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IN THE SUPREME COURT
OF FLORIDA

Advisory Opinion To Attorney General
Re: Limited Casinos

Case No. 83, 886

INITIAL BRIEF OF
RESPONDENT ROBERT T. MANN
IN SUPPORT OF AN
ADVISORY OPINION
THAT THE LIMITED CASINOS
INITIATIVE VIOLATES THE
SINGLE SUBJECT REQUIREMENT
AND §101.161(1) FLA. STAT.

Robert T. Mann
P.O. Box 907
Tarpon Springs, FL 34688
Attorney for Respondent
Florida Bar No. 050155

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FULL STATEMENT OF
THE INITIATIVE

Section 1

Section 7 of Article X is amended to revise its title to read "Lotteries and Limited Casinos," and to designate the existing text as subsection "(a)".

Section 2

Subsection 7(b) of Article X is created to read:

The operation of a limited number of state regulated, privately owned gaming casinos is authorized, but only:

(1) at one facility each to be established within the present boundaries of Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas Counties; and

(2) at two facilities to be established within the present boundary of Broward County; and

(3) at three facilities to be established within the present boundary of Dade County; two of which shall be within the present boundary of the City of Miami Beach -- with one of those two being in the South Pointe Redevelopment Area -- and the third facility shall be outside the present boundary of the City of Miami Beach; and

(4) with each pari-mutual facility which has been authorized by law as of the effective date of this amendment and which has conducted a pari-mutuel meet in each of the two immediately preceding twelve month periods; provided that no casino located with a pari-mutuel facility shall have a gaming area in excess of 75,000 square feet; and -

(5) at not more than five riverboat casino facilities having a gaming area not in excess of 40,000 square feet as the legislature may approve within the present boundaries of counties not identified in paragraphs (1), (2) and (3); provided that the legislature shall not approve more than one riverboat casino in any one county.

Section 3.

By general law, the legislature shall implement this section, including legislation to regulate casinos, to tax casinos, and to license casinos to pari-mutuel permit holders and at the other authorized facilities.

Section 4.

This amendment shall take effect on the date approved by the electorate; provided however, that no casino gaming shall be authorized to operate in the state until July 1, 1995.

INTEREST OF RESPONDENT

Respondent Robert T. Mann is a citizen and taxpayer of Florida residing in Pinellas County, Florida.

Argument

I. THE LIMIT CASINOS INITIATIVE VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI §3 FLORIDA CONSTITUTION.

Article XI, §3 Florida Constitution states, in relevant part:

The power to propose the revision or amendment of any portion or portions of this constitution by initiatives is reserved to the people, provided that any such revision or amendment shall embrace but one subject and matter directly connected therewith.

(Underlining supplied.) The Florida Supreme Court has held that the primary purpose of the single-subject requirement is to prevent "log rolling," Fine v. Firestone, 448 So.2d 984, 998 (Fla. 1984), by virtue of which the initiative requires the voters to "accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." 488 S.2d at 988.

The Justices have repeatedly rejected initiatives that have forced voters to make a balance between voting "yes" to obtain a favored aspect of an initiative when the same initiative includes other discrete portions upon which the voter would vote "no" if a separate choice was given. In the latest of these, In re Advisory

Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So.2d 1018 (Fla. 1994), the initiative sought to amend Article I §10 Florida Constitution to include, in part, this provision:

(b) The state, political subdivisions of the state, municipalities or any other governmental entity shall not enact or adopt any law regarding discrimination against persons which creates, establishes or recognizes any right, privilege or protection for any person based upon any characteristic, trait, status, or condition other than race, color, religion, sex, national origin, age, handicap, ethnic background, marital status, or familial status.

632 So.2d at 1018. (Underlining added.) The Justices invalidated this initiative on single - subject grounds precisely because its internal structure required the balance of "yeses" against "nos."

Said the Justices:

The proposed amendment also violates the single-subject requirement because it enumerates ten classifications of people that would be entitled to protection from discrimination if the amendment were passed. The voter is essentially being asked to give one "yes" or "no" answer to a proposal that actually asks ten questions. For example, a voter may want to support protection from discrimination for people based on race and religion, but oppose protection based on marital status and familial status. Requiring voters to choose which classifications they feel most strongly about, and then requiring them to cast an all or nothing vote on the classifications listed in the amendment, defies the purpose of the single-subject limitation. Therefore, the proposed amendment fails the single-subject requirement of article IV, section 3 of the Florida Constitution.

632 So.2d at 1019. (Underlining added).

In exactly the same manner, the Limited Casino's initiative "defies the purpose of the single-subject limitation" by forcing voters to choose and cast an all or nothing vote among the counties

designated in subsections (1), (2) and (3) of section 2 of the proposal. Indeed, the number of separate questions posed is practically limitless.

A voter might wish to vote "yes" as to permitting casinos in Dade County (i.e., subsection (3)), but "no" as to Duval (i.e., subsection (1)), or all the rest. The voter might also favor casinos in the counties named in subsections (1), (2) and (3), but strongly object to subsection (4), which purports to empower the Legislature to authorize riverboat casinos in any other county. The latter point is accentuated by the fact that no voter can know from the initiative which county or counties might be subject to an authorized riverboat casino.

Limit Casinos offers a virtual limitless number of voting conflicts among its five subsections under section 2 and is clearly and conclusively defective under the test applied by the Justices in the Discrimination case. Accordingly, the Justices' opinion should be that the initiative violates the single subject standard.

II. The Ballot Summary Violates the Notice Requirement of §101.161 Fla. State.

The ballot summary of the Limited Casinos measure states:

Authorizing a limited number of gaming casinos in Broward, Dade, Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas Counties, with two in Miami Beach; and limited-size casinos with existing and operating parimutuel facilities; and if authorized by the legislature up to five limited-size riverboat casinos in the remaining counties, but only one per county. Mandating implementation by the legislature. Effective upon adoption, but prohibiting casino gaming until July 1, 1995.

In this proceeding, the Justices must test this summary against the standards of §101.161(1) Fla. Stat., which states in part:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot ...

The Supreme Court has interpreted this provision to require that, "the summary must give voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots," Smith v. American Airlines, Inc., 606 So.2d 618, 619 (Fla. 1982), and to require also that summary not require the "voter to infer a meaning which is nowhere evident on the face of the summary itself." Id., at 620.

The Limited Casino ballot summary plainly fails this test. The summary refers to authorizing "limited-size riverboat casinos in the remaining counties" without giving the voter any hint as to what defines a "riverboat casino." Indeed, the proposed amendment itself fails to provide any such definition and, thus, if adopted, leaves to someone other than the people the power to decide what the constitution should be. This is not a mere technicality about what physical form so-called "riverboat casinos" must assume, but in fact will determine in which counties of Florida a riverboat casino may ultimately be placed. Few Florida counties contain large flowing rivers that would permit large Mississippi River casino boats to navigate freely on their waters, and few Florida voters will know which counties they are. Nor will the voter know whether a "riverboat casino" must actually be a boat on water or whether it may be merely a landed replica. The initiative simply


leaves all these to be decided by someone else. These later decisions, and not the voters, would decide which counties have riverboats.

The ballot summary (and the measure itself) simply leave too much to be inferred by the voter. No voter can know the legal effect of what is being voted for (or against) because no limiting definitions are provided. The lack of definition plainly renders the Limited Casinos summary (and text) clearly and conclusively defective.

Conclusion

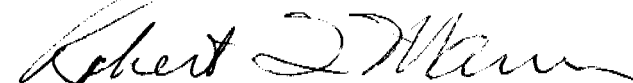
For the reasons stated, the Limited Casinos initiative fails to comply with the single-subject requirement of Article XI §3 Florida Constitution and the ballot summary fails to provide the voter fair notice of its legal affect as required by §101.161(1) Fla. Stat. Accordingly, Respondent respectfully submits that the Justices should issue an opinion that it does not comply with legal requirements to be placed on the ballot.

Respectfully submitted,


Robert T. Mann
Fla. Bar. No. 050155
Attorney for Respondent

Certificate of Service

I certify that a copy of this kind was mailed to the Attorney General, the Capitol, Tallahassee, Fl. this 5 day of July, 1994.


Robert T. Mann