general fund and other state and federal revenue sources."

F. Section 6

Section 6 purports to repeal Idaho Code § 63-923 [now Idaho Code § 63-1313] and "any laws in conflict with" the initiative. This office has previously concluded that this section renders the initiative incapable of implementation:

It is the law in Idaho that a statute providing for repeal of all inconsistent laws is effective to accomplish such repeal. *State v. Davidson*, 78 Idaho 553, 309 P.2d 211 (1957). This doctrine is known as "repeal by implication." It is not favored and will not be indulged if there is any other reasonable construction. *State v. Martinez*, 43 Idaho 180, 250 P. 239 (1926). Statutes, although in apparent conflict, are construed to be in harmony if reasonably possible. *Cox v. Mueller*, 125 Idaho 734, 874 P.2d 545 (1994). Only that part of an existing statute actually in conflict with a subsequent statute is repealed by implication. *State v. Davidson*, 78 Idaho 553, 309 P.2d 211 (1957) (holding that enactment of negligent homicide statute repealed the earlier voluntary manslaughter statute to the extent the earlier statute included homicide resulting from the improper operation of motor vehicles).

The conflict section of the Initiative does not expressly repeal existing Idaho Code § 63-923 [now Idaho Code § 63-1313]. The language of the preamble leaves no doubt it is the drafters' intent that existing Idaho Code § 63-923 [now Idaho Code § 63-1313] be repealed and replaced by the language of the Initiative, but the Initiative does not expressly accomplish this purpose. Since the Initiative does not expressly repeal existing Idaho Code § 63-923 [now Idaho Code § 63-1313], only those portions of the existing statute in irreconcilable conflict with the Initiative will be repealed by implication. The legislature, of course, could expressly repeal the existing section, thereby solving this problem.

. . . .

In a greater sense, however, the Initiative may be read as conflicting with the principles of the entire property tax code. It is the opinion of this office that this Initiative, like its predecessor as reviewed in Attorney General Opinion 91-9, is unimplementable. It is unimplementable because it is in conflict with the basic principles of Idaho's property tax structure. Given a choice between effectively repealing Idaho's property tax code or holding that an initiative which ostensibly attempts only to modify a portion of that code cannot be implemented, a court is most apt to find the Initiative unimplementable.

The repeal provision in the Initiative may affect statutes other than the property tax code. Chapter 17, title 50, for example, permits local improvement districts to issue bonds which are then repaid by collecting "special assessments" levied against the property lying within the local improvement district. (*See, e.g.,* Idaho Code § 50-1721A for use of the

> phrase "special assessment.") Bonds issued by local improvement districts are not [a]ffected by the provisions of art. 8, sec. 3 of the Idaho Constitution. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912). Section 1.4 of the Initiative prohibits "special assessments" to repay indebtedness not approved pursuant to "art. 8, sec. 3 of the Idaho Constitution relating to bonds." Art. 8, sec. 3, requires that bonds for indebtedness be approved by a two-thirds vote of those persons living in the taxing district, unless the indebtedness is for "ordinary and necessary" expenses. It is likely, then, that bonds of local improvement districts issued after January 1, 1997 [the effective date of the previous initiative], the effective date of the Initiative, will have to be approved by a two-thirds vote when neither the local improvement district code nor the Idaho Constitution require such a vote now. The legislature, of course, may address this problem by amending affected statutes, the Initiative, or both.

Atty. Gen. Op. 96-3 at 16-18.

CONCLUSION

This is the second time within a year the Office of the Attorney General has reviewed the one percent initiative. In August, 1996, this office concluded that the initiative could not be implemented as it was drafted. While a number of specific changes have been made, the overall structure and intent of the initiative remains the same. Therefore, this office concludes, once again, that the most recent version of the one percent initiative cannot be implemented in its current form.

I hereby certify that the enclosed measure has been reviewed for form, style and matters of substantive import and that the recommendations set forth have been communicated to Ronald D. Rankin by sending him a copy of this certificate via U.S. Mail.

Sincerely,

MATTHEW J. MCKEOWN
Deputy Attorney General
Intergovernmental and Fiscal Law Division