OFFICIAL OPINION NO. 111

October 5, 1945.

Hon. Walter N. Ringer, Secretary,
Athletic Commission,
State House,
Indianapolis 4, Indiana.

Dear Sir:

You have requested an official opinion upon the following questions:

1. May an annual license issued by the State Athletic Commission be limited to the conducting of boxing, sparring and wrestling matches or exhibitions to a particular city, or to a particular address located in such city?

2. May the State Athletic Commission restrict the holder of an annual license to the conducting of boxing, sparring and wrestling matches or exhibitions, to a certain city or location?

3. What effect, if any, does the giving of a bond by an applicant for an annual license, have upon such annual license, where the bond is limited by its terms to cover only matches or exhibitions given at a particular address?

Section 63-205, Burns' 1933, same being Section 5, Chapter 93, Acts of 1931, gives the State Athletic Commission jurisdiction over such boxing, sparring and wrestling matches or exhibitions, and is in part as follows:

> "* * * The commission shall have, and hereby is vested with, the sole direction, management, control and jurisdiction over all such boxing, sparring and wrestling matches or exhibitions to be conducted, held, or given within this state; and it is hereby authorized to issue licenses therefor: * * * No boxing, sparring or wrestling match, or exhibition, except as herein provided, shall be held or conducted within this state except under a license and permit issued by the state athletic commission in accordance with the provisions of this act and the rules and regulations adopted in pursuance thereof."

Section 63-207, Burns' 1933, being Section 7, Chapter 93, Acts of 1931, reads as follows:

> "Applications for licenses or permits to conduct a boxing, sparring or wrestling match or exhibition, shall be made in writing upon forms prescribed by the state athletic commission, and shall be addressed to and filed with such commission, and shall be verified by the applicant, if an individual, or by some officer of the club, corporation, or association in whose behalf the application is made.
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> "The application for a permit to conduct a particular boxing, sparring, or wrestling match, or exhibition, shall, among other things, state the time and exact place at which the boxing, sparring, or wrestling match or exhibition is proposed to be held, the names of the contestants who will participate therein and their seconds, the seating capacity of the building, or the hall, in which such exhibition is proposed to be held, the admission charge, or charges, which is proposed to be made, the name of the referee who will act at such match or exhibition and the amount of his fee or compensation, the amount of the compensation or percentage of gate receipts which is proposed to be paid to each of the participants therein, the name and address of the person, club, corporation, or association making the application, and the names and addresses of all the officers of such club, corporation or association. The commission shall keep proper records of the names and addresses of all persons, clubs, corporations and associations receiving permits and licenses.
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> "* * *."

Section 63-211, Burns' 1933, being Section 11, Chapter 93, Acts of 1931, is as follows:

> "LIMIT ON PERMITS AND LICENSES—The commission shall have full power and authority to limit the number of boxing, sparring, and wrestling matches or exhibitions to be held or given by any person, club, organization, or corporation in any city or town in this state."

Section 63-212, Burns' 1933, same being Section 12, Chapter 93, Acts of 1931, provides in part as follows:

> "Any person, club, corporation, or association, to whom, or to which, a *permit* is issued, shall not
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> "(a) Hold such match or exhibition at any other time or place, or
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> "(b) Permit any other contestant or referee to participate therein,
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> "(c) Charge a greater rate or rates of admission, or
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> "(d) Pay a greater fee, compensation or per centage to contestants or referee than are specified in the application made and filed prior to the issuance of such permit: * * *"

Section 63-223, Burns' 1933, being Section 23, Chapter 93, Acts of 1931, provides as follows:

> "Every person, club, corporation or association which may conduct any match or exhibition under this act shall, within twenty-four hours (24) after the determination thereof, furnish to the commission by mail, a written report duly verified by that person or, if a club, corporation or association, by one of its officers, showing the number of tickets sold for such contest and the amount of the gross proceeds thereof, and such other matters as the commission may prescribe; and shall also within the said time pay to the state treasury a tax of ten (10) per cent of the total gross receipts, exclusive of any federal tax paid thereon, from the sale of tickets of admission to such match or exhibition, which money derived from such tax shall be covered in the general treasury of the state.
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> "Before any license shall be granted to any person, club, corporation or association to conduct, hold or give any boxing, sparring or wrestling match or exhibition, such applicant therein shall execute and file with the state treasurer bond in the sum of not less than five thousand dollars ($5,000), to be approved as to form and sufficiency of the sureties thereon by the state

treasurer, payable to the State of Indiana; and conditioned for the payment of the tax hereby imposed and the compliance with this act and compliance with the valid rules and regulations of this commission. Upon the filing and approval of such bond the state treasurer shall issue to such applicant a certificate and duplicate thereof of such filing and approval, one (1) of which shall be by said applicant filed in the office of the commission with his or its application for such license; and no license shall be issued until such certificate shall have been filed."

The section of the statute authorizing the issuance of annual licenses and permits is Section 63-206, Burns' 1933, same being Section 6, Chapter 93, Acts of 1931, which in part, provides as follows:

"The commission may issue, in its discretion, under the name and seal of the state athletic commission, an annual license in writing for holding such boxing, sparring and wrestling matches or exhibitions, to any person, club, corporation, or association, who or which is properly qualified for the holding of such exhibition within the provisions of this act, and shall adopt reasonable rules and regulations to establish the qualifications of the applicants for such license, which rules and regulations shall be such as to carry out the spirit of this act and shall not be inconsistent herewith.

"In addition to the general license herein required, every person, club, corporation or association, before conducting any particular boxing, sparring or wrestling match or exhibition, where one or more contests are to be held, shall obtain a permit therefor from the state athletic commission. Such permit, so issued, shall authorize the conducting of one such boxing, sparring or wrestling match or exhibition and any number of contests may be held thereat.

"Annual licenses may be revoked by the commission upon hearing and proof as herein provided, to wit: That any holder of such annual license has violated any of the provisions of this act or of any rule, regulation, or order of the commission."

These statutory provisions must be construed as a whole in order to determine the legislative intent.

> Snider v. State *ex rel.* Leap (1934), 206 Ind. 474, 478;
> State v. Ritter's Estate (1943), 221 Ind. 456, 48 N. E. (2d) 993, 998.

We must look to the general purpose and scope of a statute to determine the legislative intent.

> City of Indianapolis v. Evans (1940), 216 Ind. 555, 567;
> State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 612.

Before dealing with each question separately it is further submitted that the aforesaid Act is one passed by the Legislature under the police powers of the State of Indiana. Prior to the passage of said Act, under Section 10-1502, Burns' 1933, same being Section 436 of Chapter 169 of the Acts of 1905, the carrying on of such activities was a misdemeanor, was classed as prize fighting, and prohibited by the provisions of said 1905 statute, same being the general statute concerning public offenses.

Under Section 63-235, Burns' 1933, same being Section 35, Chapter 93, Acts of 1931, it is provided:

> "Section 435 of Chapter 169 of the Acts of the General Assembly of the State of Indiana of the year 1905 entitled, 'An act concerning public offenses,' is hereby repealed in so far as it is inconsistent with any provisions of this act, and all other acts and parts of acts inconsistent with this act as (are) hereby repealed."

While the Legislature refers to section 435 of Chapter 169 of the Acts of 1905, it unquestionably meant Section 436 of said Act. In any event under the last quotation the provision "and all other acts and parts of acts inconsistent with this act are hereby repealed" would include Section 436 of Chapter 169 of the Acts of 1905, *supra.*

It is therefore clear that the Legislature repealed the prohibition against prize fighting to the extent set forth in Chap-

ter 93 of the Acts of 1931, *supra,* and placed such boxing and wrestling activities under the control of the State Athletic Commission, with stringent provisions to keep such activities within the limits of those outlined by the Legislature in enacting Chapter 93 of the Acts of 1931. This Act therefore is clearly an exercise by the Legislature of the police powers of the State. It was intended to protect the contestants as well as the public and to prevent the legalized sports from degenerating into a racket.

1. In answer to your first question it is submitted that under the foregoing provisions of said statute the granting of an annual license or a permit to conduct such exhibitions is discretionary in the Commission.

In 1933 Am. Jur., Licenses, Section 52, the following rule is announced:

> "As a general rule, a state or governmental authority which has power to deny a privilege altogether may grant a license therefor upon such conditions, not requiring the relinquishment of constitutional rights, as it sees fit to impose, and the person to whom the license is granted takes it upon such conditions. * * *"

On this question also see:

> Manchester Press Club v. State Liquor Commission (1938), 89 N. H. 442, 116 A. L. R. 1093, 1096;
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> Finch v. United States (1880), 102 U. S. 269, 272.

It is pertinent to note that Section 11 of Chapter 93 of the Acts of 1931, same being Section 63-211 Burns' 1933, *supra,* contains a title to said section as follows: "Limit on permits and Licenses." In the body of said section of the statute the Commission is given full power and authority to limit the number of such matches or exhibitions to be held or given by *any person* in *any city or town* in this State. An examination of the original enrolled Act in the Secretary of State's office reveals that this title to Section 11 was placed there by the Legislature and is contained in such original enrolled Act. It is therefore clear the Legislature intended the authority given the Commission by Section 11 of said Act, *supra,* to limit such

matches or exhibitions to any city or town in this State, to apply equally to permits and *licenses*, and that such statute authorizes the restriction of an annual license to a particular town or city, but does not authorize such license to be restricted to a particular address located in such city.

The statutes of the States of Illinois and Wisconsin are almost identical in their provisions as to the issuance of annual licenses. On inquiry I am advised the Athletic Commissions of said states restrict annual licenses to certain cities or towns under the provisions of their statutes. While the interpretation given such statutes in said states by their Athletic Commissions are not controlling in construing similar Indiana statutes, such action is entitled to some weight and consideration, if for no other reason than to show such interpretation is in harmony with this opinion.

Therefore, in answer to your first question I am of the opinion an annual license may be restricted by the State Athletic Commission to a particular city or town, but not to a particular address located therein.

2. In answer to your second question I am of the opinion that if the Commission has granted an annual license applicable throughout the State of Indiana that it may limit the holding of any such matches or exhibitions to a certain city or location by the granting or refusal to grant a *permit* for the particular match or exhibition which permit could be granted or refused by the Commission at its discretion. If the Commission has granted such applicant a limited or restricted annual license then a permit could not be granted for any town or city not covered by such annual license.

3. In answer to your third question I wish to advise that under the provisions of Section 63-223 Burns' 1933, *supra*, any applicant for an annual license is required to file with the Treasurer of State a bond in the sum of five thousand dollars ($5,000.00) guaranteeing the payment of any taxes due the State of Indiana and guaranteeing compliance by the applicant for such annual license with the provisions of said Act, and guaranteeing the compliance with the valid rules and regulations of the Commission.

In the case of General Asbestos and Supply Company v. Aetna Casualty and Surety Company (1935), 101 Ind. App. 207, wherein the court was required to construe the validity of

the provisions of a contractor's construction bond containing provisions requiring other duties to perform than were required by the statute under which such bond was filed, the court on pages 216 and 217 of the opinion said:

> "* * * The bond having been taken pursuant to the provisions of the statute above referred to, falls within the class designated as official bonds, so the terms of the statute requiring the bond enter into and become a part of it, whether written into the bond or not, and constitute the contract upon which both the rights and liabilities of the surety are to be determined. When parties enter into a bond of this kind they are bound to know the conditions imposed by the law pertaining thereto. United States Co. v. Poetker (1913), 180 Ind. 255, 102 N. E. 372; Holthouse v. State *ex rel.* (1912), 49 Ind. App. 178, 97 N. E. 130; Southern Surety Co. v. Kinney (1920), 74 Ind. App. 205, 127 N. E. 575; Million v. Metropolitan, etc. Co., *supra*. * * * If the contention of the appellee should prevail, then a surety on executing an official bond could insert binding conditions therein, though not required by the statute demanding the execution of the bond, restricting and limiting its liability thereunder, irrespective of the provisions of the statute, thereby defeating the very purpose and intent of the Legislature in requiring the giving of such bond in the first instance. This would in effect vest public officials, whose duty it is to require the bond, with power to contract away the rights of the public and the very persons for whose benefit the bond is demanded. This, the courts hold, such officials do not have the right to do, and when such restrictive conditions are inserted in an official bond they are treated as surplusage, and as of no binding effect."

Also see:

United States Fidelity, etc. v. Poetker (1913), 180 Ind. 255, at 264 to 265.

From the foregoing authorities it is clear that when such bond is filed and so approved it becomes an official statutory bond.

Under the provisions of Section 63-233 Burns' 1933, *supra*, the filing of such bond for an annual license is a condition precedent to the obtaining of an annual license. The filing of such bond is necessary before the Commission has the authority under said statute to issue such annual license.

Where an office is created by statute public officers may exercise only such powers as are expressly authorized by statute.

Blue v. Beach (1900), 155 Ind. 121, 131;
State *ex rel.* v. Goldthait (1909), 172 Ind. 210, 216, 217;
State *ex rel.* v. Home Brewing Co. (1914), 182 Ind. 75, 91;
The State v. The Portsmouth Savings Bank (1886), 106 Ind. 435, 451;
Dept. of Insurance v. Church Members Relief Assn. (1940), 217 Ind. 58, 60;
Wallace v. Dehner (1929), 89 Ind. App. 416, 420.

In my answer to your question number one, *supra*, it is stated the Commission may restrict an annual license to a particular town or city in this State, but not to a particular address therein. Therefore, under the authorities heretofore cited, if the bond furnished by the applicant for an annual permit is restricted to a particular address in a certain city or town, such bond being an official statutory bond, the same would cover and be sufficient for any match or exhibition given any place in that city or town under such annual license.

I am further of the opinion that since the Commission may restrict an annual license to a particular city or town, that a bond given covering matches and exhibitions held or given in any particular city or town would be legal and within the contemplation of the statute, as such bond would cover matches and exhibitions given at any location within such city or town. In such event the Commission would not have authority to issue an annual license beyond the territorial limits of the city or town covered by such bond. Any such annual license so issued beyond the territorial limits stated in such bond would be void to the extent of such excess for the reason that in such event no bond would be on file covering the issuance of such annual license for such additional territory.