

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:

“Money Supply Increase
(+\$3,000) Initiative.”

Administrative Hearing
No. 18-010

Re: Acceptance of Proposed
Initiative Measure

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections (“the Board”) on Wednesday, May 2, 2018, pursuant to D.C. Official Code § 1-1001.16(b)(1). It involves a finding by the Board that the proposed initiative, “Money Supply Increase (+\$3,000) Initiative,” (“the MSI Act”), is a proper subject of initiative pursuant to D.C. Official Code § 1-1001.16(b)(1). The Board’s General Counsel provided a summation of the Attorney General’s opinion that the MSI Act is a proper subject for initiative. Staff Attorney Rudolph McGann provided testimony on behalf of the Board’s Office of the General Counsel concurring with the Attorney General’s position. The proposer of the initiative, Mr. Ameer Flippin, appeared before the Board *pro se*. Chairman Michael Bennett and Board Members Dionna Lewis and Michael Gill presided over the hearing. Executive Director, Alice Miller, General Counsel Kenneth McGhie, and the Director of the Office of Campaign Finance, Cecily Collier-Montgomery were also present.

Statement of the Facts

On March 20, 2018, Ameer Flippin filed the MSI Act initiative pursuant to D.C. Official Code § 1-1001.16(a). In summary, the MSI “seeks to increase the Maximum Asset Levels by \$3,000.00 to allow recipients of Social Services to participate in Equity Offerings associated with the Jumpstart Our Business Startups Act, 112 Pub. L. 106, 126 Stat. 306.”¹ The legislative text posits a question of whether the Maximum Allowable Asset Levels should be increased by \$3,000.00. The measure reiterates the existing language codified at D.C. Code § 4-205.37, which provides the Mayor with the authority to take into consideration all income and resources in establishing the need of an individual for assistance. The measure then reiterates D.C. Code § 4-205.38; however, it re-designates the provision as D.C. Code § 4-205.39. The final provision of the proposed measure requires D.C. Code § 4-205 et seq. to be reviewed for revision, repeal and/or amendment.

On March 23, 2018, the Board’s General Counsel requested that the Office of Documents and Administrative Issuances (“ODAI”) publish in the D.C. Register a “Notice of a Public Hearing: Receipt and Intent to Review” (“the Notice”) with respect to the Initiative. The Notice was published in the D.C. Register on April 6, 2018. *See* 65 D.C. Reg. 14 (2018). On March 23, 2018, the General Counsel’s office also sent the Notice to the Attorney General for the District of Columbia (“the Attorney General”), the Office of the Mayor’s Legal Counsel, and the General Counsel for the Council of the District of Columbia (“the Council”) inviting them to comment on the issue of whether the Initiative presented a proper subject.

On April 24, 2018, the Attorney General submitted comments to the Board asserting that “the proposed initiative would not violate the prohibition against initiatives that require the

¹ Summary Statement of the MSI.

allocation of revenues and that it is the proper subject of an initiative.”²

During the Proper Subject Hearing convened on May 2, 2018, there were no witnesses in opposition to the MSI. The proponent of the measure, Mr. Flippin, explained that he seeks funding for his startup company and seeks capital funding from citizens receiving Temporary Assistance for Needy Families (TANF) Benefits. He explained the measure’s purpose is to increase the allowable assets any person on public assistance may hold in order to maintain their access to social services in the form of TANF Benefits. Mr. Flippin asserted that the MSI would not appropriate funds nor negate or limit a current Budget Request Act. He concluded his remarks by deferring to the Board’s expertise in drafting his proposed measure in the proper legislative format.

Analysis

Pursuant to D.C. Official Code § 1-1001.02(10), “[t]he term ‘initiative’ means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.” The Board may not accept an initiative measure if it finds that it is not a proper subject of initiative under the terms of Title IV of the District of Columbia Home Rule Act or upon any of the following grounds:

- (A) The verified statement of contributions has not been filed pursuant to §§ 1-1163.07 and 1-1163.09;³
- (B) The petition is not in the proper form established in subsection (a) of this section;⁴
- (C) The measure authorizes, or would have the effect of authorizing,

² See Racine Opinion Letter. p.3 (Apr. 24, 2018).

³ The verified statement of contributions consists of the statement of organization required by D.C. Official Code § 1-1163.07 and the report of receipts and expenditures required by D.C. Official Code § 1-1163.09.

⁴ Subsection (a) of D.C. Official Code § 1-1001.16 provides that initiative measure proposers must file with the Board “5 printed or typewritten copies of the full text of the measure, a summary statement of not more than 100 words, and a short title of the measure to be proposed in an initiative[.]”

- discrimination prohibited under Chapter 14 of Title 2;⁵ or
- (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.⁶

D.C. Official Code § 1-1001.16 (b)(1). The instant measure at issue was submitted in the proper form, and the proponent filed the verified statement of contributions. Moreover, the measure does not authorize or have the effect of authorizing any form of discrimination because all people receiving TANF benefits are treated equally under the proposed scheme.

Each case determining the proper subject of initiative is however foremost concerned with the allocation and control of revenues: “[t]his means that a measure which would intrude upon the discretion of the Council to allocate District government revenues in the budget process is not a proper subject for initiative. This is true whether or not the initiatives would raise new revenues.” *Hessey v. District of Columbia Board of Elections and Ethics, et al.*, 601 A.2d at 19. For an initiative measure to pass muster, the measure may not block the expenditure of funds requested or appropriated; it may not directly appropriate funds; it may not require the allocation of revenues to new or existing purposes; it may not establish a special fund; it may not create an entitlement enforceable by private right of action; it may not directly address and eliminate any revenue source; finally, the mandatory provisions of the initiative may not be precluded by any lack of funding. *See District of Columbia Board of Elections and Ethics and District of Columbia Campaign for Treatment v. District of Columbia*, 866 A.2d 788, 794 (D.C. 2005). In the instant case, the

⁵ Chapter 14 of Title 2 of the D.C. Official Code contains the District of Columbia Human Rights Act, the intent of which is to secure an end in the District of Columbia to discrimination for any reason other than individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence or business.

D.C. Official Code § 2-1401.

⁶ D.C. Official Code § 1-204.46 deals with budgetary acts of the D.C. Council.

proponent's measure does not run afoul of any of the proscriptions cited in *Campaign Treatment*.

The MSI clearly does not appropriate funds. As the Attorney General opined:

[t]he proposed initiative does not compel or halt any expenditure, increase or reduce revenue, or otherwise allocate funds. It does not specify who should conduct the review, what should be considered in that review, provide what level of review is required, when this review should occur, or otherwise compel any specific action that could reasonably be construed to require an allocation of funds.⁷

The measure's stated purpose in the proffered summary statement is to increase the allowable assets any person on public assistance may hold in order to maintain their access to Social Services in the form of TANF Benefits. In the interest of reading the proposed measure in the most liberally construed light, the measure is a policy question put before the voters of the District of Columbia.

Such policy considerations submitted to the electorate in the form of an initiative were sanctioned in the case *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 909 (D.C. 1981). "This jurisdiction [] has recognized the 'policy' basis of the distinction between legislative and administrative powers." *Convention Center* distinguished measures that are legislative from administrative in form. While legislative measures are proper subjects, administrative measures have been found to be improper subjects for initiatives. "The test of 'legislative' and 'administrative' matters that other jurisdictions most frequently have employed is whether the proposition is one to make new law or to execute law already in existence." *Id.* at 908. This measure only asks the question—albeit peripherally—of whether the citizenry approves of some unknown entity reviewing the existing state of the law. The provision that effectuates policy here is the final provision seeking to review the existing Code section for revision, repeal or amendment. The MSI act is a policy question that can be submitted to the electorate in the form of an initiative. The public can make the determination of whether

⁷ Racine Opinion Letter p.3

the existing policy needs to be repealed or amended without concern for appropriations nor disruption of existing Budget Request Acts.

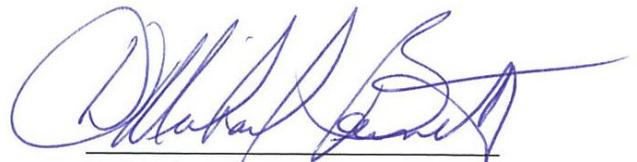
Conclusion

In conclusion, the MSI Act is a policy proposal that has no bearing on future appropriations or Budget Request Acts and should be processed forthwith so that the proponent may engage the electorate by gathering the requisite number of signatures on a petition for ballot access

For the foregoing reasons, it is hereby:

ORDERED that the proposed initiative, the “Money Supply Increase (+\$3,000) Initiative” is **ACCEPTED** pursuant to D.C. Code § 1-1001.16(b)(2)

Date May 18, 2018



D. Michael Bennett
Chairman,
Board of Elections