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January 16, 1996

OPINION LETTER NO. 135-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B6.

We conclude the petition must be rejected as to form for the following reasons:

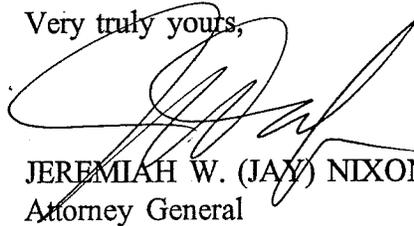
1. At the top of the back side of the initiative petition is the language "An Initiative to Reward Work by Creating a Living Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.
2. The proposed amendment to Section 290.502 is headed "Section 1. Required Living Wage." Such heading does not reflect the words of the proposed statute in that the words "living wage" do not appear in the proposed statute. The use of the words "living wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

The Honorable Rebecca McDowell Cook

3. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Nixon", is written over the typed name and title.

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure