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Gale announces decisions on eligibility of gambling initiatives

LINCOLN – Nebraska Secretary of State John Gale announced today that a three-part initiative proposal to allow casino gambling is not eligible for the Nov. 7 ballot but that an initiative proposal to authorize video keno is eligible for the ballot.

Gale ruled that the casino gambling initiatives would be kept off the ballot because they violate a provision of the Nebraska Constitution that says the “same measure, either in form or essential substance,” shall not be submitted to voters by the initiative process more than once in three years.

The November 2004 ballot contained a constitutional initiative that would have opened the door for expanded gambling; a statutory initiative that would have allowed two casinos in Omaha, authorized gambling devices across the state and established a gambling regulatory body; and a statutory initiative that established and provided for distribution of gambling tax receipts.

The 2006 initiatives include a constitutional amendment that would authorize one casino in each of the state’s three congressional districts; a statutory initiative that would establish a gambling regulatory body; and a statutory initiative that would provide for distribution of gambling tax receipts.

Gale said the plain meaning of Nebraska’s resubmission clause precludes the submission of measures that share the same “essential substance” more than once every three years.

While there are certainly differences between the 2004 initiatives and the 2006 initiatives, he said, they are mostly cosmetic. The fundamental nature or essence of both would open Nebraska to casino gambling in a comparatively similar fashion, he said.

He said that the casino gambling initiatives met the constitutional requirement that an initiative petition be limited to a single subject.

Gale said the video keno initiative was eligible for the ballot because it conformed to both the single-subject rule and the three-year resubmission provision.

He said the essence of the video keno proposal was to amend statutory provisions in the Nebraska County and City Lottery Act. He said the current proposal does not mandate new dedicated gaming sites nor create a body to regulate new devices as was the case with the 2004 initiatives.

Sponsors submitted what they purport to be sufficient numbers of signatures on the three-part casino gambling proposal and the video keno proposal.

Gale said he expects that his decisions on ballot eligibility will be challenged in court. To make the Nov. 7 ballot, the issues must be resolved by the courts by early September.

In a July 10 opinion, Attorney General Jon Bruning said the three-part casino gambling proposal and the video keno proposal both violate the Constitution's resubmission provision.

Bruning's opinion also said the video keno measure is unconstitutional because it attempts to authorize by statute a form of gambling not permitted by the Constitution.

Gale noted that he is charged under state law with the ministerial duty of deciding whether to keep an initiative off the ballot.

"My authority is specific to whether each initiative has the semblance of a law and is legally appropriate for the initiative process," he said. "An initiative would only be inappropriate where there is a constitutional defect which is patent and appears on the face of the petition."

Gale said Bruning's opinion was advisory in some respects but a broad public policy statement in other respects. Bruning's opinion, he said, did not in any way address the limits on his authority as secretary of state to address the broader policy issues.

"My authority in reviewing initiatives is purposely restrained in order to protect the right of initiative, which is precious to the people and is one which the courts are zealous to preserve," Gale said.

He said he does not believe that he has the power to rule on Bruning's contention that legalization of video keno can only be done by constitutional amendment. "That would clearly be an interpretation of the meaning of the Constitution and of the proposed law that is far beyond my statutory powers," he said.

“My duties of law are very limited and not broad. To declare video keno to be facially unconstitutional would clearly need research and investigation, considering differing definitions of games of chance and constitutional history,” he said.

“It would not be a patent defect on its face. This is not my place to decide, but rather that of the courts.”

Added Gale, “My oath of office, duties of law and my principles of good government tell me I should do my duty specifically and not assume powers not given to me by law.”

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