



OFFICE OF THE SECRETARY OF STATE

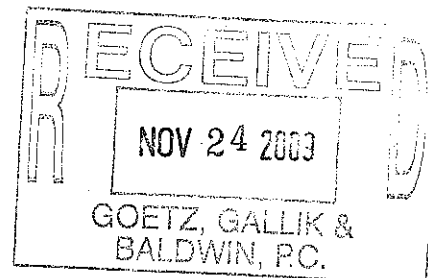
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Linda McCulloch
Secretary of State

November 23, 2009

gbc



Jim Barr Coleman
Goetz, Gallik & Baldwin P.C.
P.O. Box 6580
Bozeman, MT 59771-6580

RE: Proposed Ballot Initiative by Charles Denowh

Dear Mr. Coleman:

I am in receipt of your letter dated November 18, 2009, regarding Charles Denowh's proposed ballot initiative, entitled the "Private Property Rights Preservation Act." You have asked the Secretary of State's office to reject Mr. Denowh's proposal "because it contains new substantive language not reviewed by Legislative Services," in violation of Mont. Code Ann. § 13-27-202(4).

Legislative Services reviewed the initiative for clarity, consistency and conformity with the most recent edition of the bill drafting menu and other factors as enumerated in Mont. Code Ann. § 13-27-202 (2). The Secretary of State's office reviewed the text and did not find it to contain material that was a substantive change not recommended by Legislative Services. Following our review, our office forwarded the initiative to the Montana Attorney General's Office for their review in accordance with Mont. Code Ann. § 13-27-202.

As you correctly pointed out, Mr. Denowh did change the language of the definition of "Taking or Damage." This appears to have been done based on the October 23, 2009, recommendation of Bartley J. Campbell, Staff Attorney for the Montana Legislative Services Division, "to define taking or damaging in your proposal as other than eminent domain." A side-by-side comparison of the initial language and the final language for the definition shows that the language is substantially similar. The original language read:

- (5) "Taking or damaging" means:
- (a) action by a governmental entity that affects private property, in whole or in part, temporarily or permanently, in a manner that requires the governmental entity to compensate the private property owner as provided by the Fifth and Fourteenth Amendments to the

United States Constitution or by Article II, Section 29, of the Montana Constitution; or

(b) action by a governmental entity that:

(i) affects an owner's private property, in whole or in part, temporarily or permanently in a manner that restricts or limits the owner's right to possess, use, modify, sell, or otherwise freely transfer the property; and

(ii) is a substantial factor causing a reduction of at least 25 percent in the fair market value of the affected private property, determined by comparing the fair market value of the property before and after the governmental action.

The final language reads:

(5) "Taking or damaging" means action by a governmental entity that:

(a) causes or permits the public appropriation, occupation, possession or use of private property; or

(b)(i) affects an owner's private property, in whole or in part, temporarily or permanently, in a manner that restricts or interferes with the owner's right to possess, use, modify, sell, or otherwise freely transfer the property; and

(ii) is a substantial factor causing a reduction of at least 25 percent in the fair market value of the affected private property, determined by comparing the fair market value of the property before and after the governmental action.

Mr. Denowh followed Mr. Campbell's suggestion to define taking or damaging. The changes made were in direct response to the suggestion made by Legislative Services and do not signify a substantive change not recommended by the Legislative Services Division.

Under Mont. Code Ann. § 13-27-202(3), as you are probably aware, all correspondence is available to any person upon request. Our office is in receipt of written and e-mail correspondence between Mr. Denowh and Mr. Campbell which directly contradicts your contention that the revised ballot initiative as received by the Secretary of State's office contained "new substantive language not reviewed by Legislative Services."

In a letter dated October 23, 2009, Mr. Campbell provided Mr. Denowh with a thorough review of his proposed ballot initiative, which suggested several stylistic and editorial changes to the proposed ballot initiative and requested that Mr. Denowh respond to his office in writing either accepting, rejecting, or modifying the recommended changes.

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In turn, Mr. Denowh did respond to Mr. Campbell's suggested changes by letter dated November 4, 2009. In that response, Mr. Denowh stated that he had accepted the majority of the changes proposed, but had modified a couple of the suggested changes and asked for additional review prior to advancing the initiative draft to the Secretary of State because he had made "substantive changes to the draft outside of your recommendations."

Mr. Campbell, in turn, responded to Mr. Denowh in an e-mail dated November 6, 2009, by stating as follows:

I have received your letter and will deliver a hardcopy of ypur (sic) correspondence to Alan Miller at the Secretary of State's office. We do not review your response to our initial review of your initiative proposal. However, you expressed concern over one provision that you felt was substantive and outside the original submission. **In examining your correspondence to me I believe that the change you are suggesting as to remedies of a property owner was made in direct response to a concern that I raised in my initial review.** Therefore I believe that you can now submit your initiative proposal to the Secretary of State as you have complied with the statutory requirement of responding to me and stating if you are accepting, rejecting, or modifying the suggested changes I made before submitting a sample sheet of the petition to the Secretary of State [emphasis added].

Since we believe it is clear that Mr. Denowh's proposal does not "contain new substantive language not reviewed by the Montana Legislative Services," we cannot comply with your request.

Sincerely,



Jorge Quintana
Chief Legal Counsel

cc: Anthony Johnstone, Solicitor
Attorney General's Office

Bartley J. Campbell, Attorney
Legislative Services Division