

Judge rules to keep Nevada tax on casinos unchanged

By Sean Whaley, Nevada News Bureau

CARSON CITY – A Carson City District Court judge rejected an initiative petition proposing to create a new and higher rate of taxation for Nevada's largest casinos, finding that the 200 word description of effect of the measure was misleading.

In rejecting the petition, Judge James Todd Russell said he did not believe he had the authority to rewrite the description himself.

Las Vegas businessman Monte Miller, who attended the hearing this week on his proposed gaming tax hike, said he will file a new proposal with the Secretary of State's office reflecting Russell's concerns and begin the signature gathering effort all over again.

The proposed petition was challenged by the Nevada Resort Association, which cited several concerns with the measure, including the use of the term "unrestricted" instead of "nonrestricted" to identify the affected gaming properties, and the use of the term "gross revenue" instead of "gross gaming revenue."

Miller, through a group called Nevadans for a Fair 9% Gambling Revenue Tax (NF9GRT), filed the initiative petition in February. It would set a new tax rate of 9 percent on net casino gambling revenue above \$250,000 per calendar month.

Under current law, net casino gambling revenue in excess of \$134,000 per calendar month is taxed at a 6.75 percent rate.

Las Vegas attorney Maggie McLetchie, representing Miller's group, argued that Russell could rewrite the description of

effect for the proposed petition, thus allowing the signature gathering process to begin again without the potential for a new legal challenge.

But Carson City attorney Matt Griffin, representing the resort association, said Russell did not have the authority to rewrite the proposal, which would in effect take away the association's due process rights.

The description is flawed and the only solution is to reject the petition and require a new one to be filed, he said.

After the hearing, McLetchie said the NRA is using the legal process to stall the petition effort.

"They are obviously trying to exploit a process that is in place to ensure that voters are informed about the effects of a law to try to drag this out for as long as possible," she said. "And I think it is unfortunate and I think it is antithetical to the very nature of the initiative process."

McLetchie said judges have in the past rewritten descriptions of effect on other initiative petitions.

"The interest of the NRA is in trying to delay this process for as long as possible," she said. "Our interest is trying to get this into the hands of the voters."

The group has until Nov. 13 to collect 72,352 valid signatures from Nevada voters to send the proposal to the Nevada Legislature in 2013. If the Legislature does not enact the proposal within 40 days, it would go to voters in 2014 and take effect in 2015 if approved. The Legislature could also opt to put a competing proposal on the ballot for voters to consider.

The Legislature would have to get a two-thirds vote to approve the tax hike on casinos instead of sending it to the voters. But Legislative Counsel Brenda Erdoes said a competing tax

proposal could be placed on the 2014 ballot by a simple majority vote of the Legislature because voters would have the final say.

If both measures received more than 50 percent of the vote, the one receiving the largest number of votes would take effect.

Miller said he is pursuing the gaming tax option in the face of a possible business profits tax appearing on the ballot in 2014 as well. The gaming tax, and another petition that could lead to an increase in the mining tax, would be on the ballot as alternatives to a business tax, he said.

Miller said the proposed business profits tax is a bad idea.

State AFL-CIO leader Danny Thompson said earlier this month his labor group is moving forward with a broad-based business profits tax ballot measure to raise money for education. It would assess a 2 percent tax on net profits in excess of \$500,000.