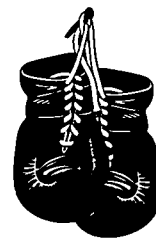


# Athletic Commission

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The Athletic Commission, part of the state Department of Consumer Affairs (DCA), is empowered to regulate professional and amateur boxing and full contact martial arts and kickboxing under the Boxing Act, Business and Professions Code section 18600 *et seq.* The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of seven members, each serving a four-year term. All seven members are "public members," as opposed to industry representatives.

The Commission has sweeping powers to approve, manage, and direct all professional and amateur boxing and full contact martial arts shows or exhibitions held in California, and to license professional and amateur boxers and martial arts competitors, promoters and clubs, referees, judges, matchmakers, booking agents, timekeepers, managers, trainers, seconds, and training facilities. The Commission is authorized to develop and administer appropriate examinations to determine the qualifications of individual athletes, including pre-bout physical examinations, HIV/HBV testing, neurological testing, and eye examinations. The Commission is also responsible for establishing and administering the Professional Boxers' Pension Plan, a financial protection program for competitors. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical standards. Further, the Commission's power to regulate boxing extends to the separate approval of each contest in order to preclude mismatches. Commission representatives attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of the competitors, and the integrity of the sports of boxing and martial arts in the interest of the general public and the participating athletes.

On June 1, the term of Commission Chair Ernest Weiner expired; Vice-Chair Manuel "Cal" Soto took over as Chair at the Commission's September meeting.

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## MAJOR PROJECTS

### Commission Prepares for Sunset Review

In October, in preparation for its upcoming sunset review hearing, the Athletic Commission submitted a report to the Joint Legislative Sunset Review Committee (JLSRC) to update the JLSRC on actions and issues which have arisen since the Commission's 1995–96 sunset review. [15:4 CRLR

57] Because the Commission was originally created in the state constitution, the legislature may not "sunset" it *per se*; however, the nature of the Commission's regulation is subject to legislative alteration, including the authority and the composition of the Commission. Following the Commission's first sunset review, the legislature amended the Boxing Act to reduce the composition of the Commission from eight to seven members and deregulate a number of categories previously regulated by the Commission (including announcers, box office employees, doorpersons, ticket sellers, ticket takers, and ushers), and scheduled the Commission for another review in the fall of 1999.

Following is a summary of the issues raised in the Commission's 1999 sunset report:

♦ **Funding.** The primary issue discussed at the Commission's first sunset review—adequate funding for its various programs to protect the health, safety, and welfare of boxing and martial arts participants—has not been resolved to any significant degree. Unlike other DCA agencies that are sustained

completely by licensing fees, the Commission is a "general fund" agency, meaning it is funded directly by the state general fund; all unrestricted revenues accruing to the Commission (including licensing fees and a 5% gate tax collected at live professional boxing events and professional wrestling

exhibitions) are deposited back into the general fund. Because of its fluctuating licensee base (a boxer may not renew his/her license unless he/she knows a California event is scheduled) and the varying number of events in California every year, the Commission uses general fund money to support its programs, repays what it can from revenues, and is forced to rely on the general fund for at least 3–4% of its budget every year.

According to the Commission's report, two recent events have further exacerbated its funding problems:

- In October 1998, a federal court invalidated Business and Profession Code section 18830, which permitted the Commission to collect a 5% tax on gross receipts from pay-per-view broadcasts of boxing, martial arts, and wrestling matches in California. [16:1 CRLR 131] This decision, which the Commission did not appeal, will cost the Commission an estimated \$800,000 per year in revenue.

- In 1996, Congress enacted the Professional Boxing Safety Act, which preempts state regulation of professional boxing on tribal lands under most circumstances (see below for details). As a result, many promoters have been taking their matches to Indian reservations, and have argued they

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are no longer subject to the Commission's 5% gate tax or its per-ticket assessments for required neurological examinations (60 cents per ticket) or the Professional Boxers' Pension Plan (88 cents per ticket). The Commission may supervise boxing events on reservations under federally prescribed circumstances, and previous Commission staff negotiated a \$1,500 supervision fee with the tribes that want Commission supervision; however, the \$1,500 fee does not cover the Commission's costs. Thus, the consequences of the federal statute are eroding the Commission's revenue and the restricted funds supporting both the pension plan and the neurological testing program—placing all three in severe fiscal jeopardy.

♦ **"Submission Fighting."** Another issue identified by the Commission in its October report is the emergence of "submission fighting" or "mixed martial arts." This form of fighting, which is currently illegal in California, is a mix of wrestling and martial arts; participants fight in a cage (not a ring) until one of them "submits" by tapping the canvas. [16:2 CRLR 111] According to the Commission, many of these events have "gone underground" to avoid Commission intervention. However, "these events can be regulated and taxed by the Commission when regulations are promulgated. The Commission's Martial Arts Advisory Committee has met with various mixed martial arts promoters and an initial set of regulations has been drafted."

♦ **"Pregnancy Testing."** Finally, the Commission noted that "the most controversial issue facing the Commission is the pregnancy testing of professional and amateur boxers and martial arts fighters. Currently, the Commission does not have authority to require this and the California Commission is one of the few state athletic commissions that does not afford this protection to the female athletes." The Commission noted that it has sought legislative authority to require pregnancy testing on several occasions, but without success. As recently as August 1999, the Department of Consumer Affairs declined to sponsor proposed legislation authorizing pregnancy testing for female boxers and martial arts fighters. According to the Commission, "it is only a matter of time before a tragedy will occur and the liability will be tremendous."

At this writing, the Commission's sunset hearing is scheduled for November 30.

### **Professional Boxers' Pension Plan In Jeopardy**

Due to declining contributions, the stability of the Commission's Professional Boxers' Pension Plan is in jeopardy.

Created in 1982 in Business and Professions Code section 18880 *et seq.*, the pension plan is intended to provide box-

ers with a small amount of financial security once they have retired from boxing. Once funded with required contributions from boxers, managers, and promoters, the plan is now funded with required assessments against promoters up to a maximum of \$4,600 per show. Contributions are deposited into the Commission's Boxers' Pension Fund for distribution to eli-

gible boxers upon regular retirement at age 55, medical retirement, or vocational early retirement at age 36.

The viability of the pension plan is in danger because of the enactment of the Professional Boxing Safety Act of 1996, 15 U.S.C. § 6301 *et seq.*, a federal statute that generally preempts state regulation of professional boxing on tribal lands. Section 6312(b)(1) of the federal act states that "a tribal organization...may...(A) regulate professional boxing matches held within the reservation under the jurisdiction of that tribal organization; and (B) carry out that regulation or enter into a contract with a boxing commission to carry out that regulation." Section 6312(b)(2) states that "if a tribal organization regulates professional boxing matches pursuant to paragraph (1), the tribal organization shall, by tribal ordinance or resolution, establish and provide for the implementation of health and safety standards, licensing requirements, and other requirements relating to the conduct of professional boxing matches that are at least as restrictive as (A) the otherwise-applicable standards and requirements of a State in which the reservation is located; or (B) the most recently published version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions."

Because of this statute, more and more promoters are holding their fights on Indian reservations. Almost 45% of California's fights are now being held on Indian reservations. Not only do the tribes pay promoters substantial

"site fees," but promoters claim to be exempt from the Commission's 5% gate tax and from its assessments for the pension plan and its neurological examination program. As noted above, the Commission has negotiated a \$1,500 supervision fee with the tribes that want Commission supervision, but the \$1,500 fee does not even cover the Commission's costs and the Commission has not demanded that pension and neuro fees be assessed for the benefit of the boxers competing in the matches held on Indian reservations. To raise sufficient funds for the pension plan, the Commission has had to increase the per-ticket assessment from 46 cents to 88 cents per

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ticket per show. The pension plan funding situation has become so dire that Deputy Attorney General Earl Plowman recommended that the Commission "fold" the pension plan at its July 23 meeting, because continued increases to the per-ticket assessment will only force more shows to Indian reservations.

During the fall, Commission staff, DCA legal counsel Anita Scuri, and Plowman consulted with Professor Robert C. Fellmeth of the University of San Diego School of Law; Professor Fellmeth chaired the Athletic Commission in 1982 and helped draft the statute creating the pension plan. Fellmeth does not believe the new federal law bars the Commission from demanding its full gate tax and pension/neuro fees from promoters who take fights to tribal lands. Although Fellmeth acknowledges that the statutory language is less than clear, he believes an argument might be made that the pension plan is part of the "regulatory conduct" of a professional boxing match in California, such that a California tribe regulating its own boxing matches by adopting standards "at least as restrictive" as the Commission's would be required to impose the pension assessment.

Failing that, he cites to the "default rule" applicable to state jurisdiction over matters involving Indian tribes and their members generally. In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the U.S. Supreme Court ruled that the state could not impose its gambling laws on tribal lands; however, the Court stated "our cases...have not established an inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent." Several cases have held that states may impose a tax on non-Indian customers of Indian retailers doing business on the reservation; such an assessment may be valid even if it seriously disadvantages or eliminates the Indian retailer's business with non-Indians. For example, the *Cabazon* Court cited *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980), in which the U.S. Supreme Court upheld the right of the state of Washington to collect sales tax from a tribal smokeshop "even though it would eliminate their competitive advantage and substantially reduce revenues used to provide tribal services, because the Tribes had no right 'to market an exemption to state taxation to persons who would normally do their business elsewhere....It is painfully apparent that the value marketed by the smokeshops to persons coming from outside is not generated on the reservations by activities in which the Tribes have a significant interest.'"

Fellmeth notes that the pension issue involves both non-Indian boxers and, most likely, non-Indian boxing match attendees. Second, the state has a strong interest in the continuation of its boxers' pension plan which does not, or should not, run counter to any interest of the tribe. Third, imposition of a per-ticket pension fund charge would be a "minimal burden imposed" on the tribal boxing organization. Fellmeth recom-

mended that the Commission, in negotiating future contracts with tribes for boxing match supervision, include the required pension plan assessment and inform the tribes that the assessment is due regardless of whether they contract with the Commission for match supervision. The Commission has not yet discussed Fellmeth's recommendation.

Professor Fellmeth agreed to help the Commission seek relief through the legislature, possibly by calling legislative attention to the matter at its upcoming sunset review hearing.

## Update on Commission Rulemaking

The following is an update on recent Commission rulemaking proceedings, some of which are described in detail in Volume 16, No. 2 (Summer 1999) of the *California Regulatory Law Reporter*:

♦ **Boxers' Pension Plan Regulations.** At its May 13 meeting, the Commission held a public hearing on its proposal to amend section 403(a), Title 4 of the CCR, to increase the required contribution of promoters to the Boxers' Pension Plan from 46 cents per ticket per show (excluding complimentary tickets) to 88 cents per ticket. The Commission projects that the increase will permit it to meet its goal of \$91,000 in annual contributions to the pension plan. [16:2 CRLR 109-10] At the hearing, boxing promoter Roy Englebrecht complained that it is unfair that he must pay an average of \$3,000-\$4,000 per show to the Commission in taxes and pension/neuro fees, when other promoters who hold their shows on tribal lands are limited to \$1,500 per show. He suggested that the Commission raise the flat fee it is currently charging Indian tribes for boxing match supervision, and argued that the current assessment and incentives are simply driving more fights to the Indian reservations. He urged the Commission to explore other ways of funding the pension plan. Following the hearing, the Commission adopted the amendment. On July 23, the Office of Administrative Law (OAL) approved the amendment as an emergency regulation effective for 120 days; on October 13, OAL approved the permanent change to 88 cents per ticket.

Also related to the pension plan, on May 13 the Commission approved permanent amendments to sections 401(a)(2) and 405(c), Title 4 of the CCR. After the Commission converted the pension plan from a "defined benefit" plan to a "defined contribution" plan in 1996, it had to notify certain boxers who made contributions to the plan prior to May 1, 1996 that they will never be entitled to benefits from the plan and are owed a refund in the amount of their contribution plus interest. As amended in 1996, section 401(a)(2) required the Commission to set up a "refund account" as a sub-account within the Pension Fund to hold the contributions of these boxers; the sub-account was to exist until January 1, 2000; and Commission staff had until January 1, 1999 to contact these boxers and notify them that they may be entitled to a refund.

**Fellmeth does not believe the new federal law bars the Commission from demanding its full gate tax and pension/neuro fees from promoters who take fights to tribal lands.**

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Eligible boxers had to claim a refund by January 1, 1999, or forfeit it. However, the task of notifying eligible boxers was more difficult and took much longer than originally anticipated. In November 1998, the Commission adopted emergency amendments to sections 401 and 405, extending the January 1, 1999 claiming deadline to January 1, 2000, thus giving staff another year to contact boxers eligible for a refund from the Pension Fund. [16:1 CRLR 128] On April 2, just prior to the April 5 expiration of those emergency amendments, the Commission readopted and OAL approved these emergency changes for another 120-day period. [16:2 CRLR 110] On May 13, the Commission permanently amended sections 401 and 405 to extend the existence of the refund account until January 1, 2002, to give the Commission ample time to contact boxers who contributed to the pension plan prior to May 1, 1996. OAL approved these changes on October 13.

♦ **Clean-Up Regulatory Changes.** On July 30, the Commission published notice of its intent to amend sections 202, 306, 370, and 502, Title 4 of the CCR, to make some technical changes to its regulations. The Commission proposes to amend section 202 to delete an old address and substitute the new address of its Los Angeles office. The proposed amendments to section 306, which describes a boxer's "ring costume," would delete a provision requiring boxers to have two pairs of trunks "of contrasting color"; require male boxers to have a custom-made, individually-fitted mouthpiece and an abdominal guard ("cup") that does not extend above the boxer's hipline; and require female boxers to have two pairs of trunks, a body shirt, shoes, a custom-made, individually-fitted mouthpiece, and a breast protector. The proposed amendment to section 370 would require a licensee who wishes to contest the Commission's assignment of a referee to file a written protest with the Commission at least five days prior to the contest and state the reason for the protest. Section 502 currently provides that section 290, regarding medical insurance, does not apply to martial arts or kickboxing; the proposed amendment would delete the listing of section 290 in section 502 to clarify that promoters must provide medical insurance for martial arts fighters.

At its September 17 meeting, the Commission held a public hearing on these proposed changes. The Commission received no comments on the proposed amendments to sections 202, 370, and 502, and adopted them. However, the Commission engaged in lengthy discussion of the proposed deletion of the current requirement in section 306(a) that boxers provide two pairs of trunks in "contrasting colors." That provision was originally adopted in the days of black and white television, and assisted viewers in identifying the boxers. Complaints about the cost of having two sets of trunks led the Commission to propose deletion of the requirement. However, some referees complained that some members of the viewing public in a large arena (including judges judging the fight) might have difficulty distinguishing between two boxers wearing the same or similar color trunks. After much debate, the Commission modified the language of section

306(a) to read as follows: "The ring costume for each boxer on a program shall be approved by the Commission, and shall include two pairs of trunks, shoes, and a custom-made individually-fitted mouthpiece. The Commission staff shall not approve ring costumes that are so similar as to possibly cause confusion as to the identity of the contenders." The Commission instructed staff to publish the modified version of the section for an additional 15-day public comment period.

## LEGISLATION

**SB 160 (Peace)**, the state budget bill for fiscal year 1999–2000, appropriated \$937,000 to the Commission from the general fund for general support of the Commission's activities during FY 1999–2000, and additionally authorized the Commission to spend \$79,000 from the Professional Boxers' Pension Plan and \$97,000 from the Boxers' Neurological Examinations Account, for a total 1999–2000 Commission budget of \$1.1 million. The Governor signed the budget bill on June 29 (Chapter 50, Statutes of 1999).

## RECENT MEETINGS

At its May 13 meeting, the Commission denied a request by wrestling promoter Paul Brown that he be exempt from having to pay a 5% tax (\$1,000 minimum) from gross receipts collected at professional wrestling events. The Commission noted that it is required to collect the gate tax on wrestling events by Business and Professions Code sections 18824 and 18827, and urged Mr. Brown to contact his state representative if he wants to seek a change in the law.

At the Commission's July 23 meeting, boxing promoter Roy Englebrecht asked for permission to hold a two-round "Kung Fu vs. Boxing" event so he could videotape the event for the Nevada Boxing Commission. In such an event, a competitor skilled in kung fu "fights" a traditionally-trained boxer. Commissioner Executive Officer Rob Lynch expressed concern about the proposed exhibition, because a boxer would have no experience in blocking kicks or knowing how to fall correctly when being taken down. After discussion, the Commission decided to permit Englebrecht to stage the match, so long as he agreed to abide by the Commission's boxing/martial arts regulations (*i.e.*, no take-downs and no punching below the hipline).

## FUTURE MEETINGS

- November 12, 1999 in Sacramento.
- December 10, 1999 in El Segundo.
- February 18, 2000 in El Segundo.
- March 31, 2000 in Glendale.
- April 28, 2000 in El Segundo.
- June 2, 2000 in San Diego.
- August 18, 2000 in San Francisco.
- October 13, 2000 in Sacramento.
- December 8, 2000 in Los Angeles.