

MEMORANDUM

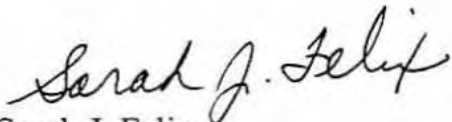
State of Alaska
Department of Law

To: The Honorable Fran Ulmer
Lieutenant Governor

Date: November 9, 2001

File No.: 663-02-0066

Tel. No.: 465-3600

From: 
Sarah J. Felix
Assistant Attorney General
Governmental Affairs – Juneau

Re: **Revised Review Memorandum on Initiative Petition Legalizing Hemp and Marijuana (01-MRNA)**

I. INTRODUCTION AND SUMMARY:

You have asked us to review an application for an initiative petition entitled “an act to decriminalize and regulate cannabis (hemp including marijuana).” We have completed our review, and find that the application complies with the constitutional and statutory provisions governing the use of the initiative. Under these circumstances we recommend that you certify the application. We are providing you with this ~~reviewed~~ ^{revised} review memorandum in order to correct an error made in describing comments made by staff of the Department of Law, Criminal Division. Please replace our earlier review memorandum with this revised review memorandum.

II. SUMMARY OF THE PROPOSED BILL AND ANALYSIS:

The sponsors of this initiative have indicated in their application that this initiative petition is similar to a previous initiative (99-HEMP) with a few changes and deletions. The previous initiative, 99-HEMP, was approved but not completed. Because of the similarities between the current initiative and the previous initiative, we will rely on the analysis and conclusions set out in our June 4, 1999, memorandum reviewing 99-HEMP, and in an earlier review memorandum of another similar initiative, 93-HEMP, as the review for the current initiative application. For your convenience we have attached a copy of our June 4, 1999, memorandum and the November 29, 1993, memorandum reviewing 93-HEMP.

There are a number of differences between the law to be initiated by the current initiative and the law proposed by 99-HEMP. For instance, under the bill set out in the current petition persons age 21 years or older may engage in the use of hemp products, including marijuana for personal use. The previous initiative, 99-HEMP, set the age limit

at persons 18 years or older. The current bill also adds a provision that provides the initiative should not be construed to nullify laws regulating minors' use, etc. of hemp products. Although this is a significant point from a policy perspective, it does not change our legal analysis, as set out in our June 4, 1999, and November 29, 1993, review memoranda.

Another change in the current bill to be initiated is the deletion of the provision for retroactive amnesty for persons convicted of marijuana crimes. The current initiative also differs from 99-HEMP by deleting the provision that would have prohibited Alaska law enforcement resources to be used to enforce federal cannabis laws. The current initiative also removes the provision from 99-HEMP that would have required the state to challenge federal cannabis prohibitions that conflict with the initiative. Finally, the current initiative does not contain a clause such as the one set out in 99-HEMP requiring establishment of a panel to study restitution for persons imprisoned in the past for cannabis offenses. Again, these changes are significant from a policy perspective, but do not change our legal analyses as set out in our two prior review memoranda.

There is also one minor difference in the form of the current application from the application for 99-HEMP. AS 15.45.030(2) requires that an initiative application shall include

a statement that the sponsors are qualified voters who signed the application with the proposed bill attached.

The sponsor pages included within current application contain a statement that the sponsors are qualified voters, and also includes a statement that the sponsors signed the application with the proposed bill attached. In the 99-HEMP application, the sponsor pages had failed to include the latter statement. Thus, the current application meets the requirements of AS 15.45.030(2).

Also, in preparing this review memorandum we have consulted with attorneys in our office who are familiar with issues regarding regulation of marijuana. Staff of the commercial section of our office, and staff of the criminal division of the Department of Law, have also expressed concerns regarding enforcement of the bill to be initiated. The terms of the bill are confusing and send mixed messages. There are a number of inconsistencies in the bill that may lead to litigation over enforcement of the bill.

These concerns of the criminal division and the commercial section raise serious issues with the current initiative application. However, as we have explained in the past, a petition for an initiative which is otherwise in the proper form cannot be rejected because it is unwise or may be substantively unconstitutional. The courts will not entertain a challenge to an initiative's substantive constitutionality unless or until the initiative passes. *Boucher v. Engstrom*, 528 P.2d 456, 460 (Alaska 1974). Nor will it do so if the law is of doubtful wisdom or effectiveness. *Yute Air Alaska v. McAlpine*, 698 P.2d 1173, 1176 and 1181 (Alaska 1985).

III. CONCLUSION

For the reasons set out above, we find that the proposed bill and application are in the proper form, and therefore recommend that you certify this initiative application.

IV. PROPOSED BALLOT AND PETITION SUMMARY

We have also prepared a ballot-ready petition summary and title for your consideration. It is our practice to provide you with a proposed title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180. We believe that it is good practice for the petition and ballot to conform to the requirements of a title (six words) and ballot summary (100 words) under AS 15.45.180. We do this in order to reduce the chance of collateral attack due to a divergence between the ballot and petition summaries. We therefore propose the following ballot and petition title and summary for your review:

Initiative to Decriminalize Hemp, Including Marijuana

This bill would do away with civil and criminal penalties for persons 21 years or older who grow, use, sell, or give away marijuana, or other hemp products. These products include hemp used for paper, fiber, food, fuel, medicine, or personal use in private. Marijuana could be regulated like alcohol or tobacco. State law could not stop doctors from prescribing marijuana. The bill allows for laws limiting marijuana use in some cases to protect public safety. It allows laws to limit marijuana use in public. The bill would not nullify laws regulating marijuana use by minors.

Should this initiative become law?

This summary has a Flesch test score of 51.47, which is somewhat lower than the target score of 60. We think that the reason for the lower score is that the summary includes commonly understood words containing three or more syllables, such as

“marijuana,” “regulating,” and “prescribing.” Under these circumstances we believe that the summary meets the readability standards of AS 15.60.005.

At the request of your office we have reviewed the above language with Tim Hinterberger, the designated representative of the initiative committee. Mr. Hinterberger has indicated that the committee is willing to approve the summary in order to quickly secure approval of the initiative application. However, the committee has reservations about certain language in the summary.

Please contact me if we can be of further assistance to you on this matter.

SJF:jn

Attachments

cc(w/att.): Janet Kowalski, Director
Division of Elections

Dan Branch, Supervising Assistant Attorney General
Commercial Section - Juneau

Dean Guaneli, Chief Assistant Attorney General
Criminal Division, Juneau

Kristen Bomengen, Supervising Assistant Attorney General
Human Services Section, Juneau

Tim Hinterberger
Initiative Committee Member