

MEMORANDUM

State of Alaska Department of Law

TO: The Honorable Fran Ulmer
Lieutenant Governor

DATE: ~~October 13, 1997~~

FILE NO.: 663-98-0079

TELEPHONE NO.: 465-3600

SUBJECT: Wolf Snare Initiative
(97TRAP)

FROM: Kathleen Strasbaugh
Assistant Attorney General
Governmental Affairs Section – Juneau

I. INTRODUCTION AND SHORT ANSWER

You have asked us to advise you whether an initiative application submitted for your review under AS 15.45.070 is in compliance with AS 15.45. The proposed bill would prohibit the use of a snare for trapping wolves.

We have reviewed the application and recommend certification. Our analysis, and a proposed summary for the petition booklet, are included below.

II. ANALYSIS

A. Matters of Form

You are required to review an application for an initiative and “. . . either certify it or notify the initiative committee of the grounds for denial.” AS 15.45.070. You may not certify an application if (1) the bill to be initiated is not in the proper form, (2) the application is not in substantially the proper form, (3) there is an insufficient number of qualified sponsors, and (4) the bill to be initiated is on a subject prohibited by Article XI, Section 7 of the Alaska Constitution. AS 15.45.080 and AS 15.45.010. *See also Boucher v. Engstrom*, 528 P.2d 456, 460 (Alaska 1974). Likewise, you may not approve an initiative which purports to place a constitutional amendment on the ballot; constitutional amendments are governed exclusively by Article XIII of the Alaska Constitution. *See Starr v. Hagglund*, 374 P.2d 316, 317 n.1 (Alaska 1962). *Cf. Whitsun v. Anchorage*, 608 P.2d 759, 762 (Alaska 1980).

The application must contain:

(1) the proposed bill to be initiated, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative, and (4) the signatures and addresses of not less than 199 qualified voters.

AS 15.45.030.

The bill to be initiated must be in the following form:

(1) the bill shall be confined to one subject;
(2) the subject of the bill shall be expressed in the title;
(3) the enacting clause of the bill shall be: "Be it enacted by the People of the State of Alaska;"
(4) the bill may not include subjects restricted by AS 15.45.010.

AS 15.45.040.

The application and bill submitted to you meet these requirements.

We note that after the initial application was filed, the initiative committee submitted additional signature pages. Whether this would have been acceptable to meet any deficiency in the gathering of signature pages is a moot point; there were sufficient qualified sponsors in the original application to meet the requirements of AS 15.45.040(4).

Thus it appears that the application is sufficient as a matter of form.

B. Other Matters

The Initiative is on a Proper Subject

Under AS 15.45.070, the initial review of any initiative petition by this office involves a determination of whether the proposed ballot measure is on a subject that is a proper one for the initiative under the Alaska Constitution. While this would not seem to be in doubt with respect to this initiative, we address the matter because of citizen interest in the

matter in a related ballot proposition. Since this initiative is not a constitutional amendment, a rule of court, a law affecting the creation or jurisdiction of the courts, an appropriation, a dedication of revenue or local or special legislation, the subject was a proper one for the initiative. Art. XI, sec. 7, Alaska Const.

Our conclusion in this regard is not changed by *Pullan v. Ulmer*, 923 P.2d 54 (Alaska 1996), which held that an initiative which allocated a portion of the state's salmon resources to certain fisheries constituted an appropriation of the resource and was therefore not a proper subject for an initiative under Article 11, Section 7 of the Alaska Constitution. The wolf snare initiative does not allocate a resource in the manner disapproved in *Pullen*.

Further, it is not presently appropriate to review the initiative for substantive unconstitutionality. A petition for an initiative that is otherwise in proper form cannot be rejected because it is unwise, or 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).

C. The Proposed Petition Summary

To assist you in complying with AS 15.45.090(2), we have drafted the following proposed title and summary for your review:

BILL PROHIBITING TRAPPING WOLVES WITH SNARES

This bill would prohibit a person from using a snare with the intent of trapping a wolf. It would also prohibit a person from possessing, buying, selling, or offering to sell the skin of a wolf known by the person to have been caught with a snare. Breaking the law would be a misdemeanor. The penalty could be jail time of up to one year, and a fine of up to \$5000.

We have drafted the summary to conform to the requirements of a ballot summary under AS 15.45.180. We recommend this approach to reduce the chance of collateral attack on account of a divergence between the ballot and petition summaries. This summary has a Flesch test score of 76.814, and thus exceeds the readability standards of AS 15.60.005.

At the request of your office we reviewed the above language with the

initiative committee's chief spokesperson. He has indicated the committee's approval. (We forwarded his letter to this effect on Friday.) One issue bears mention. The committee requested that the summary note that the bill does not apply retroactively to possession and sale of wolf skins from wolves trapped with snares prior to the effective date of the bill. There is no doubt that this is so under AS 01.10.090. However, we rejected the request because impartial summaries should not as a rule discuss effects of the bill beyond those set out in the bill itself; those are matters usually left for the campaign debates and advocacy statements. *See Burgess v. Miller*, 654 P.2d 273 (Alaska 1982), in which the Alaska Supreme Court held that while an impartial summary could state the obvious effect of a bill, it was not necessary or appropriate to give the voters special reminders about the scope of an initiative, in that case, that the bill did not restrict federal rights. 654 P.2d at 276. This topic could bear more extended research and analysis by this office. However, it is our understanding the sponsors are anxious to proceed, so they have agreed to the summary, and we have refrained from extended research upon or discussion of this topic.

III. CONCLUSION

The bill is in the proper form in accordance with AS 15.45.040, it is on a proper subject, and is not an effort to amend the Alaska Constitution.

In summary, then, we can recommend that you certify the initiative application.

Please let us know if we can assist you further in this matter.