

Opinion No. 12-890

May 11, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Charles C. G. Ward, District Attorney, Las Vegas, N. M.

PRIZE FIGHTS.

There is no statute in New Mexico making a prize fight illegal.

OPINION

{*33} Your letter of the 9th inst. was received yesterday, but I had no time to answer until today. You say that you have been asked by opponents of the proposed Johnson-Flynn prize fight at Las Vegas, and also by those who favor having that fight, whether or not there are any laws on the statute books of New Mexico to make such a contest illegal, and that you have expressed the opinion that at the present time there is no such statute in New Mexico; and you ask me to give you my opinion on this question.

I am compelled to say that I believe you are correct in the opinion which you have expressed, and that, as you say, the only statute approaching this subject is to be found in Section 1404 of the Compiled Laws of 1897. That section reads as follows:

"If two or more persons, voluntarily or by agreement, engage in any fight or use any blows or violence toward each other in an angry or quarrelsome manner, in any public place, to the disturbance of others, they are guilty of affray, and shall be punished by imprisonment in the county jail not exceeding three months, or by fine not exceeding fifty dollars."

If this section had merely provided that if persons voluntarily or by agreement should engage in a fight, or that they should use blows or violence toward each other, and stop there with the definition of the offense, it might be applicable to a prize fight, but the added clauses show distinctly that the legislative intent was to punish conduct of this kind in a public place where it would disturb and annoy other persons. The words, "in any public place, to the disturbance of others," indicate essential ingredients of the offense. It might reasonably be contended that a house, theater or enclosed arena where a prize fight takes place, is, within the meaning of the statute, a public place, but those of the members of the public who would be disturbed by any such exhibition, are under no obligation to attend, and those who are willing to witness such performances, certainly are not persons who would be disturbed thereby. Such disturbance of others as may be occasioned if the proposed fight takes place, will not be from the engaging of the two principals in the fight, but, as is urged by those who oppose exhibitions of professional pugilists, the disturbance, annoyance and injury will come from the congregation of large numbers of undesirable characters, whose presence in the town

and whose influence and example will be of a demoralizing and pernicious character. If there were no statutory definition whatever of what constitutes an affray, there would be more room to contend that the proposed fight would be a violation of law than there is in the presence of such a statute as the one above quoted, but the legislature {^{*34}} having given this statutory definition, it must be held that any other is excluded.

If public sentiment is opposed to these exhibitions, the remedy must be supplied by the people through their representatives in the legislature by way of distinct and unmistakable statutory prohibition.