

ATHLETIC COMMISSION: When a proposed public dinner, sponsored by a labor union, is to be held at a St. Louis hotel, at which
BOXING:
LICENSE NOT REQUIRED: a special feature is a boxing program, and the only tickets offered for sale, or sold, are for the dinner, the event is not a boxing, sparring or wrestling exhibition within the meaning of Section 317.020, RSMo Cum. Supp. 1957. The Missouri Athletic Commission has no jurisdiction over said event and the sponsors are not required to secure the permission of or a license from the commission to hold the dinner.

September 16, 1959



Honorable Charles W. Pian
Chairman
Missouri State Athletic Commission
723 Olive Street
St. Louis, Missouri

Dear Mr. Pian:

This is to acknowledge receipt of your request for a legal opinion reading, in part, as follows:

"It has come to my attention that the Teamsters' Union of St. Louis is going to have a \$100.00 a plate dinner at the Chase Hotel and will present a boxing program as a special feature of the dinner.

They figure, I have learned, to go around the 5% State Tax on admissions, 2% State Tax, 5% City Tax and the regular Federal Admission tax, by advertising the dinner, etc.

Are they violating any of the State Statutes if they go ahead with this plan without my permission? Also can they undertake this venture without having a regular promoters' and matchmakers' license?"

A subsequent letter attempting to clarify said factual situation advises that \$100-a-plate tickets for the proposed boxing program are not limited to members of the Teamsters' Union, the affair is not private, and union members are now soliciting sales of tickets from various business houses and manufacturers.

Section 317.010, RSMo Cum. Supp. 1957, creates the Missouri Athletic Commission, giving it the power provided by Chapter 317, RSMo 1949, as amended.

Section 317.020, RSMo Cum. Supp. 1957, provides the athletic commission shall have certain powers and duties with reference to

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the supervision of all boxing, sparring and wrestling exhibitions held in Missouri and reads 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:

(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 admissions thereto;

(2). To accept applications for and issue licenses to contestants in boxing, sparring and wrestling exhibitions held in the state of Missouri as authorized herein; such contestants' licenses to be issued in accordance with rules and regulations duly adopted by the commission;

(3). 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 applications shall designate the city in which the organization or local unit thereof intends to operate, or local unit thereof, to conduct such boxing, sparring and wrestling exhibitions in that city, and no other;

(4). To charge fees for such license of ten dollars for every license issued and to charge five per cent of the gross receipts of any organization holding a license or permit under

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this chapter, derived from admission charges, concession sales, sales of television rights or privileges and from any other source connected with or as an incident to the holding of any boxing, sparring or wrestling exhibition in this state. 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."

The language used in this section indicates it is very broad in scope, empowering the commission to " * * * have general charge and supervision of all boxing, sparring and wrestling exhibitions in the state of Missouri * * *." However, in an opinion of this department written for Honorable Bert Cooper, Director, (State) Department of Business and Administration, on June 11, 1953, the above terms used in Section 317.020, RSMo 1949, were construed.

The event referred to and set out in an earlier part of the opinion was a professional wrestling match sponsored by the Shriners in Kansas City on May 8, 1953. Shriners were the only persons admitted to the show and no admission was charged. It was concluded, among other matters, the athletic commission has jurisdiction and general supervision over only professional wrestling matches at which an admission fee was exacted and that an organization which presents a private wrestling match without a license does not violate any criminal law. A copy of said opinion is enclosed.

Section 317.020, RSMo 1949, quoted in the opinion request, was amended by Laws of 1955, page 757, and is now Section 317.020, RSMo Cum. Supp. 1957. Paragraph 2, authorizing the commission to accept applications to issue licenses to contestants in boxing, sparring and wrestling exhibitions, is one of the amendments to this section. The other amendment is found in paragraph 4. In addition to authorizing the commission to charge a fee of \$10 for a license issued to the sponsoring organization, five per cent of the gross receipts of every boxing, sparring or wrestling exhibition could be charged by the commission as formerly but the amendment specifically states what should be included within the meaning of the terms "gross receipts" and reads:

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" * * * and to charge five per cent of the gross receipts of any organization holding a license or permit under this chapter, derived from admission charges, concession sales, sale of television rights or privileges and from any other source connected with or as an incident to the holding of any boxing, sparring or wrestling exhibition in this state."

With the exceptions noted above, there is no change in Section 317.020, and it is the same now as when the opinion was written insofar as the conclusion reached and is still a correct construction and application of the law where the facts are the same or similar to those given in said opinion.

In considering the present inquiries, it must first be determined if the proposed event is a public boxing exhibition at which an admission fee is to be charged, within the meaning of Section 317.020, supra. Unless these facts are found to exist, the commission will not have jurisdiction over the event.

We again find it necessary to refer to the enclosed opinion. On pages 5 and 6, the following definitions from Black's Law Dictionary, 3rd Edition, are given of "public" and "private" and read as follows:

"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. * * * .'"

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

On page 5, the case of State ex rel. Wear vs. Business Men's Club, 178 Mo. App. 548, and a local citation at 575,576 was quoted, and which reads as follows:

"Enough has been shown to lead to but one conclusion and that is that the sparring exhibi-

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tions 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. * * *

The above quoted definitions and portion of the court's opinion in the case cited are fully applicable to the facts given in the present opinion request and will be mentioned later in our discussion.

In describing such event, the opinion request specifically states, "The Teamsters' Union of St. Louis is going to have a \$100-a-plate dinner at the Chase Hotel and will present a boxing program as a special feature of the dinner." The second letter refers to the proposed meeting and states, in part, "It is my understanding that the Teamsters' Union of St. Louis will sell \$100-a-plate tickets to the proposed boxing program to anyone who cares to purchase a ticket, * * *."

The second statement gives the new information that tickets are not limited to union members. When the second statement is compared with that of the opinion request, it is readily seen there is a discrepancy. The former describes the proposed meeting as a dinner at which a special feature will be a boxing program. The second statement describes the contemplated meeting as a proposed boxing program for which tickets are being sold to anyone. Clearly the emphasis in the first statement is on the dinner, while it is on the boxing program in the latter. We are inclined to believe the first statement gives a more nearly accurate account of the facts involved, and for that reason we shall adopt it for the purpose of our discussion.

As we understand the facts which appear to be involved, the proposed meeting sponsored by the Teamsters' Union at the Hotel Chase in St. Louis is a dinner which the general public, or as many of the general public as can purchase admission tickets at \$100 per plate, may attend. One of the special features to be offered for the entertainment of the guests is a boxing program, and one who purchases a dinner ticket and attends the dinner will be permitted to watch the boxing program without payment of any additional admission fees.

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Apparently the dinner, and not the boxing program, is the primary purpose of the proposed meeting, and it is probably being held to raise funds for the union. Presumably, no one will be admitted to the dining room for the entertainment who has not purchased a ticket for the dinner.

Keeping in mind the primary purpose of the meeting and also the definitions of "public" and "private" given above, it is believed there is no question but what said proposed meeting will be a public event. No complaint has been made that the sponsors have not complied with all applicable statutes and city ordinances concerning license tax or other possible charges for holding the dinner, and it will be assumed such requirements, if any, either have been, or will be, complied with in due time. Therefore, the only question remaining for consideration is whether the admission fee to be charged is for the dinner or for the boxing matches.

In this connection, we direct your attention to the case of *People v. Campbell*, 65 N.Y.S. 114. The defendant was prosecuted for giving a concert without a license. He had been duly licensed to operate a saloon in New York City where the alleged violation of the city charter occurred. The defendant was convicted as charged in the lower court, but the New York Supreme Court reversed the conviction, and in discussing the issues the Court said at l.c. 115:

"The question is whether this was an exhibition, interlude, minstrelsy, or any other entertainment of the stage. I think it clear that it was not. In the case of *Mayor, etc., of New York City v. Eden Musee Amer. Co.*, 102 N.Y. 596, 8 N.E. 41, the court of appeals, in construing a section of the consolidation act which was substantially like the section of the charter in question, said: 'Taking the statute in all its terms, it evidently meant to include all classes of public exhibitions such as are usually conducted upon a stage for the observation and amusement of the public.' It seems that the performance upon this piano was not an exhibition, within the meaning of this definition, which evidently related to the classes of public exhibitions usually conducted or produced upon a stage, at which the

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public attend for the purpose of seeing the exhibition, and not to a case where music is performed as a mere incident to any business, where no admission fee is charged, and where in fact there is no exhibition. Taking, for instance, the case of a hotel or any other business where incidentally music is performed to attract customers or entertain them while upon the premises, it would seem to be quite clear that that was not an exhibition of minstrelsy or other entertainment of the stage. While it may in some cases be somewhat difficult to define precisely what is an entertainment of the stage, within the meaning of this section of the charter, I do not think that the fact that during the transaction of business a proprietor of an establishment has a person to play upon the piano as an incident to his business constitutes a violation of the statute * * * ."

It is believed that the above quoted case is particularly applicable to the facts before us, as will be presently seen.

The proposed meeting of the Teamsters' Union will be a public event at which everyone who can pay the admission fee of \$100 per plate may attend. Apparently the union has complied with all license tax requirements as to holding a public dinner; the dinner, and not the special feature of entertainment consisting of a boxing program, is of primary importance. There is no evidence that the union is seeking to promote a boxing exhibition within the meaning of Section 317.020, supra, nor is there any evidence of any admission tickets being offered for sale, or being sold, to a proposed boxing exhibition. All the facts seem to point to the offer and sale of tickets for the dinner and for no other event. It does not appear that said section regarding the license tax fees and five per cent of the gross receipts of boxing, sparring or wrestling matches covers situations such as the present one where no such public exhibitions are promoted as such, no admission to same is charged, and the only boxing exhibitions to be offered are in connection with and as a special feature of a dinner, and incidental to it.

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Therefore, in view of the foregoing, it is our thought the proposed dinner described in the opinion request is not within the jurisdiction of the Missouri Athletic Commission.

Our answer to the first inquiry is the Teamsters' Union of St. Louis will not violate any Missouri statutes if they proceed with their plans to hold the proposed meeting at the Hotel Chase, without first securing your permission.

Our answer to the second inquiry is that such union is not required by law to secure a regular promoters' and matchmakers' license for the proposed meeting.

CONCLUSION

Therefore, it is the opinion of this department that a proposed public dinner, sponsored by a labor union, to be held at a St. Louis hotel, at which one of the special entertainment features is a boxing program, and the only tickets offered for sale, or sold, are for the dinner, that the event is not a boxing, sparring or wrestling exhibition within the meaning of Section 317.020, RSMo Cum. Supp. 1957, giving the Missouri Athletic Commission general charge and supervision over all boxing, sparring and wrestling exhibitions held in the state. The commission has no jurisdiction over said public dinner, and the sponsors are not required to secure its permission before proceeding with their plans, nor are they required to secure a license from the commission under provisions of Section 317.020, RSMo Cum. Supp. 1957, to hold said dinner.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

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