

✓ SURETY BONDS: Executed to Athletic Commission may or may not be cancelled at the mere pleasure of the Commission.

October 27, 1933.

10-28



Mr. R. F. Wundorff
Secretary
Athletic Commission of the
State of Missouri
Cassville, Missouri

Dear Mr. Wundorff:

This is to acknowledge your letter which reads as follows:

"Will you please supply this office with a written opinion as to whether or not surety bonds executed prior to June 30, 1933, can be canceled at the pleasure of the commission?"

You will remember going over this matter with me some time ago. We would like to have a written opinion for this office, as we desire to write the bonds in a different company."

I.

Section 12998, R. S. Mo. 1929, provides as follows:

"CREATING ATHLETIC COMMISSION.--That immediately upon this chapter becoming effective, the governor of the state of Missouri by and with the advice and consent of the senate, shall appoint two members, not more than one of whom shall belong to the same political party, who, together with the athletic

director of the university of Missouri, shall constitute the athletic commission of the state of Missouri, and shall have such powers and duties as hereinafter set forth. The athletic director of the university of Missouri shall be ex officio chairman of said commission, in addition to his present duties. The other two members of the commission shall hold office at the pleasure of the governor. Every commissioner shall serve as such without salary."

Section 12999, R. S. No. 1929, among other things, provides:

"That the athletic commission of the state of Missouri shall have general charge and supervision of all boxing, sparring and wrestling exhibitions held in the State of Missouri, and it shall have the power, and it shall be its duty: First, to make and publish rules and regulations governing in every particular the conduct of boxing, sparring and wrestling exhibitions, the time and place thereof, and the prices charged for admission thereto. Second, to accept application for and issue licenses to any etc. * * * * * Third, to collect fees for such license of ten dollars (\$10.00) for every license issued etc. * * * * *"

II.

Thus it is the duty of the Athletic Commission, among other things, to make and publish rules and regulations governing boxing, sparring and wrestling exhibitions, and further, to collect a license fee of ten dollars. In pursuance to the above statute the Athletic Commission published rules and regulations governing boxing and wrestling exhibitions and referring to them, on page 6, the following is found:

"The Commission will issue annual licenses as provided by law. Each application for a license shall be accompanied by a fee of \$10. In addition, each application must be accompanied by a fee of \$10 in

payment of premium of \$1000 bond required by the Commission. If the license is applied for after the beginning of the fiscal year, bond premium will be computed on quarterly basis. Each such license shall designate the usual place where such exhibitions are to be held."

And further, page 8,

"No license shall be granted unless the licensee has executed a surety bond in the sum of not less than one thousand dollars (\$1000), in which the surety is a bonding company authorized to do business in Missouri, the bond to be approved by the Commission, conditioned on the faithful compliance by the licensee with the provisions of this act, the rules and regulations of the Commission, and such other laws of the state as may be applicable to anything done by the licensee in pursuance of the license."

Referring to the rules and regulations, supra, it will be noted that (1) each licensee is required to give a surety bond which expires at the end of the fiscal year, (2) the premium of the bond is ten dollars or the proportionate part thereof, depending on time issued, (3) it must be a surety bond in which the surety is a bonding company authorized to do business in the State of Missouri, and (4) that it is conditioned on the faithful compliance by the licensee with the provisions of the statute etc.

As stated in *Dibert v. D'Arcy*, 248 Mo. 617, 1. c. 660:

"A surety is simply one who is bound for a debt of another."

So, to insure the faithful compliance by licensees with the provisions of the statutes and rules and regulations, the Athletic Commission requires a surety bond.

III.

If the surety bonds do not meet the requirements of the provisions of the rules and regulations, supra, then the present Commission would have the right and authority to require a bond that does comply therewith.

It is our opinion that a surety bond may be cancelled by the Commission if it does not meet the requirements of the rules and regulations relating thereto, or the Commission may require a new surety bond to be given that conforms thereto. However, the cancelling of a surety bond by the Commission, that meets the requirements of the rules and regulations in all respects, on the mere whim or at the pleasure of the Commission, exceeds the authority of the Commission.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED: ROY McKITTRICK
Attorney-General.

JLH:EG