

ATHLETIC COMMISSION: Sponsorship of private wrestling show by
CRIMINAL LAW: unlicensed organization not criminal.
BOXING: "Booking" of professional wrestlers for
WRESTLING: wrestling show, either public or private
not criminal.



June 11, 1953

Honorable Bert Cooper
Director
Department of Business and
Administration
State Office Building
Jefferson City, Missouri

Dear Mr. Cooper:

You requested an official opinion on the following factual situation:

A group of Shriners in Kansas City scheduled a wrestling show to be held May 8, 1953. The participating wrestlers were to be paid for their services, and were professional wrestlers. Only Shriners were to be admitted to the show. There was no admission charge.

This particular group had not been licensed by the Athletic Commission. The "booker" had not been licensed. The Athletic Commission had not been consulted in any manner about this show.

The specific questions to which you request an answer are:

- "1. In the event of injury sustained during this match is the Commission responsible?
- "2. Does the Commission have jurisdiction over a match to which no admission is charged? (This would include the setting of dates, assigning of doctors, inspectors, etc.)

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- "3. Does the Commission have grounds for the arrest of _____ for operating as a booker in the state of Missouri without a license?
- "4. Does the Commission have grounds for action against participants if such a match, without Commission sanction, is held?

"Especially are we interested in question 3. I find that _____ has not only been booking talent for this particular case but for definitely public matches without a license."

Prior to 1927, all public boxing or sparring exhibitions were prohibited, and persons engaging or assisting in such exhibitions were deemed guilty of a misdemeanor. In 1927, what is now Chapter 317, RSMo 1949, was enacted. This chapter created the Athletic Commission, and gave it these powers:

"317.020. Commission to supervise boxing, sparring and wrestling matches--rules--fees

"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:

"(1) 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 there-
to;

"(2) 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

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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.

"(3) To charge fees for such license of ten dollars 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."

(Emphasis ours.)

Section 317.030, RSMo 1949, makes certain amateur wrestling matches exempt from the provisions of Chapter 317:

"* * * provided further, that the provisions of this chapter shall not apply to amateur wrestling matches which are held by patriotic, benevolent, fraternal, educational or religious organizations where the contestants do not receive a monetary consideration for their services."

Since the wrestlers appearing in this show were paid for their services, they are not amateurs, and thus the exemption provided by Section 317.030, do not apply to the match in question.

An examination of the first paragraph of Section 317.020, supra, indicates that the Athletic Commission shall have general charge and supervision of all wrestling

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exhibitions in this State. However, in determining the intent of the Legislature in enacting any legislation, the whole enactment must be scrutinized. In the numbered subparagraphs of Section 317.020, it should be noted that in paragraph (1) the Commission is given the power to regulate the admission charges for any match. It is further noted that subparagraph (3) directs the Commission to charge five per cent of the gross receipts of every exhibition. Thus, in reading and construing the whole statute, it becomes clear that the legislative intent was to remedy the evils connected with unsupervised professional exhibitions for which the only purpose was to profit the promoter and participants.

Therefore, since the provisions of Chapter 317 apply only to those matches at which an admission fee is charged, the instant match does not fall under the supervision of the Athletic Commission.

Since the Commission does not have supervision over this match, your question as to liability of the Commission becomes moot, and will not be further discussed.

The only penal provision by which the Commission may command obedience to the authority given them by Chapter 317 is Section 317.050, RSMo 1949:

"Any person who shall engage in any public boxing, sparring or wrestling exhibition, or who shall aid, abet or assist in any such exhibition, or who shall furnish any room or other place for such exhibition, unless a license for holding such exhibition has been granted by the athletic commission of the state of Missouri, shall be deemed guilty of a misdemeanor."

(Emphasis ours.)

It should be noted that the above-quoted section makes criminal prosecution possible only in public exhibitions. Thus, before we can determine criminal liability we must determine whether the subject show was "public." The real test of whether an exhibition is public or private should be whether admission is open to any person or persons who may have the price of an admission

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ticket, or whether the exhibition may be viewed only by members of a closed and select group.

In the case of State ex rel. Wear vs. Business Men's Club, 178 Mo. App. 548, the Prosecuting Attorney brought a Quo Warranto proceeding to oust a corporation of its franchise for misuser. The club had been formed ostensibly for the purpose of providing for education and entertainment of its members. The only requirement for members was that an applicant fill out an application blank and pay a fee of one dollar. Of a large number of applicants only eight were rejected, two because the membership fee was not paid, and six because the application blank was not signed. All other applications were accepted. At the time of the proceedings the club had only a room wherein a boxing ring was erected with chairs to seat spectators. The Court decided that the corporation was formed to evade the prohibition against public sparring and boxing exhibitions and ousted the corporation of its franchise. FARRINGTON, J. in a concurring opinion gave this discussion of what is a public exhibition, l.c. 575, 576:

"Enough has been shown to lead to but one conclusion and that is that the sparring exhibitions given under the auspices of this club were accessible to all who cared to witness them and who were able to sign their name to an application and could raise the small amount of money required. This constituted the exhibitions in law and in fact public sparring and boxing exhibitions, and hence unlawful. * * *."

Black's Law Dictionary, third edition, defines "public" and "private" as follow:

Public -- "Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; Open to common use. * * *."

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Private -- "Affecting or belonging to private individual, as distinct from the public generally * * *."

In view of these definitions and interpretations, the subject match, at which no admission was charged, and admittance was restricted to a small and highly select group was not a public exhibition within the meaning of Section 317.050.

In your letter you indicated that the "booker" has been booking matches that are definitely public matches. You inquire whether he may be prosecuted for that. Section 317.020, subsection 1, gives to the Commission the power and the duty to make and publish rules and regulations governing, in every particular, the conduct of wrestling matches. Pursuant to this statutory mandate, the Commission has issued a pamphlet entitled "Laws, Rules and Regulations for the Governing of Boxing and Wrestling in the State of Missouri", which rules were to be effective November 1, 1951. Said rules under Section XXIV, "Miscellaneous", page 47, makes provision for licensing persons booking wrestlers:

"26. It is hereby required that any group, individual or organization engaged in the business of booking wrestlers and boxers, professional and amateur, in the State of Missouri, is hereby required to be licensed by this commission. Fee for said license is \$100.00 per year or any part thereof. Any booker licensed by this commission must file with this commission a copy of the contract with each principal stating therein the fee or percentage the booker is charging for such service. The booker shall furnish this commission with a list of all names of those engaged as his assistants, agents and employees.

"By booker is meant any group, individual or organization engaged in furnishing boxing and wrestling contestants to organizations, promoters or match makers."

You inquire whether an unlicensed person, who acts in a capacity for which he is required to be licensed by the

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rules of the Commission, may be prosecuted. It must be noted that Chapter 317 makes specific provision for issuance of licenses to organizations desiring to sponsor boxing and wrestling exhibitions. However, there is no statutory provision for licensing bookers. Therefore, any prosecution must be based on the premise that violation of the rules promulgated by the Commission is criminal. However, the Commission is prohibited by Article I, Section 31, Constitution of Missouri, 1945, from fixing a fine or imprisonment for violation of their rules:

"Sec. 31. Fines or Imprisonments Fixed by Administrative Agencies.--That no law shall delegate to any commission, bureau, board or other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation."

Therefore, because Section 317.050 makes it criminal to engage in public exhibitions only when the sponsoring organization has no license, and since the Commission cannot provide punishment for booking by an unlicensed person, there can be no criminal prosecution for unlicensed booking.

CONCLUSION

It is, therefore, the conclusion of this office that the Athletic Commission has jurisdiction and general supervision over only professional wrestling exhibitions to which an admission fee is exacted; that an organization which presents a private wrestling exhibition without a license does not violate any criminal law; and that an unlicensed person booking professional wrestlers for participation in either a private or public wrestling exhibition cannot be criminally punished.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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