

OPINION NO. 72-010

Syllabus:

The summary of the proposed constitutional amendment (Article XII, Section 8, Ohio Constitution) does not contain a fair and truthful statement of the proposed amendment because it is not a fair, accurate and clear summary of the amendment and does not contain an explanation of the character and effect of the proposed amendment as required by Section 3519.01, Revised Code.

**To: The honorable Messrs.: Chester T. Cruze, Joseph P. Tulley
Robert E. Levitt, Howard A. Knight
Raymond P. Luther**

By: William J. Brown, Attorney General, February 3, 1972

On January 20, 1972, you submitted for my examination a written petition bearing over one hundred names proposing an amendment to the Constitution of Ohio by the enactment of an amendment of Article XII, Section 8. The full text of said proposed section and a summary of the section were incorporated in the petition.

In accordance with Section 3519.01, Revised Code, I have examined the proposed section and its purported summary. In part, Section 3519.01, supra, instructs me as follows:

"* * * If in the opinion of the attorney

general the summary is a fair and truthful statement of the proposed law, constitutional amendment, or measure to be referred, he shall so certify."

The Supreme Court addressed itself to the requirements of a summary of a constitutional amendment petition as provided in Section 3519.01, supra, in State, ex rel. Hubbell v. Bettman, 124 Ohio St. 24 (1931). The Supreme Court said a summary must be:

"'a short concise summing up,' which will properly advise those who are asked to either sign the petition or to support the amendment at the polls of the character and purport of the amendments without the necessity of perusing them at length."

Because of a lack of clarity, your summary does not fulfill the "fair and truthful" requirement of Section 3519.01, supra. For instance, the summary says no taxes can be collected after January 1, 1973. If this is true, what happens to all of the tax obligations which accrue prior to January 1, 1973, but are not withheld or collected prior to January 1, 1973, by the State of Ohio. Are these taxes to be forgiven and forgotten? I think not. In spite of this, your summary unequivocally states this is true.

Likewise, the discussion of the uniformity of tax rates in your summary is confusing. It is difficult to determine whether the language means non-graduated and uniform for each classification or non-graduated and uniform for all classifications. The amendment clearly only requires the rate to be non-graduated and uniform within any given classification and permits different rates in different classifications. In these respects and others, it is my opinion that your summary is not a fair, accurate and clear statement of the amendment and thus is deficient under Section 3519.01, supra.

Furthermore, as pointed out in the Hubbell case, supra, the summary must advise the signers of the "character and purport of the amendments without the necessity of perusing them at length". As defined in Webster's New International Dictionary (3rd. ed.), "purport" is an "intention", "purpose", or "design". "Purpose" is further defined as "effect, or result aimed at, intended or attained". Your summary fails to fulfill this obligation as it contains no full and fair disclosure of the substance and effect of the proposed amendment. Consequently, your summary is deficient in this respect as well.

Since the Hubbell case, supra, Section 3519.01, supra, has been amended and the words "a fair and truthful summary of the contents and purposes of such proposed law or amendment" were changed to "a fair and truthful statement of the proposed law". In spite of this change, one of my predecessors, Thomas J. Herbert, considered Section 4785-175, General Code, which was the predecessor to Section 3519.01, supra, reaffirmed the Hubbell test and quoted the language stated above. Opinion No. 850, Opinions of the Attorney General for 1939. After stating the summary cannot merely rewrite the amendment in almost identical words and be substantially the same length, Attorney General Herbert said the summary must contain a "short concise summing up. . .of the

character and purport of the amendments". Accordingly, Attorney General Herbert refused to certify the petition and said at page 1142 as follows:

"An examination of the summary you have submitted shows that it is written in almost the identical words of the proposed sections and is substantially of the same length.

"It is therefore my opinion that the purported summary submitted is not a summary within the meaning of the legislative intent of section 4785-175, General Code, as interpreted by the Supreme Court, and consequently I am returning your petition without my certification."

The Hubbell test was also accepted and affirmed in an opinion issued by Attorney General Hugh S. Jenkins on December 20, 1946. Opinion No. 1449, Opinions of the Attorney General for 1946.

Two Common Pleas Courts have considered the definition of summary and have judicially adopted the Hubbell test. In Markus v. Trumbull County Board of Elections, 48 Ohio Op. 2d 447, 87 Ohio L. Abs. 168 (1961), the Trumbull County Common Pleas Court considered Section 519.12, Revised Code, which requires the petition to contain "a summary of the proposed amendment or supplement". The Court discussed the Hubbell case, *supra*, adopted the Hubbell standard and noted on page 248 as follows:

"In the circulation of the petitions, it would seem to me that the purpose would be to inform those citizens having an interest in the amendment of the zoning resolution, and they should be informed of the zoning status of the property as it presently is and the nature and extent of the proposed changes."

In Seylor v. Clark, 17 Ohio Op. 2d 447, 87 Ohio L. Abs. 168 (1961), the Hamilton County Common Pleas Court considered Section 303.12, Revised Code, which also required "a summary of the proposed amendment or supplement" be filed with the petition. While discussing the adoption of the Hubbell principle, the Court emphasized the necessity of fully informing those to whom the notice is given of the "nature, character and purport" of the proposed change in matters of public concern and said:

"In the text of the Supreme Court's opinion in the above case, [Hubbell] the Court defined 'summary' as 'short, brief, compendious, succinct, reduced into a narrow compass,' and later in its opinion alluded to 'summary' as 'a short, concise, summing up, which will properly advise * * * (the reader) * * * of the character and purpose of the amendments without the necessity of perusing them at length.' (87 Ohio L. Abs. 172)

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"Needless to say, the purpose of the published notice is to publicly inform those

citizens having an interest in the amendment of the zoning resolution that an amendment or supplement is suggested affecting the present zoning resolution and, furthermore, to inform them of the nature, character and purport of the amendment." (87 Ohio L. Abs. 173)

After examining the proposed amendment and summary in light of the requirements of Section 3519.01, supra, and the relevant precedents, I am of the opinion that the purported summary of the proposed constitutional amendment (Article XII, Section 8, Ohio Constitution) is not a "fair and truthful statement" of the proposed constitutional amendment because it is not a fair, accurate and clear summary of the proposed amendment and does not contain an explanation of the character and effect of the amendment. For these reasons, I am unable to make the certification requested by you and must return your petition.