

Opinion No. 18-2097

May 7, 1918

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Honorable W. E. Lindsey, Governor of New Mexico, Santa Fe, New Mexico.

No State Law Prohibiting Prize Fighting. Prize Fighting Is Not a Game of Chance.

OPINION

I have your favor today, wherein you state that the Santa Fe New Mexican of May 6th contains an advertisement of a boxing contest to be held in the City of Santa Fe. You state that this advertisement specifies certain features apparently involving a breach of the peace and an infraction of our statutory provisions against engaging in games of chance. You wish an opinion from this office on the subject matter of the advertisement relative to whether or not, in the event the same is carried out, any law, either common or statutory, operating in the State of New Mexico and in the City of Santa Fe, will be breached. You state that you desire this information at an early date, since you conceive, first, that it will be the duty of the authorities of the City of Santa Fe to prohibit the performance of the proposed program; that next in order it will be the duty of the peace officers of the County of Santa Fe; and lastly and eventually the duty of the peace officers of the State, to see that the law is enforced.

Before proceeding to an answer to your inquiry we will state that we are not conversant with the ordinances of the City of Santa Fe, and that we cannot express any opinion based upon them. This feature of your inquiry, it seems to us, should be addressed to the City Attorney of Santa Fe.

The advertisement which you mention is as follows:

"Grand six-round bout at Elks' Opera House Wednesday Night, May 8th, 9 o'clock between Mexican Pete Evard Champion Heavyweight of Colorado and Mike Baca of Santa Fe. Good sixround preliminary by local talent. Doors Open at 7:30. \$ 50.00 in cash paid to anyone who will stand before Mexican Pete six rounds. Admission 50c and \$ 1.00."

It can fairly be presumed from the above advertisement that some sort of a boxing bout or prize fight is in contemplation. On May 11th, 1912, former Attorney General Frank W. Clancy, in an exhaustive opinion, which will be found at page 33 of the Opinions of the Attorney General for 1912 and 1913, held that there is no statute in New Mexico making a prize fight illegal. The opinion is as follows:

"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 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."

We cannot find where the courts of this State have ever considered the question of prize fighting, and the above opinion of Mr. Clancy is the only opinion on the subject that we know of. There has been no legislative enactment on the subject since Mr. Clancy wrote his opinion. The specific offense of prize fighting was unknown at common law, the participants being punishable for assault and battery, breach of the peace or riot, according to the circumstances surrounding the particular case. We think that the

participants in such a bout as is advertised might be guilty of assault and battery, but they would not be guilty of the offense of prize fighting because such offense is unknown in this State. Therefore, we will answer your first inquiry by saying that, in our opinion, the law of the State prohibiting assault and battery, and assault will be breached by the holding of the event announced in the advertisement.

Your other inquiry is whether or not the advertisement indicates a proposed violation of the gambling statutes of this State. We take it that you refer particularly to that portion of the advertisement which announces that fifty dollars in cash will be paid to anyone who will stand before "Mexican Pete" six rounds. The gambling statute of this State, now in force, is Chapter 110 of the Laws of 1917, passed by the last legislature and which repeals all the former laws on the subject, which were much more drastic than the present statute. The present statute is as follows:

"That any person who for money or anything of value, conducts or operates any game of chance, by whatsoever name known or howsoever played, or who knowingly permits any such game to be so conducted or operated upon premises of which he is the owner, lessee or occupant, upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or both such fine and imprisonment."

Under this statute the operation of a game of chance is prohibited. The term "game of chance" has been frequently defined by many courts and a distinction has always been made between games in which the winning would be the result of pure chance, and games in which the winning would depend upon the skill or strength or ability of the contestants. The New Mexico statute is not a very adequate one, and hence reference to the statutes of other states are of little value. We do not believe that a person contending with "Mexican Pete" for a reward could be said to be engaging in a game of chance as the term is commonly used, and hence the promoters, or whoever could be said to be conducting the affair, could hardly be said to be conducting a game of chance within the meaning of the New Mexico Statute.