



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Joe Kunschik, Commissioner
Bureau of Labor Statistics
Austin, Texas

Dear Sir:

Opinion No. 0-2588
Re: Exhibition of prize fight
motion picture films.

We have your letter of August 2, 1940, request-
ing the opinion of this department upon the following
question:

"Reference is made to Article 612 of the
Penal Code, Acts of 1910, which prohibited the
showing of prize fight moving picture films in
Texas theaters.

"Inasmuch as the Boxing and Wrestling Law
of Texas (Art. 614--1, 17c, Vernon's Penal Code)
was passed in 1934 and placed under the super-
vision of this department, please advise whether
Article 612 of the Penal Code has been, in ef-
fect superseded in any way, or whether it is
still a violation of the law to show prize fight
moving picture films in Texas theaters."

Article 610 of Vernon's Annotated Penal Code,
first enacted by the Legislature in 1895, prohibited pugil-
istic encounter, and the same enactment defined a "pugilistic
encounter" as:

"By the term 'pugilistic encounter,' as
used herein, is meant any voluntary fight or
personal encounter by blows by means of the
fists or otherwise, whether with or without
gloves, between two or more men for money, or
for a prize of any character, or for any other
thing of value, or for any championship, or
upon the result of which any money or anything

of value is bet or wagered, or to see which any admission fee is charged."

From 1895 until the year 1933 "prize fighting", as that term is commonly understood in athletic circles, was held unlawful.

See SULLIVAN v. STATE, 32 Tex. C. R. 50, 22 S. W. 44;

WILLARD v. KNOBLAUCH (T. C. A.), 206 S. W. 734.

In 1910 the Legislature went a step further and prohibited the exhibition of motion pictures of prize fights. Article 612, Vernon's Annotated Penal Code. This enactment reads as follows:

"No person, association, corporation, or any agent or employe of any person, association, corporation or receiver, partnership or firm, shall give or present to the public an exhibition of prize fights or glove contests, or of any obscene, indecent or immoral picture of any character whatsoever, by means of moving picture films, bioscopes, vitascopes, magic lanterns or other device or devices in moving picture shows, theaters, or any other place whatsoever.

"Any person, or any agent or employe of any person, association, corporation or receiver violating any provision of this article shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail for not less than ten nor more than sixty days, or both. Each day's violation of any provision of this article shall be a separate offense."

In 1933, however, the public policy of the State as manifested by its legislative enactments changed. H. B. 832, Acts 1933, 43rd Leg., p. 843, ch. 241, legalized with certain limitations fistic combat, wrestling matches, boxing, sparring contests or exhibitions for money. Supervision was placed in the hands of the Commissioner of Labor Statistics. This enactment was subsequently amended

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in 1934, to allow the Commissioner to prescribe rules and regulations for boxing and wrestling. See Acts 1934, 2nd C.S., p. 63, ch. 21.

Section 16 of the Act of 1933 expressly repealed all laws and parts of laws in conflict therewith and we may safely assume that Articles 610 and 611 of the Penal Code have been superceded. This we may not assume for Article 612.

We have carefully examined the Act of 1933 as amended by the Act of 1934 (Vernon's Annotated Penal Code, Articles 614-1-614-17c, inclusive) and have failed to find any provision making it lawful to present an exhibition of prize fighting to the public by motion picture films. Certainly there has been no express repeal of Article 612 of the Penal Code. While the law frowns upon, but sometimes sanctions, repeals by implication, here we have nothing upon which to attach an implication. The Acts of 1933 and 1934 from word to word are silent upon the subject of exhibiting motion picture films of prize fights. We must conclude that Article 612 of the Penal Code stands untouched.

It is, therefore, the opinion of this department and you are respectfully advised that Article 612 of Vernon's Annotated Penal Code has not been superceded by Articles 614-1-614-17c, inclusive, of Vernon's Annotated Penal Code, and it is a violation of the law to present for public exhibition prize fight moving picture films in Texas theaters.

Yours very truly

ATTORNEY GENERAL OF TEXAS

/s/

By

James D. Smullen
Assistant

JDS:ob

APPROVED AUG 15, 1940
/s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED OPINION COMMITTEE
BY R.W.F. CHAIRMAN