

Hi. This is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Today's podcast concerns the roles of the Attorney General and the Legislative Analyst's Office in the initiative process itself.

In California's initiative process both the Attorney General, the AG, and the Legislative Analyst or Legislative Analyst's Office, the LAO, both play very important roles. These roles are established in the California State Constitution as well as the state's Elections Code. What I hope to accomplish in today's podcast is to describe the roles of the AG and the LAO.

Let's first turn to the Attorney General before we examine the role of the Legislative Analyst, both of whom play substantial roles in the initiative process here in California. First is the Attorney General.

In California's Constitution, Article II, the three forms of direct democracy -- the recall, the initiative, as well as the referendum -- are all found in Article II.

In particular on the initiatives, Section 10 of Article II describes the role of the Attorney General, particularly in Subdivision D, where it provides, "Before circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General, who shall prepare a title and summary of the measure as provided by law."

As you might expect, there are numerous provisions of California's Elections Code that set forth the Attorney General's role. Section 9001 requires the text of the proposed measure to be submitted to the AG with a written request for a title and summary. Section 9001 also provides that the proponents of an initiative measure must pay a fee of \$2,000 to the Attorney General at that time.

Section 9002 specifies that, upon receipt of a request from the proponents for a title and summary, the Attorney General must initiate a public or review process for a period of 30 days by posting the text on the AG's website and inviting written public comments.

Also, under Section 9002 the proponents of the proposed initiative measure may submit amendments to their measure to the Attorney General. They have to be relatively germane to the original initiative measure. Otherwise, they have to do an entirely new one.

Then Section 9003 of the Elections Code assigns the roles of the Attorney General, such as preparing the title and summary, also to the Legislative Counsel for when the AG is actually the proponent of the proposed ballot measure.

Then Section 9004 specifies that, after the public review period, the AG now must prepare the circulating title and summary. That title and summary cannot exceed 100 words. The AG is also responsible for providing a unique numeric identifier for each proposed initiative measure.

Also, the fiscal estimate is required to be made jointly by the Department of Finance and the Legislative Analyst. Then that estimate has to be delivered to the Attorney General within 50 days of the date of receipt of the initiative measure by the Attorney General.

Section 9006 specifies that the Attorney General is required to prepare a circulating title and summary of the chief purpose and points.

Under Section 9007 the AG also has to provide the title and summary to the Assembly and to the Senate. Thereafter, the appropriate policy committees of each house will hold public hearings on that particular ballot measure.

Section 9008 requires that every proposed initiative have across it certain AG information.

Jumping ahead to Section 9050 of the Elections Code, after the Secretary of State determines that the measure will appear on the ballot at the next statewide election, then the Secretary of State has to promptly transmit a copy of the measure to the AG.

The AG then provides and returns to the Secretary of State the ballot title and summary.

The courts of California have also examined the role played by the Attorney General. In a 1996 appellate court decision called "Lundgren v. Superior Court," the Attorney General was found to have complied with the mandate that he provide the electorate with a true impartial statement of the purpose of the measure by essentially repeating the operative language of the ballot initiative measure. The courts have also ruled on the main purpose of the pre-election initiative ballot title and summary requirements, basically, finding that they are there to avoid misleading the public with any inaccurate information.

In a 2010 appellate court decision, which was called "Yes on 25 v. Superior Court," the appellate court ruled that a difference of opinion does not rise to the level of clear and convincing proof that the challenged language in a ballot initiative title and summary and that the ballot label is misleading to the electorate, if reasonable minds may differ as to it.

Let's next turn to the role of the Legislative Analyst. As mentioned before on Section 9005 of the Elections Code, that requires the AG to include in the title and summary a fiscal estimate. Again, that estimate is done jointly by the Department of Finance and the LAO.

Under Section 9051 of the Elections Code, the ballot title and summary must include a summary of the Legislative Analyst's estimate of the net state and local government fiscal impacts.

Section 9085, jumping ahead, requires the State Voter Information Guide to contain a section located near the front of the guide to provide a concise summary of the general meeting as well as what is the effect of a yes and a no vote on each state summary statements that are required. Those have to be prepared by the Legislative Analyst, not the Attorney General.

The Legislative Analyst is solely responsible for determining the contents of these statements. They are made public for public examination and potential amendment.

Section 9087 of the Elections Code requires the Legislative Analyst to prepare an impartial analysis of a proposed initiative measure. It has to describe the measure, include a fiscal analysis of the measure, show any amount of an increase or decrease in revenue or cost to a state or local government.

Section 9087 also requires that, to the extent practicable, the legislative analyst needs to use a uniform method in each of his or her analyses to describe the estimated increase or decrease in revenue or cost of a measure.

Basically, it's an effort for the average voter to draw comparisons amongst the fiscal impacts of pending measures on the ballot. In addition, the Legislative Analyst may contract with a professional writer or other person for assistance in writing the analysis so long as it fulfills the requirements of this section of the Elections Code.

Also, the Legislative Analyst, in preparing their summary, may request the assistance of a state department agency or official in preparing this analysis.

Finally, under Section 9087, before the analysis is provided to the Secretary of State, the Legislative Analyst is required to submit the analysis to a committee of five persons that are actually appointed by the Legislative Analyst.

The purpose of this committee is to review the analysis to confirm that it's clear and easy to comprehend to an average voter. The Legislative Analyst under this section must consider the committee's recommendations. Ultimately, again under Section 9087, the legislative analyst is solely responsible for determining the content of the analysis.

Then finally, under Section 9088, it specifies that at each statewide election at which bond measures are submitted to the voters for approval. The state information guide for that election has to include a discussion that's prepared by the legislative analyst concerning the state's current bonded indebted situation.

There's been a number of court cases as you can imagine regarding the role of the Legislative Analyst. One in particular I highlight, "People v. Cordova" in 2016.

There the appellate court determined that the preparer of a ballot pamphlet that summarizes the meaning and effect of a ballot measure necessarily exercises a discretionary function that requires the courts to allow considerable latitude when the result is challenged as somehow incomplete or inaccurate.

In this particular case, the Legislative Analyst, in preparing the ballot pamphlet, was determined to have used irrational judgment about the effects that most likely would matter to the voters and that the legislative analyst must describe them in a fair and intelligible way.

That's a lengthy look at the roles of the AG and the LAO in the initiative process. Thanks for joining today's podcast. I hope you enjoyed it.