



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

July 8, 1971

Hon. Tommy V. Smith
Commissioner
Bureau of Labor Statistics
Capitol Station
Austin, Texas 78711

Opinion No. M- 899

Re: Authority of Commissioner
of Bureau of Labor Stat-
istics, pursuant to Article
614-17c, Texas Penal Code,
to promulgate rules and
regulations limiting the
number of boxing and
wrestling promoters in
Texas cities within cer-
tain population brackets.

Dear Mr. Smith:

Your recent letter requesting the opinion of this office concerning the referenced matter states, in part, as follows:

"A question has arisen as to whether Article 614-17c of the Penal Code of the State of Texas authorizes the Commissioner of Labor Statistics to promulgate rules and regulations to limit the number of boxing and wrestling promoters for cities in the State of Texas. Specifically, can the Commissioner establish rules and regulations that will limit cities of certain populations to a maximum number of boxing and wrestling promoters?"

Article 614-17c, Texas Penal Code, provides, in part, as follows:

"The Commissioner of Labor is hereby empowered and it is hereby made his duty to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Law . . ." (Emphasis added.)

Articles 614-1 through 614-17c, Texas Penal Code, constitute the Boxing and Wrestling law of the State of Texas. With reference to boxing and wrestling promoters, Article 614-4 provides for a scale of graduated registration fees for such promoters, with such fees increasing for cities within certain population brackets wherein the promoter does business. Article 614-5 provides for a graduated scale of requisite surety bond amounts for such promoters, once again, depending on the population of the city wherein they do business.

Nowhere, however, in the Boxing and Wrestling law is there found any provision limiting, or authorizing you to limit, the number of boxing and wrestling promoters for cities within certain population brackets.

Article 614-17c does authorize you to "promulgate any and all reasonable rules and regulations . . . for the purpose of enforcing the provisions of this Law . . ." If such rules and regulations are consistent with, related to, and in implementation of, any of the provisions of the Boxing and Wrestling Law, such rules and regulations are valid. Kee v. Baber, 157 Tex. 387, 303 S.W.2d 376 (1957); Texas State Board of Examiners in Optometry v. Carp, 412 S.W.2d 307 (Tex.Sup. 1967).

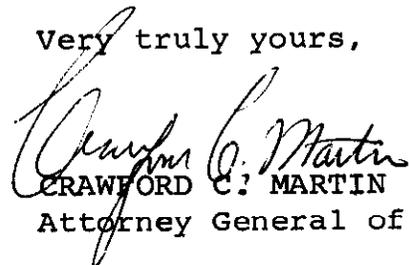
However, Article 614-17c does not authorize the issuance of rules and regulations which are in excess of, or inconsistent with, the statutory provisions; nor may you impose any additional burdens, conditions, or restrictions which would result in giving such rules and regulations a higher mandate than that of the statute. Kelly v. Industrial Accident Board, 358 S.W.2d 874 (Tex.Civ.App. 1962, error ref.); Bailey v. Texas Indemnity Insurance Co., 14 S.W.2d 798 (Tex.Comm.App. 1929); Attorney General's Opinions No. M-609-A (1970) and No. M-868 (1971); 2 Am.Jur.2d 126, Administrative Law, Sec. 300; and Id. at pp. 129-30, Sec. 301, wherein it is stated that an administrative agency cannot create a new license requirement or compel that to be done which lies without the scope of a statute.

In view of the foregoing, we are of the opinion that there is no authorization in the Boxing and Wrestling Law for you to promulgate rules and regulations limiting the number of boxing and wrestling promoters in cities of certain population brackets. Your question is, therefore, answered in the negative.

S U M M A R Y

There is no authorization in the provisions of Article 614-17c, Texas Penal Code, for the Commissioner of the Bureau of Labor Statistics to promulgate rules and regulations limiting the number of boxing and wrestling promoters in cities within certain population brackets.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Austin C. Bray, Jr.
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
W. E. Allen, Co-Chairman
Ronald Luna
Camm Lary
Jerry Roberts
Dick Chote

MEADE F. GRIFFIN
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

NOLA WHITE
First Assistant