

ATHLETIC COMMISSION: Proceeds to licensee from concessions are part of gross receipts of boxing or wrestling exhibitions.

July 18, 1949

7/26/49

Col. Chas. P. Orchard
Chairman, Missouri State
Athletic Commission
3914 North Union Boulevard
St. Louis 15, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request reads, in part, as follows:

"Pursuant to Section 14604, Chapter 106, Revised Statutes, as amended, the previous athletic commission, or its predecessor, adopted the following rule:

"'20. Concessions operated at all boxing and wrestling shows under the supervision of the organization holding the charter to promote such shows for the privilege of operating such concessions shall pay to the State of Missouri, a license fee equal to 5 per cent of the gross sales for each individual attraction. Concessions so operated at boxing and wrestling events are considered part of gross revenue and subject to this tax.'

"There is some question in my mind as to whether or not the athletic commission is within its power in adopting such a rule, for the reason that the concessions, particularly at the Auditorium here in St. Louis where the contests are usually held, are not operated by the organization holding the charter to promote the show, but under a contractual arrangement with the management of the Auditorium, or the City of St. Louis.

"I would appreciate an opinion from you as to whether or not it is the duty of the commission to collect a license fee equal to five per cent of the gross fees of the concessions operated at all boxing and wrestling shows in the city."

Section 14604, R. S. Mo. 1939, as amended, Laws of 1947, Volume I, page 216, 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 bona fide patriotic, benevolent, fraternal or religious organization or local unit thereof, desiring to promote boxing, sparring and wrestling exhibitions, which has been in existence and has held meetings at regular intervals during the year immediately preceding the granting of the license, and to revoke the same at its pleasure; said application shall designate the city in which the organization or local unit thereof intends to operate, and the license granted shall entitle said organization, or local unit thereof, to conduct such boxing, sparring and wrestling exhibitions in that city, and no other. Third, to charge fees for such license of ten dollars (\$10.00) for every license issued and to charge five per cent of the gross receipts of every boxing, sparring or wrestling exhibition held. Such funds to be paid to the Division of Collection in the Department of Revenue, which shall pay said funds into the state treasury to be set apart into a fund to be known as the athletic commission fund."

In determining the validity of the rule in question, the fundamental principle must be kept in mind that the Athletic Commission may make only such rules and regulations as fall within the enactments of the Legislature. Although the statutory provision does authorize the Commission to make rules and regulations "governing in every particular the conduct of boxing, sparring and wrestling exhibitions," the Commission may not exercise such power to exact a license fee not authorized by the Legislature. The rule in question, on its face, purports to exact a license fee of five per cent on the sale of concessions, and, as such, is beyond the authority of the Commission inasmuch as it has not been authorized to license concessions.

However, the question remains as to whether or not proceeds from concessions are part of gross proceeds of boxing, sparring and wrestling exhibitions. If so, the Commission is required to charge and collect five per cent thereof for the credit of the Athletic Commission fund.

The statute does not attempt to define what shall be included in the term "gross receipts." There is no provision limiting the term to gross receipts from admission charges. In the case of State v. Hallenberg-Wagner Motor Co., 341 Mo. 771, 108 S.W. (2d) 398, the court considered the meaning of the word "gross," as used in the Missouri Sales Tax Act in levying a tax upon the "gross receipts" of sales of tangible personal property (Laws of Mo. 1933-34, Extra Session, page 155, Section 2). In the course of its opinion the court discussed the meaning of the term as follows (108 S.W. (2d), l.c. 401):

" * * * 'gross' accentuates the 'receipts' of the taxpayer upon which the tax imposed is to be computed. Gross means: '4. Whole; entire; total; as, the gross sum, amount, weight;-opposed to net. The gross earnings, receipts, or the like, are the entire earnings, receipts, or the like, under consideration, without any deduction.' Webster's New International Dictionary (2d Ed.) tit. 'Gross.' All means: '1. The whole of:-used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree: as, all the wheat; all the year; all this. * * 2. The whole number or sum of;-used collectively, with a plural noun or pronoun

expressing an aggregate. * * * 3. Every member or individual component of; each one of;-used with a plural noun. In this sense, all is used generically and distributively. * * * Syn.-All, every, each agree in inclusiveness, but differ in stress. All collects, every divides, each distributes. All refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves; as, all men are mortal. Every refers to the individuals, but never denotes the separate individual; as, every man must die. Each refers to the separate individual, but never denotes this or that one in particular; as, each must meet death alone.' Id., tit. 'All.' 'Gross' and 'all'--whole, entire, total--uncompromisingly express the aggregate of the parts, undiminished and intact. * * *

In view of the fact that the statute does not limit the term "gross receipts" to receipts from admission charges, but rather refers simply to gross receipts of boxing, sparring and wrestling exhibitions, we feel that the Commission may consider the amount received from concessions by the licensee of the Commission promoting the exhibition part of the gross receipts of the boxing, sparring and wrestling exhibitions.

Inasmuch as the Commission is not authorized to exact a license fee from concessionaires, as such, we do not feel that the five per cent fee could be charged upon the gross receipts of the concessionaires unless the concessions are operated directly by the licensee promoting the exhibition. In the absence of such direct handling of concessions by the licensee, only the amount received by the licensee from concessions should be included as gross receipts of boxing, sparring and wrestling exhibitions.

Conclusion.

Therefore, it is the opinion of this department that the proceeds from concessions received by a licensee of the Missouri Athletic Commission promoting a boxing, sparring and wrestling

exhibition are part of the "gross receipts" of such boxing, sparring and wrestling exhibition and should be included under Section 14604, R. S. Mo. 1939, as amended, in determining the amount of the five per cent fee payable on the "gross receipts of every boxing, sparring or wrestling exhibition held."

Respectfully submitted,

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APPROVED:

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