

STATE ATHLETIC COMMISSION: Has no authority to waive collection
of tax provided by Sec. 12999, R.S.'29.

3-16

March 15, 1934.



Mr. C.L. Brewer,
Director of Physical Education,
University of Missouri,
Columbia, Missouri.

Dear Sir:

This department is in receipt of your letter of March 12, 1934, requesting an opinion as to the following state of facts:

"I just have a letter from Mr. Brundage, President of the Amateur Athletic Union, asking that the state tax on the Amateur Championships that have been assigned to St. Louis, April 4th, 5th, and 6th, be waived.

The awarding of this championship to St. Louis and to our state is of course a fine thing. I think we should here in Missouri do everything we can to show our appreciation. I understand the event is being handled by prominent St. Louis citizens who serve without compensation and that all net proceeds will be used for the further promotion for amateur sport.

I do not know that the law will permit waiving the tax; it certainly cannot be done by the State Athletic Commission without the approval of your office."

I.

The State Athletic Commission is without authority to waive the tax provided by Sec. 12999, R.S. Mo. 1929.

Sec. 12999, R.S. Mo. 1929 provides in part as follows:

"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: *****Third, to collect fees for such license of ten dollars (\$10.00) for every license issued, and to collect five per cent of the gross receipts of every boxing, sparring or wrestling exhibition held, such funds to be accounted for by the said athletic commission of the State of Missouri and deposited monthly in the state treasury, and by the state treasurer set apart into a fund to be known as the athletic commission fund."

This section imposes a positive duty upon the State Athletic Commission to collect five per cent of the gross receipts of every boxing exhibition held in the State of Missouri.

In the case of State v. Hackmann, 254 S.W. 53, a public officer is defined as follows:

"A public officer is one elected or appointed in the manner prescribed by law, as an agent of the public in the performance of duties imposed by law and exercise of authority necessary and incidental to a proper discharge of such duties."

Applying this definition to the State Athletic Commission, it follows logically that the members of the Commission are public officers. Being public officers, the authority of the Commission is prescribed by law. As was well stated in State v. Hackman, supra (l.c. 56):

"An 'officer' is simply an agent of the public, whose power of attorney is the law, which prescribes his duties and limits his authority to such acts only as are necessary and incidental to a proper discharge of such duties as it imposes. Callaghan v. McGown (Tex. Civ. App.) 90 S.W., l.c. 327."

There is no authority conferred by reason of Sec. 12999, supra, that would enable the Commission to waive the tax provided for, since the statute makes it the plain and unequivocal duty of the Commission to collect five per cent of the gross receipts of every boxing exhibition held in the State of Missouri.

In respect to the duty imposed by Sec. 12999, we respectfully call the attention of the Commission to the words of the Court in the case of *Smith v. Berryman*, 272 Mo., 1.c. 374:

"Those cases simply hold that an action will lie against an officer whose duty it is to perform, but who refuses to perform, a ministerial act. There can be no doubt upon this point, and no one would be so bold as to contend otherwise, especially in a case which does not call for the exercise of official discretion. If the rule were not so, no suit would lie against an officer upon his official bond by a citizen, injured by a failure to correctly or timely perform a ministerial duty."

CONCLUSION

It is the opinion of this department that since Sec. 12999, R.S. Mo. 1929 imposes a positive duty on the State Athletic Commission to collect five per cent of the gross receipts of every boxing exhibition held in the State of Missouri, the State Athletic Commission has no authority to waive the collection of this tax.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

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