



September 2010
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AGENCY REVIEW

DEPARTMENT OF REVENUE STATE ATHLETIC COMMISSION

AUDIT OVERVIEW

The State Athletic Commission Could Improve Its Oversight of the Sport of Boxing and Increase Its Public Accessibility by Being Placed Under the Authority of the West Virginia Lottery Commission



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EXECUTIVE SUMMARY

Issue 1: The State Athletic Commission Could Improve Its Oversight of the Sport of Boxing and Increase Its Public Accessibility by Being Placed Under the Authority of the West Virginia Lottery Commission.

The West Virginia State Athletic Commission (Commission), under the authority of the Department of Revenue, is responsible for the regulation of the sport of boxing in the state. The Commission consists of five members, appointed by the governor, and its current headquarters is the home of one of the Commissioners.

The Commission is currently not adequately accessible to the public. The Commission is not listed in the Government section of the Charleston area telephone book, has little presence on the internet and utilizes a Commissioner's residence as office space. Consolidating the Commission under the authority of the West Virginia Lottery Commission should improve the accessibility issues. This transition can likely be made with minimal disruption because the Athletic Commission is a small regulatory commission with a small budget. Both commissions are already under the authority of the Department of Revenue, which adds to the adaptability of such a transition. The Athletic Commission members could remain in their positions following the consolidation process, but administrative duties could be performed by the Lottery Commission.

The Commission currently has a \$5,500 spending limit set forth in West Virginia State Code (WVC) §29-5A-5. This spending capacity is inadequate to best regulate the sport of boxing, and is supported by the fact that the Commission has been appropriated and spent well over that in recent fiscal years. There are also perhaps some missed opportunities to increase revenue by raising license fees. West Virginia currently charges the lowest fees for boxing related licenses compared to surrounding states. By raising fees to that of some surrounding states, the Athletic Commission could become a more self-sufficient agency.

The Legislative Auditor identified five other areas of concern.

- The Commission has not made biennial reports to the Legislature as required by WVC §29-5A-2.
- The Commission should make improvements to its record keeping which has been strictly paper files.
- Waivers signed by boxing contestants do not expressly exempt the State from liability.

Consolidating the Commission under the authority of the West Virginia Lottery Commission should improve the accessibility issues.

West Virginia currently charges the lowest fees for boxing related licenses compared to surrounding states.

- There have been instances of Commission members acting as officials in boxing events. This is allowed for in emergency situations in the Legislative Rules, though emergency situations are not clearly defined.
- Changing the name of the Athletic Commission back to the Boxing Commission would be more descriptive and may improve public accessibility.

Recommendations

1. *The Legislative Auditor recommends that the Legislature consider placing the West Virginia State Athletic Commission under the authority of the West Virginia Lottery Commission.*
2. *The Legislative Auditor recommends that the Athletic Commission maintain an electronic database for future record keeping and incorporate past records into this database.*
3. *The Legislative Auditor recommends that the Athletic Commission present biennial reports to the Legislature to comply with the intent of WVC §29-5A-2.*
4. *The Legislative Auditor recommends that the Legislature consider increasing or eliminating the spending limits set forth in WVC §29-5A-5.*
5. *The Commission should consider revising its release waiver to include language with no uncertainty that the State of West Virginia is not liable for any injuries occurring in a boxing match overseen by the Commission.*
6. *The Legislative Auditor recommends that the Commission consider clearly defining emergency situations in which Commission members may act as either officials or referees, and mandate that Commission members recuse themselves in appealed matches in which they served as a judge or referee.*
7. *The Legislative Auditor recommends that the Legislature rename the West Virginia Athletic Commission to the West Virginia Boxing Commission to more accurately describe the sport that it regulates.*

OBJECTIVE, SCOPE & METHODOLOGY

The performance review of the State Athletic Commission (Commission) is authorized by the West Virginia Performance Review Act, specifically §4-10-8(b)3 of the West Virginia Code, as amended. This review was conducted in conjunction with the 2010 agency review of the Department of Revenue.

Objective

The objective is to assess the need for the Commission, assess whether it adheres to statutory guidelines, and assess how to improve its effectiveness.

Scope

The scope of the data collected for this review spanned from fiscal year 2007 to June, 2010. This review focused on the performance of the Commission, identification of its duties and compliance with West Virginia State Code. The standards of safety and oversight in West Virginia's boxing regulation compared to national standards were also a focus.

Methodology

The Legislative Auditor's Office acquired data from the Athletic Commission, commissions from surrounding states, and national organizations. Interviews were conducted with the Commission Chair and staff. West Virginia's boxing regulations were compared with that of surrounding states and by national standards. The Commission's records were also reviewed. Legal opinions were sought from both West Virginia Legislative Services and the Association of Boxing Commissions. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS) as set forth by the United States Comptroller General.

ISSUE 1

The State Athletic Commission Could Improve Its Oversight of the Sport of Boxing and Increase Its Public Accessibility by Being Placed Under the Authority of the West Virginia Lottery Commission.

Issue Summary

The West Virginia State Athletic Commission is currently not adequately accessible to the public. It has no listing in the Charleston area telephone book, no professional, accessible office space, and little internet presence. The Commission's finances limit its ability to provide much public access. These issues may be improved by placing the Commission under the authority of the West Virginia Lottery Commission. The Secretary of Revenue agrees that boxing would be better served by oversight by the Lottery Commission. Additionally, the Legislative Auditor identified that biennial reports need to be presented to the Legislature as required, the Commission's licensee database can be improved, and the Commission should address when and if commissioners can also serve as boxing officials and referees.

Established in 1931 as the State Boxing Commission, the Athletic Commission regulates boxing at both the amateur and professional levels.

The Sport of Boxing Has Been Regulated in West Virginia Since 1931

The West Virginia State Athletic Commission (Commission), under the authority of the Department of Revenue, is responsible for the regulation of the sport of boxing in the state. Established in 1931 as the State Boxing Commission, the Athletic Commission regulates boxing at both the amateur and professional levels. The Commission consists of five members, appointed by the governor, and its current headquarters is the home of one of the Commissioners. The only staff member is shared part time with the Tax Division.

West Virginia Code §29-5A-1 et. seq. outlines the Commission's duties, which include: licensing boxing contestants, promoters and officials; sanctioning individual bouts; and incorporating and enforcing the rules of the sport in West Virginia. Duties also include generally preserving the safety and integrity of boxing through disciplinary actions, monitoring

of fraud, and adherence to applicable health standards. The Commission sanctions all boxing events including “Toughperson” style tournaments, such as the Toughman contests and the Rough and Rowdy events, held throughout the state. The Commission sanctioned a total of 52 events in FY 2010, 18 professional events and 34 semiprofessional events. A list of these events can be found in Appendix B. The Commission was unable to provide uniform event data for previous years. Kickboxing events are also sanctioned by the Commission with no discernable distinction between it and boxing in Legislative Rules or licensing documents. The Commission does not oversee collegiate events.

A primary responsibility of the Commission is to ensure the safety of participants in boxing events. The regulation of boxing is necessary to ensure contestants are in good health and are fit enough to take such a risk and ensures the presence of physicians at all matches as required by WVC §29-5A-18. It is also necessary to ensure that other aspects of the boxing profession are monitored to reduce the impact of injury, eliminate the perception of various types of impropriety, and guarantee safe conditions. The regulation of promoters ensures that the minimum required insurance coverage for contestants is secured and the event will be staged in an acceptable environment. With respect to the perception of impropriety, regulation requires that monetary payments such as prizes and payment of officials pass through the proper channels. The Legislative Auditor finds that the sport of boxing in the state should continue to be regulated by the West Virginia State Athletic Commission.

On a national level, uniformity in boxing regulation is promoted by the Association of Boxing Commissions, a non-profit organization that draws its membership from state and tribal combative sports commissions from the United States and Canada. There are boxing regulatory agencies, similar to the Athletic Commission, in 48 states and Washington, D.C. Alaska and Delaware are the only two states that do not currently have a state agency which regulates boxing.

The State Athletic Commission’s Funding is From License Revenue and a Budget Appropriation from the State

The State Athletic Commission has received license fee revenue ranging from \$14,035 in FY 2006 to \$16,260 in FY 2010. Additionally, the Commission has received a budget appropriation ranging from \$20,000 in FY 2006 to \$86,877 in FY 2010. In FY 2008, the State

The Commission sanctioned a total of 52 events in FY 2010, 18 professional events and 34 semiprofessional events.

The Legislative Auditor finds that the sport of boxing in the state should continue to be regulated by the West Virginia State Athletic Commission.

Athletic Commission’s appropriated funding was increased over 280 percent, from \$20,000 to \$89,500. This increase was in anticipation of expenses, including the hiring of a part time clerical position, attorney fees, background checks for fight participants, inspectors and to create a database for the various licenses and statistics for which the commission is responsible. However, the Commission has only recently begun implementing the changes that required the increase in appropriations. The budget increase has been re-appropriated each year since FY2008.

West Virginia Code §29-5A-5 mandates that expenses for the Commission not exceed \$5,500 per year. The Commission has exceeded that mandate in four of the five years reviewed by the Legislative Auditor.

Expenses for the Commission have ranged from a low of \$1,799 in FY 2006 to \$18,499 in FY 2010. It must be noted that unexpended revenues are returned to the State’s general fund, and appropriations not spent are not carried over into the next fiscal year. Revenue and expenses for the Commission along with unexpended figures are shown in Table 1.

Table 1					
West Virginia Athletic Commission Finances FY2006 – FY2010					
Fiscal Year	Revenue	Actual Expenses	Budget Appropriation	Unexpended Balance	Percentage Unexpended
2006	\$14,035	\$1,799	\$20,000	\$18,200	91%
2007	\$14,940	\$9,999	\$20,000	\$10,000	50%
2008	\$15,010	\$18,499	\$89,500	\$71,000	79%
2009	\$15,455	\$6,829	\$89,500	\$82,670	92%
2010	\$16,260	\$18,011	\$86,877	\$68,865	79%

Source: West Virginia Legislative Auditor’s Office, Budget Division

West Virginia Code §29-5A-5 mandates that expenses for the Commission not exceed \$5,500 per year. The Commission has exceeded that mandate in four of the five years reviewed by the Legislative Auditor. In FY2008 and FY2010, the spending limit was significantly exceeded with expenditures reaching \$18,499 and \$18,011 respectively. Therefore, it is reasonable to argue that the \$5,500 spending limit is too low to adequately regulate the sport and cover other operating expenses. Thus, the Legislative Auditor recommends that the Legislature consider raising or eliminating the spending limit set forth in WVC §29-5A-5. The spending limit is more so inadequate considering the Commission has been appropriated a significant increase in funding in recent years.

Athletic Commission License Fees Could Be Raised to Increase Revenues

From FY 2006 – FY 2010, the Commission’s license fee revenues were only able to cover its actual expenses in FY 2007 and FY 2009. In other years, the Commission had to rely on an appropriation from the Legislature. The boxing regulatory agencies in some surrounding states have generated greater revenue than West Virginia partially through higher license fees. Overall, West Virginia has the lowest fees than its surrounding states. Table 2 compares the licensing fees charged for boxers, promoters, referees, and managers by the West Virginia Athletic Commission and by similar entities in surrounding states. A few obvious external factors such as larger markets and the licensing of mixed martial arts also contribute to the larger revenue numbers.

The boxing regulatory agencies in some surrounding states have generated greater revenue than West Virginia partially through higher license fees. Overall, West Virginia has the lowest fees than its surrounding states.

Table 2
Boxing License Fees in Surrounding States

State	Boxer	Promoter	Referee	Manager
West Virginia	\$10	\$125	\$10	\$10
Virginia	\$40	\$500	N/A	\$50
Ohio	\$20	\$100	\$20	\$20
Pennsylvania	\$22	\$100	\$35	\$60
Maryland	\$10	\$150	\$150/\$15 renew	\$25
Kentucky	\$20	\$300	\$20	\$20

Source: Rules and license applications of state athletic commissions

These fees are established by the respective commissions in their rules and not by state code. As shown in the table, West Virginia charges less than most states in the region for similar licenses. In 2010 the Commission reported revenue of \$16,260, which was generated strictly through license fees based on the fee schedule in Table 2. Currently, the Commission licenses:

- 1,258 boxers
 - 41 amateur: boxer who competes for other than a money prize.
 - 120 professional: boxer who competes for money
 - 1,097 semi-professional: boxer who competes in an elimination-style tournament.
- 6 managers
- 7 promoters
- 14 referees
- 66 seconds
- 15 timekeepers
- 11 inspectors
- 29 judges

There are, perhaps, some unutilized opportunities for the Commission to increase revenue or become a more self-sufficient entity, as is true in some other states.

There are, perhaps, some unutilized opportunities for the Commission to increase revenue or become a more self-sufficient entity, as is true in some other states. For example Pennsylvania’s State Athletic Commission is currently self-sustaining and uses no general fund monies. Virginia charges promoters an additional fee of \$1,500 for professional boxing events, \$2,000 if it is a title fight. It should be noted that the number of mixed martial arts licenses rival or exceed boxing licenses in some states. Mixed martial arts events are currently prohibited in West Virginia.

The Commission has no physical office space, does not have its address listed in the government section of the Charleston area telephone book, and does not have an internet web-site.

The State Athletic Commission’s Public Accessibility Could Be Improved by Being Placed Under the Authority of the West Virginia Lottery Commission

The Athletic Commission’s lack of public accessibility could make it challenging for promoters or boxers new to the sport, or state, to contact it or for the public to find information about the regulation of the sport. The Commission has no physical office space, does not have its address listed in the government section of the Charleston area telephone book, and does not have an internet web-site. Currently, the only listed address is the home address of one of the Commissioners. While the statute permits the headquarters to be at the home address of a commissioner, it is not the ideal situation for public accessibility. Information about the Commission on the internet is minimal. The only contact information for the Commission found on the internet is through a listing on the State’s web portal. This listing has a telephone number,

mailing address, and a brief mission statement for the Commission, but little else.

It is the opinion of the Legislative Auditor that public accessibility found in this review can be improved by placing the Athletic Commission under the authority of a larger state agency such as the West Virginia Lottery Commission. This transition can likely be made with minimal disruption because the Athletic Commission is a small regulatory commission with a small budget. Both commissions are already under the authority of the Department of Revenue, which adds to the adaptability of such a transition. The Athletic Commission members could remain in their positions following the consolidation process, but administrative duties could be performed by the Lottery Commission. When asked for an opinion on this matter, the Secretary of the Department of Revenue concurred (Appendix C). He stated that:

For the budgetary and employment parameters that the State Athletic Commission is challenged to operate within, the Commission performs as efficiently and effectively as they can under the circumstances. However, I believe, that they can better serve West Virginians at a higher level of service with a little guidance and oversight from the Lottery Commission.

The Athletic Commission members could remain in their positions following the consolidation process, but administrative duties could be performed by the Lottery Commission.

The Athletic Commission would benefit from the extended oversight, staffing and visibility of the Lottery Commission. By sharing resources such as websites and data storage and providing a headquarters, the public would have improved access to the Athletic Commission. **Therefore, the Legislative Auditor recommends that the Legislature consider placing the West Virginia Athletic Commission under the authority of the Lottery Commission.**

Several Concerns Regarding the State Athletic Commission Should Be Addressed

The Legislative Auditor has identified several other concerns that should be addressed by the Athletic Commission and/or the Legislature.

1. West Virginia Code §29-5A-2 requires that the Commission report its proceedings to the Legislature biennially. The Commission has not done so. The Legislative Auditor recommends that the

Athletic Commission present biennial reports to the Legislature to comply with the intent of WVC §29-5A-2.

2. The Commission's record keeping has been strictly paper files. While technically sufficient, the method is not ideal. As mentioned previously, the Commission has seen a recent increase in its budget appropriation. Part of this funding is to create an electronic database which is currently being constructed with just the most recent year's information. The data are being entered by the part time staff person shared with the Tax Department. Although this is a needed, positive step for the Commission's record keeping practices, the Commission should also input previous years' data into the new system as soon as practical. This would greatly increase the Commission's ability to not only retrieve the current year's data, but also use historical data to track trends, provide multiple years of data quickly if needed, and better manage the regulation of boxing for the state's licensees. Therefore, the Legislative Auditor recommends that the Athletic Commission continue to develop an electronic database for future record keeping and incorporate past records into this database.

3. Boxing contestants are required to sign waivers so the Athletic Commission is not liable for injury. However the waiver documents reviewed for this report did not definitively express that the State of West Virginia is not liable. The Commission should consider revising its release waiver to include language with no uncertainty that the State of West Virginia is not liable for any injuries occurring in a boxing match overseen by the Commission. A copy of the waiver is included in Appendix D.

4. In researching the Athletic Commission's records, the Legislative Auditor found that there were some instances in which Commission members served as either referees or judges in boxing events. This practice is allowed in the Legislative Rules in emergency situations, although emergency situations are not defined. Part of the concern is the potential for a conflict of interest if a judge or referee's decision is appealed to the Commission. In 2006, the Commissioner of the Athletic Commission sought an opinion from the West Virginia State Ethics Commission on whether an Athletic Commission member

Boxing contestants are required to sign waivers so the Athletic Commission is not liable for injury. However the waiver documents reviewed for this report did not definitively express that the State of West Virginia is not liable.

may serve as a judge or referee. The Ethics Commission stated that it “...does not have authority to interpret the intention of the Legislature...”, and recommended that the Commission seek clarification on this issue through the legislative process. A copy of the Ethics Commission opinion is included in Appendix E. A legal opinion from Legislative Services stated that the Commission “...should generally discontinue the practice of allowing members or designees to serve as referees or judges...” except in emergency situations. Additionally, the Association of Boxing Commissions Legal Committee has stated that when a member of a boxing commission serves as a judge or a referee and there is an appeal, then the commission member should recuse his or herself. Based on the above comments, the Legislative Auditor recommends that the Commission consider clearly defining situations in which Commission members may act as officials or referees, and mandate that Commission members recuse themselves in appealed matches in which they served as a judge or referee.

The Association of Boxing Commissions Legal Committee has stated that when a member of a boxing commission serves as a judge or a referee and there is an appeal, then the commission member should recuse his or herself.

5. The Legislature should consider returning the name of the State Athletic Commission to its original name as the Boxing Commission. This may assist the public when attempting to contact the Commission. A person’s first inclination may be to look up “boxing” on the internet or in the telephone directory not knowing the actual name of the organization that regulates the sport. Currently, the Athletic Commission only oversees the sport of boxing, so there should be no conflicts with a name change. If other sporting events are placed under the authority of the Commission in the future, the Commission could be renamed to reflect such.

Currently, the Athletic Commission only oversees the sport of boxing, so there should be no conflicts with a name change.

Conclusion

The West Virginia Athletic Commission serves an important function by regulating the sport of boxing. Although this is a necessary activity, the current organization of the Commission limits the extent to which it can be effective in doing so. An apparent lack of resources, both monetary and staff, results in some inefficiencies particularly in the area of public accessibility. It is the Legislative Auditor’s opinion that many of these issues could be resolved through the transfer of the Commission to the oversight of the West Virginia Lottery Commission.

Recommendations

1. *The Legislative Auditor recommends that the Legislature consider placing the West Virginia State Athletic Commission under the authority of the West Virginia Lottery Commission.*
2. *The Legislative Auditor recommends that the Athletic Commission maintain an electronic database for future record keeping and incorporate past records into this database.*
3. *The Legislative Auditor recommends that the Athletic Commission present biennial reports to the Legislature to comply with the intent of WVC §29-5A-2.*
4. *The Legislative Auditor recommends that the Legislature consider increasing or eliminating the spending limits set forth in WVC §29-5A-5.*
5. *The Commission should consider revising its release waiver to include language with no uncertainty that the State of West Virginia is not liable for any injuries occurring in a boxing match overseen by the Commission.*
6. *The Legislative Auditor recommends that the Commission consider clearly defining emergency situations in which Commission members may act as either officials or referees, and mandate that Commission members recuse themselves in appealed matches in which they served as a judge or referee.*
7. *The Legislative Auditor recommends that the Legislature rename the West Virginia Athletic Commission to the West Virginia Boxing Commission to more accurately describe the sport that it regulates.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia
Director

September 1, 2010

Steven Allred, Commissioner
West Virginia State Athletic Commission
318 Camp Creek Rd.
Julian, WV 25529

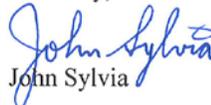
Dear Commissioner Allred:

This is to transmit a draft copy of the Agency Review of the West Virginia State Athletic Commission. This report is scheduled to be presented during the September 13-15, 2010 interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organizations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Friday, September 3, 2010. We need your written response by noon on Wednesday, September 8, 2010 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, September 9, 2010 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,


John Sylvia

C: John C. Musgrave, Acting Cabinet Secretary, Department of Revenue

Joint Committee on Government and Finance

Appendix B: Boxing Events Sanctioned by the Athletic Commission in FY 2010

Event Date	Location	Class
7/31/2009	Appalachian Power Park	Professional
8/1/2009	Huntington Veteran's Memorial Fieldhouse	Professional
8/21/2009	Waterfront Park Hotel	Professional
10/3/2009	National Guard Armory	Professional
10/10/2009	Raleigh County Armory	Semiprofessional
10/23/2009	Pullman Plaza Hotel	Professional
10/24/2009	Wheeling Island Hotel Casino Racetrack	Professional
11/6/2009	WV Building State Fairground	Semiprofessional
11/7/2009	WV Building State Fairground	Semiprofessional
11/13/2009	Logan Field House	Semiprofessional
11/14/2009	Logan Field House	Semiprofessional
11/14/2009	Parkersburg	Professional
11/25/2009	Chic-N-Bones	Professional
12/12/2009	Ranson Civic Center	Professional
12/12/2009	Wheeling Island Hotel Casino Racetrack	Professional
1/8/2010	Charleston Civic Center	Semiprofessional
1/8/2010	Frankfort High School	Semiprofessional
1/9/2010	Frankfort High School	Semiprofessional
1/9/2010	Charleston Civic Center	Semiprofessional
1/15/2010	Big Sandy Superstore Arena	Semiprofessional
1/15/2010	Summersville	Semiprofessional
1/16/2010	Big Sandy Superstore Arena	Semiprofessional
1/22/2010	Bluefield, WV	Semiprofessional
1/23/2010	Bluefield, WV	Semiprofessional
1/29/2010	Nathan Goff Armory	Semiprofessional
1/29/2010	Waterfront Park Hotel	Professional
1/30/2010	Nathan Goff Armory	Semiprofessional
2/5/2010	Williamson Field House	Semiprofessional
2/6/2010	Williamson Field House	Semiprofessional
2/19/2010	Parkersburg High School	Semiprofessional
2/20/2010	Parkersburg High School	Semiprofessional
2/26/2010	Berkeley 2000 Recreation Center	Semiprofessional
2/26/2010	Huntington, WV	Semiprofessional
2/27/2010	Berkeley 2000 Recreation Center	Semiprofessional
2/27/2010	Huntington, WV	Semiprofessional
3/5/2010	Welch, WV	Semiprofessional
3/6/2010	Welch, WV	Semiprofessional
3/12/2010	Wheeling, WV	Semiprofessional
3/13/2010	Wheeling, WV	Semiprofessional
3/19/2010	Elkins High School	Semiprofessional
3/20/2010	Elkins High School	Semiprofessional
3/26/2010	Raleigh County Armory	Semiprofessional
3/27/2010	Glenville State College	Professional
3/27/2010	Raleigh County Armory	Semiprofessional
4/9/2010	Mylan Park Community Center	Semiprofessional
4/10/2010	Mylan Park Community Center	Semiprofessional
4/23/2010	Wheeling Island Hotel Casino Racetrack	Professional
5/7/2010	Morgantown Event Center	Professional

5/8/2010 Scott High School	Professional
5/22/2010 Summersville	Professional
6/5/2010 Berkeley County High School	Professional
6/26/2010 Wheeling Island Hotel Casino Racetrack	Professional

Appendix C: Letter from the Secretary of the Department of Revenue



JOE MANCHIN III
GOVERNOR

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

VIRGIL T. HELTON
CABINET SECRETARY

STATE CAPITOL
CHARLESTON, WEST VIRGINIA

May 24, 2010

Denny Rhodes
Research Manager
West Virginia Legislature
Performance Evaluation and Research Division
State Capitol Bldg. 1, Room W-314
Charleston, West Virginia 25305

Dear Mr. Rhodes,

I am in receipt of your letter dated May 17, 2010, in which you request a response no later than today, May 24, 2010.

Thank you for the opportunity to share my thoughts on the State Athletic Commission. As you are aware, the State Athletic Commission currently is a stand-alone agency under the West Virginia Department of Revenue.

The five-member State Athletic Commission is strictly a volunteer commission with one part-time employee shared with the State Tax Division. The State Athletic Commission has no other staffing or field support.

During the 2009 Legislative Session, Governor Joe Manchin introduced legislation to restructure the Department of Revenue. Specifically Senate Bill 401 and House Bill 2882, if either passed, would have moved the Athletic Commission, and other certain Department of Revenue Agencies, or portions thereof, under the authority of the Lottery Commission. The legislation would have renamed the Lottery Commission to the State Gaming Commission. The administrative strength of the Lottery would have been used to support the achievement of synergies within the newly created commission.

I supported SB401 and HB2882 for various reasons. In particular, the legislation would have improved insufficient internal controls at the State Athletic Commission. The consolidation would have resulted in better management

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

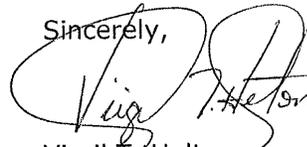
Mr. Denny Rhodes
May 24, 2010
Page 2

management efficiencies and improved service to the public served by the State Athletic Commission. Due to the lack of a substantial budget and full time employees, the consolidation would not have contributed to a significant reduction in costs for the agency but would have resulted in an improved review of the Commission and control of its activities.

While neither SB401 nor HB2882 passed during the 2009 Legislative Session, the benefits of moving the State Athletic Commission under the authority of the Lottery Commission are still relative today. I agree with the Legislative Auditor's opinion as stated in your May 17, 2010 letter, "The Legislative Auditor's opinion is that this would improve public accessibility and increase efficiency for boxing regulation in the state." In no way does my endorsement of such a consolidation mean that the State Athletic Commission is performing poorly. For the budgetary and employment parameters that the State Athletic Commission is challenged to operate within, the Commission performs as efficiently and effectively as they can under such circumstances. However, I believe, they can better serve West Virginians at a higher level of service with a little guidance and oversight from the Lottery Commission.

Again, I appreciate the opportunity to share my thoughts with you and the Legislative Auditor. If I can be of further assistance, please contact my office at your convenience.

Sincerely,



Virgil T. Helton
Cabinet Secretary

VTH/cn

Appendix E: West Virginia Ethics Commission Opinion

ADVISORY OPINION NO. 2006-18

Issued on January 4, 2007 By the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

Whether a Member of a State Commission which regulates professional and amateur athletes may serve as a judge or referee at a sports event over which the Commission has oversight?

FACTS RELIED UPON BY THE COMMISSION

The Requester is a Member of a State Commission which has direction, management and control over all amateur, professional and semi-professional events in the sport which it regulates. The Members of the State Commission serve, without pay, at the will and pleasure of the Governor. The Commissioners are reimbursed for their travel, lodging and meal expenses in accordance with the state travel regulations. The State Commission has a limited budget.

The promoters of the sporting events in question are responsible for hiring both judges and referees. These event officials must first be certified by the State Commission. For an event, the Commission designates which officials shall preside at the event. The Commission's legislative rule provides that a Commission Member may act as a judge in the event of an emergency. There is no similar provision addressing whether members of the Commission may act as a referee in the event of an emergency.

The enabling legislation specifically permits the members of the Commission to be present at the sporting events without charge for the purpose of seeing that the rules of the sport are strictly observed. If no member of the Commission is available to attend an event, then the Commission may appoint an inspector to act as a Commission representative.

The promoter is responsible for paying the judges and referees. The compensation rate is established by statute and the Commission's Legislative Rule. The current rates are judge, \$50.00 per day, and referee, \$75.00 per day. Normally, the referee or judge is not reimbursed for mileage and other related travel expenses.

At present, the Requester states that the Commission has difficulty finding qualified officials to serve at this rate of pay; particularly as mileage expenses are not included. As such, at times the Requester will act as a judge or referee. *Normally, the requester serves as an official without compensation. Once or twice he has accepted the statutory compensation rate from the promoter for his services.*

Some of the events are televised by the major television networks. The Requester serves as a referee or judge at high profile events to ensure that the sporting event is conducted fairly and in a professional manner and to ensure the health and safety of the participants by strictly enforcing the rules of the sport. The Requester also serves as an official when the Commission is unable to find a qualified person to serve.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads in relevant part... *Use of public office for private gain.* -- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(h)(5) reads... A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her job responsibilities.

W. Va. Code, § 6B-2-5(d) reads in relevant part... *Interests in public contracts.* -- (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

ADVISORY OPINION

At times the Requester serves as a judge or referee. The Legislative Rule which governs the sporting events in question states that a Commission Member may act as a judge in an event of an emergency. The rule does not define emergency. The Rule does not address whether a Commission Member may act as a referee.

The Ethics Commission does not have authority to interpret the intent of the Legislature under these circumstances. Specifically, the Ethics Commission does not have the authority to determine whether the exclusion of language in the rule authorizing a Commission Member to serve as a referee is based upon a policy concern that such dual service may create a potential for conflict. For these reasons, the Commission finds that it is without authority to rule on: (1) whether the requester may act as a judge; or (2) whether the requester may serve as a referee, with or without compensation.

The Ethics Commission recommends that the Requester's Commission seek clarification on this issue through the Legislative process. The Requester's Commission may seek to have its enabling legislation amended and may also proceed to propose an amendment to its Legislative Rule. Further, the Requester's Commission may also seek immediate relief through the filing of an emergency rule. If the Legislature amends the enabling statute and related Legislative rule, then there is nothing in the Ethics Act which prevents a part-time board member from volunteering his or her services as a referee. The Commission Member may only seek compensation for this service, either from the promoter or his Commission, if the Legislature specifically authorizes such compensation through statute or approval of a Legislative Rule.

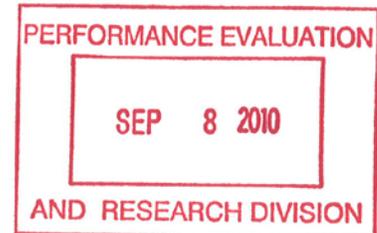
This opinion is limited to the facts and circumstances of this particular case, and may not be relied upon as a precedent by other persons.


Chairman

Appendix F: Agency Response

Steve Allred
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September 8, 2010



John Sylvia
Director
West Virginia Legislature
Performance Evaluation and Research Division
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RE: Written Response of the State Athletic Commission to the Performance Evaluation and Research Division Report

Dear Mr. Sylvia:

The West Virginia Legislative Performance Evaluation and Research Division (PERD) performed a recent performance audit on the West Virginia State Athletic Commission. Representatives of the West Virginia Legislative Auditor's Office worked with members of the Athletic Commission in the performance of this audit and gave commission members ample opportunity to provide PERD with input regarding this process.

As completion of the audit has produced various comments and / or recommendations regarding the Athletic Commission, the Commission would like to offer the following as a written response to the audit.

Several Concerns Regarding the State Athletic Commission Should be Addressed

1. West Virginia Code § 29-5A-2 requires that the Commission report its proceedings to the Legislature biennially. The Commission has not done so. The Legislative Auditor recommends that the Athletic Commission present biennial reports to the Legislature to comply with the intent of WVC § 29-5A-2.

Response: The Chairman of the State Athletic Commission has not submitted the required biennial reports to the Legislature as required by W. Va. Code § 29-5A-2 since assuming the position of Chairman. Failure to submit the required reports was simply due to the lack of knowledge mandating submission of the reports. However, throughout this timeframe, the same information required in the reports was being provided during the budget hearing process, which was presented to the Senate and House Finance Committees. The information was being provided verbally and not in written form as required by statute.

2. *The Commission's record keeping has been strictly paper files. While technically sufficient, the method is not ideal. As mentioned previously, the Commission has seen a recent increase in its budget appropriation. Part of this funding is to create an electronic database which is currently being constructed with just the most recent year's information. The data are being entered by the part time staff person shared with the Tax Department. Although this is a needed, positive step for the Commission's record keeping practices, the Commission should also input previous years' data into the new system as soon as practical. This would greatly increase the Commission's ability to not only retrieve the current year's data, but also use historical data to track trends, provide multiple years of data quickly if needed, and better manage the regulation of boxing for the state's licensees. Therefore, the Legislative Auditor recommends that the Athletic Commission continue to develop an electronic database for future record keeping and incorporate past records into this database.*

Response: All previous years' data in possession of the Commission will be submitted to our part time clerical staff for incorporation into the electronic database for future use. As the current database is relatively new to the Commission, its efficiency is unknown at this time. With recent legislative rule changes regarding the Athletic Commission, the database may require some modification to come into compliance with these changes. Additionally, as we move forward with retaining this information in an electronic format, minor revisions may be necessary as we continue to learn and use the system.

3. *Boxing contestants are required to sign waivers so the Athletic Commission is not liable for injury. However, the waiver documents reviewed for this report did not definitively express that the State of West Virginia is not liable. The Commission should consider revising its release waiver to include language with no uncertainty that the State of West Virginia is not liable for any injuries occurring in a boxing match overseen by the Commission. [A copy of the waiver is included in Appendix?]*

Response: The Commission can easily add language regarding the recommendation from the Legislative Auditor's Office. Once modified, the document will be reviewed by legal counsel prior to being implemented by the Commission.

4. *In researching the Athletic Commission's records, the Legislative Auditor found that there were some instances in which the Commission members served as either referees or judges in boxing events. This practice is allowed in the Legislative Rules in emergency situations, although emergency situations are not defined. Part of the concern is the potential for a conflict of interest if a judge or referee's decision is appealed to the Commission. In 2006, the Commissioner of the Athletic Commission sought an opinion from the West Virginia State Ethics Commission on whether an Athletic Commission member may serve as a judge or referee. The Ethics Commission stated that it "...does not have authority to interpret the intention of the Legislature...", and recommended that the Commission seek clarification on this issue through the legislative process. A copy of the Ethics Commission opinion is included in Appendix ? A legal opinion from Legislative Services stated that the Commission "...should generally discontinue the practice of allowing members or designees to serve as referees or judges..." except in emergency situations. Additionally, the Association of Boxing Commissions Legal Committee has stated that when a member of a boxing commission serves as a judge or referee and there is an appeal, then the commission member should recuse his or herself. Based on the above comments, the Legislative Auditor recommends that the Commission consider clearly defining situations in which Commission members may act as officials or referees, and mandate that Commission members recuse themselves in appealed matches in which they served as a judge or referee.*

Response: Members of the Commission have indeed previously served in the capacity of either a Judge, Referee or Inspector during a boxing event or in any other needed capacity during such an event. The reasoning behind serving in such capacity is not based on the desire to do so, but often out of necessity.

West Virginia boxing promoters conduct events occurring throughout the entire state. However, the number of boxing events held in some areas of West Virginia outnumber the amount held in other parts of the state. As such, the number of “qualified” officials in some parts of West Virginia is at a minimum – if they exist at all. For example, recent pro / amateur boxing events were held in the Eastern Panhandle of West Virginia. No qualified / experienced officials were located in the geographic area of the events. The West Virginia Commission was forced to obtain “qualified” referees / judges from the Washington, DC area. The same situation exists in other parts of West Virginia, mostly in areas where there is only one, or possibly two events held each year, i.e., Logan, Bluefield, Lewisburg, Martinsburg, Shepherdstown, Welch, etc. The Commission has attempted to train other individuals to work as officials, but it is difficult to retain these people given the limited amount of boxing activity in their respective areas. In addition, it is difficult to get officials from other areas to travel to “work” an event outside their area given the low amount of pay for officials (Judges, Inspectors and Timekeepers receive a fee of \$50, with Referees and Chief Deputy receiving a fee of \$75). The Commission would recommend the Legislature consider increasing the fees paid to such officials.

An additional factor for the Joint Committee to consider is the most important aspect of using “qualified” officials – safety. A referee is the most important participant of a boxing event, outside of the fighters themselves. A skilled referee can do almost as much, if not more, to protect the safety and welfare of a fighter from injury **during** the bout. Using someone who is **not** skilled or proficient in this area places the fighters at great risk for serious injury or death. A similar situation exists with Judges or Inspectors. Inspectors are responsible for overseeing the fighters’ preparations prior to the bout and typically watch the fighters hands being wrapped and the gloving of the fighters, all of which are vitally important to the safety of both fighters. Judges are responsible for determining the outcome of the bout. Each fighter should have the right to have a Judge reasonably proficient in their ability to score a boxing event. Using individuals as Inspectors or Referees who are unqualified or not skilled to perform such tasks poses an unnecessary risk on the.

In any particular instance in which a member of the Athletic Commission must play a role as an “Official” for an event, such member has always relinquished their control of the event to another commission member, or to the Chief Deputy to oversee the event. The situations in which a Commission member had been required to work as an official have decreased dramatically. The last known event in which a member was required to work as an official was a June 2010 event at Power Park in Charleston, West Virginia. A Judge did not show up to work the evening of the event, and no other individuals were available to replace the official. At that time the commission member in charge of the event asked another commission member to step into this role.

5. The Legislature should consider returning the name of the State Athletic Commission to its original name as the Boxing Commission. This may assist the public when attempting to contact the Commission. A person’s first inclination may be to look up “boxing” on the internet or in the telephone directory now knowing the actual name of the organization that regulates the sport. The Athletic Commission only oversees the sport of boxing, so there should be no conflicts with a name change.

Response: The members of the State Athletic Commission would be comfortable with the suggested name change. However, we would like to point out that previously the Commission also had regulatory responsibility for “Professional Wrestling”.

Presently, there are no requirements / restrictions for any professional wrestling event to be held in the State of West Virginia. There exists no state mandate for licensed physicians to be present at these events, nor is there a requirement for ambulances and/or EMTs to be present at such events. Although these events are “scripted” and are for entertainment purposes only, there is great risk for serious injury or death. Over the past couple of years we have seen national headlines of professional wrestlers being fatally injured during a professional wrestling event. Given these developments, the Legislature may want to consider placing this activity under the oversight of the Athletic Commission once again.

I would encourage the Legislature to at least consider implementing some type of safety requirements for professional wrestling events, at least in line with our surrounding states. By not doing so we are only opening up the possibility of having poorly run shows occur within our state and thereby potentially risking serious injury or death to the participants. To the best of our knowledge all of our surrounding states regulate professional wrestling to some extent.

Response to Recommendations

1. The Legislative Auditor recommends that the Legislature consider placing the West Virginia State Athletic Commission under the authority of the West Virginia Lottery Commission.

Response: The West Virginia State Athletic Commission members have no objection to being placed under the oversight of the West Virginia Lottery Commission. The move could have a positive impact as to the visibility of the Commission and in regard to assistance in administrative and technology related matters.

2. The Legislative Auditor recommends that the Athletic Commission maintain an electronic database for future record keeping and incorporate past records into this database.

Response: Commission members are in agreement that the electronic database needs to be continued, and that previous records should be incorporated into the database. The current database may need to be modified in order to adjust to recent legislative rule changes for the Athletic Commission.

3. The Legislative Auditor recommends that the Athletic Commission present biennial reports to the Legislature to comply with the intent of WVC § 29-5A-2.

Response: The Commission will submit biennial reports to the Legislature as required by W. Va. Code § 29-5A-2.

4. The Legislative Auditor recommends that the Legislature consider increasing or eliminating the spending limits set forth in WVC§ 29-5A-2.

Response: The Commission agrees with the recommendation set forth by the Legislative Auditor and will begin studying how to implement the process.

5. The Commission should consider revising its release waiver to include language with no uncertainty that the State of West Virginia is not liable for any injuries occurring in a boxing match overseen by the Commission.

Response: A modification of the existing language included in our current waiver is a minor change, and the waiver is easily modified to include such language. Commission members will have any modification reviewed by legal counsel prior to its implementation.

6. The Legislative Auditor recommends that the Commission consider clearly defining emergency situations in which Commission members may act as either officials, or referees, and mandate that Commission members recuse themselves in appealed matches in which they served as a judge or referee.

Response: Members of the Commission have no issue with mandating that members of the Commission may not act in such capacity, except in emergency situations. However, by specifically defining “emergency” situations, we may be limiting the ability of the Commission to act in the best interest of the fighter. By allowing the members of the State Athletic Commission to utilize their best judgment in any such situation, we are continuing in a manner best served to the population we serve – the fighters, promoters, and boxing fans. In addition, the Professional Boxers Safety Act (Muhammad Ali Act) addresses issues such as this for the various State / Tribal Commissions. The Commission will review the subject more closely and develop a policy or recommendation.

7. The Legislative Auditor recommends that the Legislature rename the West Virginia Athletic Commission to the West Virginia Boxing Commission to more accurately describe the sport that it regulates.

Response: Members of the State Athletic Commission have no problem with whatever name the Legislature desires to call our entity. However, as stated in my previous written comment, the Legislature may want to give consideration to implementing some type of regulatory oversight for professional wrestling. Previously, some regulatory oversight of professional wrestling fell under the jurisdiction of the State Athletic Commission, however at some point, that oversight responsibility was removed from the our statute / rules / regulations. Presently, professional wrestling has no oversight from any state governmental agency.

The members of the West Virginia State Athletic Commission are eager to work with the West Virginia Legislature to implement any changes or improvements that will help the sport of boxing. All five (5) members of the Commission work hard to serve the best interests of the people involved in our sport as well as to serve the overall best interest of the State of West Virginia. I am proud to work side by side with each member of this Commission – all of which bring their own area of expertise to the table. Each member sacrifices a large portion of their time and resources just to ensure our sport is run properly, fairly and most of all safely.

Thank you for the opportunity to respond to this report. Please do not hesitate to contact me should you need any additional information.

Sincerely,



Steve Allred
Chairman, State Athletic Commission



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