



STATE OF KANSAS

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March 30, 1981

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ATTORNEY GENERAL OPINION NO. 81-75 _____

The Honorable Ed C. Rolfs
State Representative, Sixty-Fifth District
State Capitol, Room 155-E
Topeka, Kansas 66612

Re: Crimes and Punishments -- Miscellaneous Offenses --
Unauthorized Wrestling; Local Governments' Power
to Regulate

Synopsis: Local governmental units do not have the authority
to issue licenses for professional wrestling matches
under home rule powers because such would conflict
with K.S.A. 1980 Supp. 21-1801. Cited herein:
K.S.A. 1980 Supp. 12-5101, 21-1801, Kan. Const.,
Art. 12, §5.

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Dear Representative Rolfs:

You have requested an opinion concerning whether a local govern-
mental unit is authorized by statute or incident to its home rule
power to issue licenses to conduct professional wrestling matches.
The statutes of which you seek clarification are K.S.A. 1980
Supp. 12-5101 et seq. and 21-1801.

K.S.A. 1980 Supp. 21-1801 provides:

"(a) Except as provided in subsection (b) no person
shall send or cause to be sent, publish or other-
wise make known any challenge to fight what is
commonly known as a prize fight, or engage in
any public boxing, sparring or wrestling match,
exhibition or contest with or without gloves of
any kind, for any prize, reward or compensation,
or at which any admission fee is charged or re-
ceived, either directly or indirectly, or go

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into training preparatory to such fight, exhibition, match or contest, or act as trainer for any person or persons contemplating participation in such fight, exhibition or contest, or act as aider, abettor, backer, umpire, trainer, second, surgeon, assistant, reporter or attendant at such fight, exhibition or contest, or in any preparation for the same nor shall any owner or lessee of any grounds, lots, building, hall or structure of any kind permit the same to be used for such fight, exhibition, match or contest.

"(b) The provisions of subsection (a) shall not apply to any fight, exhibition, match or contest conducted under a license issued by a governing body as provided in K.S.A. 1979 Supp. 12-5101 to 12-5126, inclusive, sanctioned by the national association of intercollegiate athletics, national collegiate athletic association, amateur athletic union of the United States, golden gloves association of America or national junior college athletic association or conducted under the control of the Kansas state high school activities association.

"(c) Any violation of the provisions of this section is a class A misdemeanor." (Emphasis added.)

Under this statute, any public fight -- boxing, wrestling or otherwise -- for compensation of any type or at which admission is charged is prohibited, unless it falls within one of the exceptions listed in subsection (b) of the statute. All of the exceptions save the first apply to events sanctioned by certain amateur athletic associations. We assume by use of the phrase "professional wrestling match," you mean an activity in which the participants receive compensation for their efforts, and are, by definition, not amateurs. Hence, these exceptions provide no authority for professional wrestling matches to be licensed. However, in addition, it should be noted that wrestling, with or without compensation to the participants, which activity falls within the above-prescribed activity, is prohibited unless otherwise sanctioned as provided by this section.

The first exception allows those fights, exhibitions, matches or contests which are conducted under a license issued pursuant to K.S.A. 1980 Supp. 12-5101 et seq. Those statutes

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provide for the licensing of professional boxing matches, but contain no provision for professional wrestling matches. Absent any specific exception from the prohibition in the statute against professional wrestling, the statutory prohibition in 21-1801 applies. Thus, under state law, there is no statutory authority granted to cities or any other governing body to license professional wrestling matches.

The next question to be resolved is whether cities may grant licenses for professional wrestling matches under the home rule powers granted in Article 12, Section 5 of the Kansas Constitution. Subsection (b) of the home rule amendment provides in pertinent part: "Cities are hereby empowered to determine their local affairs and government . . . by ordinance passed by the governing body . . . subject only to enactments of the legislature . . . applicable uniformly to all cities." The statutes in question do not set varying criteria for different classes of cities; they are uniformly applicable to all cities and therefore will subject all cities to their provisions. While regulation of sporting events held within a city is clearly a matter of local concern, it also is a matter of state concern.

As the Kansas Supreme Court stated in City of Junction City v. Lee, 216 Kan. 495 (1975): "That it is of concurrent state concern is no impediment to the exercise of authority by a city through ordinance so long as there is no conflict in terms with state legislation and the state legislature has not preempted the field." (Emphasis added). Id. at 498, 499. Two separate tests must be applied to determine if the city may properly act in an area where state legislation exists. To determine whether a conflict exists between an ordinance and a statute, one must look to see if "the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes." Id. at 501. In this instance, K.S.A. 1980 Supp. 21-1801 forbids public wrestling for any type of compensation, and an ordinance attempting to license professional wrestling would be in direct conflict with the statute. Therefore, a city is "subject to" the legislative enactment and cannot invoke home rule powers to pass an ordinance in conflict with K.S.A. 1980 Supp. 21-1801.

Since an ordinance, to be valid under home rule provisions, must neither conflict with a statute nor exist in an area preempted by the legislature, and we have determined that the local licensing of professional wrestling conflicts with a criminal statute, it is unnecessary to decide whether there has been legislative preemption in this case.

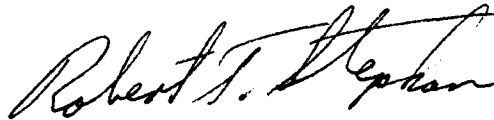
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Counties also have been granted limited, statutory home rule powers in K.S.A. 19-101a and are subject to a similar limitation regarding uniform acts of the legislature. Thus, since 21-1801 is uniformly applicable to all counties, counties also are precluded from licensing professional wrestling matches under their home rule powers, as provided in K.S.A. 1980 Supp. 19-101a.

In addition, other local governmental units, such as a township or taxing district, likewise cannot issue licenses for professional wrestling. These government bodies lack a specific grant of authority from the legislature permitting them to do so. As the Kansas Supreme Court stated in State, ex rel., v. Rural High School District No. 7, 171 Kan. 437 (1951): "It has long been the rule that school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence." Id. at 441.

It is our opinion, therefore, that a local governmental unit does not have authority by statute or constitution to issue licenses for professional wrestling matches not authorized by K.S.A. 1980 Supp. 21-1801.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle