

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 1, 2006</p>	<p>No. I06-006 (R06-034)</p> <p>Re: Proposition 203 Increase in State Tax on Cigarettes</p>
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To: Director Gale Garriott
Department of Revenue

Questions Presented

Arizona voters approved Proposition 203 in the 2006 general election. You have asked whether the effective tax increase on cigarettes under Proposition 203 will be 4 cents per cigarette as provided in the text of the proposed amendment (80 cents per pack of 20 cigarettes), or .80 cents per pack of cigarettes as stated in the descriptive title of the Proposition shown on the ballot format.¹

Summary Answer

Because the text of A.R.S. § 42-3371, as added by Proposition 203, states unambiguously that the amount of the new tax is 4 cents per cigarette, the tax levied under A.R.S. § 42-3371 is 4 cents per cigarette. The unambiguous statutory language is not altered by the misprint in the ballot description.

¹ Your November 9, 2006, letter also requests an opinion in relation to the application of Proposition 203 to sales of tobacco products on Indian reservations. This Office will address those questions in a separate opinion.

Background

A. Arizona's Initiative Process.

The Arizona Constitution reserves to the people the power to propose laws and constitutional amendments for placement on the ballot through the submission of petitions signed by a certain percentage of qualified electors. Ariz. Const. art. IV, pt. 1, § 1(2) & (4). Each sheet containing petitioners' signatures must be attached to a full and correct copy of the text of the proposed measure. Ariz. Const. art. IV, pt. 1, § 1(9). Before circulating an initiative petition, the person or organization proposing the law must file with the Secretary of State an application that includes the full text of the proposed law. A.R.S. § 19-111(A). If the requisite number of petition signatures is submitted, the Secretary of State prints a publicity pamphlet that contains the following: (1) a true copy of the text of the measure; (2) the form in which the measure will appear on the ballot; (3) the arguments for and against the measure; (4) an impartial analysis of the measure; and (5) a fiscal impact statement. A.R.S. § 19-123(A). The publicity pamphlet is sent to every household that has a registered voter. A.R.S. § 19-123(B).

B. Proposition 203.

At the 2006 general election, voters approved Proposition 203, which will take effect upon proclamation of the Governor, Ariz. Const. art. IV, pt. 1, § 1(5). The Proposition provides dedicated funding for early childhood development and health programs and establishes a statewide structure to coordinate these programs. It establishes an early childhood development health care board and fund along with regional partnership councils throughout the state to identify childhood development and health services needs at the local level and provides for distribution of monies and grants to eligible programs serving pre-kindergarten-age children.

Under the Proposition, an increase in the tax on tobacco products provides the new funding for these programs. In addition to creating new statutes governing early childhood development and health programs, Proposition 203 amends Title 42 of the Arizona Revised Statutes to add new statute A.R.S. § 42-3371, which provides the following:

In addition to all other taxes, there is levied and shall be collected by the department in the manner provided by this chapter, on all cigarettes, cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco the following tax:

1. *On each cigarette, four cents.*
2. On smoking tobacco, snuff, fine cut chewing tobacco, and refuse, scrubs, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, 9 cents per ounce or major fraction of an ounce.
3. On all cavendish, plug or twist tobacco, 2.2 cents per ounce or fractional part of an ounce.
4. On each twenty small cigars or fractional part weighing not more than three pounds per thousand, 17.8 cents.
5. On cigars of all descriptions except those included in paragraph 4, made of tobacco or any tobacco substitute:
 - (A) If manufactured to retail at not more than five cents each, 8.8 cents on each three cigars.
 - (B) If manufactured to retail at more than five cents each, 8.8 cents on each cigar.

A.R.S. § 42-3371 (as added by Proposition 203)² (emphasis added). The taxes collected under A.R.S. § 42-3371 are to be deposited in the early childhood development and education fund. A.R.S. § 42-3372 (as added by Proposition 203).

² Ariz. Sec’y of State, *Ballot Propositions and Judicial Performance Review for the Gen. Election of Nov. 7, 2006* (“Publicity Pamphlet”) at 122.

When an initiative is placed on the ballot for voter approval, it must be accompanied by a description that states the essential change in existing law that will occur in the case of either a vote for or against the proposed measure. A.R.S. § 19-125(D). In the case of Proposition 203, the 2006 general election ballot stated the following:

A “yes” vote shall have the effect of [1] establishing an early childhood development health care board and fund, [2] increasing the state tax on cigarettes (.80 cents/pack), cigars and other tobacco products, [3] establishing regional partnership councils throughout the state to identify childhood development and health services needs at the local level and [4] distributing monies and grants to eligible programs that serve children up to five years of age and their families.

This same ballot language also appeared on page 132 of the Publicity Pamphlet. The ballot description states that the measure, if passed, would increase state taxes on tobacco products, and as an aside in parentheses, it further describes the cigarette increase as an “.80 cents/pack” increase. This is incorrect. The correct way to describe the per-pack increase would have been either 80 cents or \$.80. William A. Sabin, *The Gregg Reference Manual: A Manual of Style, Grammar, Usage and Formatting* ¶ 418 at 128 (10th ed. 2005). The language on the ballot conflates the two forms of addressing U.S. currency within a written document.³

Your question concerns the correct amount of the tax imposed by Proposition 203, in light of the misprint that describes the tax as “.80 cents/pack” rather than 80 cents per pack of 20 cigarettes.

³ If the language had intended only a fraction of a cent, it would have been written “0.8 cent/pack” or “eight-tenths cent/pack.” In contrast, the language on the ballot had a zero after the eight, which is consistent with writing out the correct form of \$.80 when writing it in integer form accompanied by a dollar sign. The ballot language also added an “s” at the end of the word “cent” suggesting that it was not an increase of merely a fraction of a cent, but an increase of several “cents” per pack. In short, the ballot description was erroneous.

Analysis

When the voters pass an initiative, the text of the measure becomes law. A.R.S. § 19-127(B) (“The secretary of state shall cause every measure . . . submitted under the initiative and approved by the people to be printed with the general laws enacted by the next ensuing session of the legislature.”). If the language of an initiative is clear and unambiguous, its plain language controls. *State v. Gomez*, 212 Ariz. 55, 57, ¶ 11, 127 P.3d 873, 875 (2006) (noting rule that if initiative’s language is unambiguous, then it is construed by applying the language without further resort to rules of statutory construction). Here, the language in the proposed amendment is clear, unambiguous, and capable only of one reasonable interpretation—namely, that A.R.S. § 42-3371, as added by Proposition 203, imposes an additional state tax of four cents per cigarette.

The tax would not be “.80 cents/pack,” because the ballot description is not enacted into law; it is merely a description of the proposed law, not the law itself. *See* A.R.S. § 19-125(D). As stated above, the text of Proposition 203 is clear; but, if the text were ambiguous, then the ballot description could be considered as one factor to be weighed in determining the intent of the electorate. *See Calik v. Kongable*, 195 Ariz. 496, 500, ¶ 16, 990 P.2d 1055, 1059 (1999) (noting that “‘context, subject matter, historical background, effects and consequences, and spirit and purpose’” of statutory language may be considered) (quoting *Aros v. Beneficial Ariz., Inc.*, 194 Ariz. 62, 66, 977 P.2d 784, 788 (1999)). Because formal statements of intent are not usually recorded in connection with propositions, courts typically rely on related legislation, case law, publicity pamphlets, and voter guides to interpret ambiguous propositions. *Id.*, ¶ 17. Here, however, even if the language of Proposition 203 could be said to be ambiguous, a review of the context of its passage and the contents of the publicity pamphlet, as well as the language of the

ballot description, indicate that Proposition 203 cannot be construed to mean anything other than four cents per cigarette. The text of Proposition 203 was included in the Publicity Pamphlet, sent to every household with a registered voter in Arizona, and the proposed amendment stated that it would impose a tax of 4 cents on each cigarette. Publicity Pamphlet at 122. The impartial analysis by Legislative Council, the fiscal impact statement prepared by the Joint Legislative Budget committee, and multiple arguments “for” and “against” Proposition 203 included in the Publicity Pamphlet correctly referred to the tax increase. Publicity Pamphlet at 123, 128, 130-31. The ballot description with the “.80 cents/pack” language also appeared in the Publicity Pamphlet. Publicity Pamphlet at 132. Thus, every reference to the proposed cigarette tax in the Publicity Pamphlet, save one, was correct. It should also be noted that the purpose of a ballot description is “to direct the voters’ attention to the specific amendment so it will not be confused with other amendments on the ballot”; its purpose is not to “educate the voter.” *Hood v. State*, 24 Ariz. App. 457, 464, 539 P.2d 931, 938 (1975). Accordingly, even if the language in the ballot description were ambiguous, the context and circumstances surrounding the passage of Proposition 203 compel the conclusion that it imposes a four-cents per cigarette tax.

Conclusion

The text of Proposition 203, as submitted to the Secretary of State and set forth in the Publicity Pamphlet, clearly and unambiguously mandates a four-cent per cigarette tax increase. Therefore, the effective increase in state taxes on cigarettes under Proposition 203 is four cents per cigarette.

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