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Goddard: Voters OK'd 80¢-a-pack cigarette-tax hike despite ballot error

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PHOENIX — Voters approved increasing taxes on cigarettes by 80 cents a pack, regardless of what the ballot explanation said, Attorney General Terry Goddard concluded Friday.

Goddard acknowledged the actual description of Proposition 203 on the Nov. 7 ballot said it would increase the levy by ".80 cents/pack." Technically speaking, that's eight-tenths of a cent.

An explanation of the measure that appeared in a pamphlet mailed to voters contained the same language.

But Goddard, in a formal legal opinion, said that is legally irrelevant. He said that when voters approve an initiative, it is the text of that measure that prevails.

"The tax would not be '.80 cents/pack' because the ballot description is not enacted into law," Goddard wrote. "It is merely a description of the proposed law, not the law itself."

Whether that is the last word remains unclear.

A spokesman for Philip Morris USA, which actually got involved in the fight against Proposition 203, declined to comment on whether the company plans to challenge Goddard's opinion — an opinion the state Department of Revenue now will use to enforce the law after the governor signs the election proclamation, probably early next week.

R.J. Reynolds, which spent more than \$8 million in Arizona in its unsuccessful effort to defeat another measure to ban smoking in bars, has made no decision on litigation, according to a company spokesman.

A legal fight would be based on the premise the eight-tenths- of-a-cent language was what voters saw when they marked up their ballots, whether at home or at a polling place on Election Day. And the ballots themselves do not have the full text of the initiative.

But Goddard said it doesn't matter. He said courts examine the ballot-description language only when they cannot determine the intent of the voters from the language of the measure itself.

Here, Goddard said, the initiative spelled out would be a new tax on tobacco of 4 cents per cigarette — or 80 cents for the typical pack of 20. And Goddard noted that the ballot pamphlet mailed to all households had an incorrect explanation but did contain the full language of the measure if voters chose to read it.

The new levy, coupled with an additional 2-cent-a-pack tax approved by voters to enforce the public-smoking restrictions of Proposition 201, will bring the state's tax on cigarettes to \$2 a pack.

The 80 cents is supposed to raise about \$150 million a year to go for various programs for early childhood development and education.

The incorrect explanation was written by the Secretary of State's Office and approved by Goddard's own

department. But it was not caught until a few days before the election, too late to change the ballots that already had been printed and, in some cases, mailed.

Neither proponents nor opponents spotted the extra decimal point, either, even though state law gives the public a chance to comment on, and challenge, ballot wording and explanations before printing.

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