



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Joe Kunschik, Commissioner
Bureau of Labor Statistics
Austin, Texas

Dear Sir:

Opinion No. O-1541

Re: Is the Commissioner of Labor authorized to permit a wrestling match between a duly licensed wrestler and a "wrestling bear"?

Your request for an opinion on the following question has been received:

"This Department is in receipt of a request from a duly licensed wrestling promoter that he be permitted to include as a part of his show a match between a duly licensed wrestler and a 'wrestling bear.' The bear under consideration has been trained to wrestle and has performed in licensed wrestling shows in other states. The promoter states that this plan would be purely an exhibition and a novelty, which would be of interest to the spectators, and that it would probably increase attendance at the performance.

"Please advise whether this Department would be authorized to permit a wrestling match between a duly licensed wrestler and the 'wrestling bear,' under the Texas Boxing and Wrestling Law, especially under subdivision 'e' of section 11 of said law."

The question before us, stated simply and directly is whether or not an exhibition wrestling match between a duly licensed wrestler and a bear is legal in Texas.

At the outset we wish to point out that the jurisdiction and authority of the Commissioner of Labor

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in respect to "regulating the promoting, conducting or maintaining of fistie combats, wrestling matches, boxing or sparring contests or exhibitions for money remuneration, purse or prize equivalent to be received by the participants or contestants, or where an admission fee thereto or therefor is charged or received" is conferred by Article 614 of the Texas Penal Code. Under this law fistie combats, wrestling matches, boxing or sparring contests or exhibitions are legalized in this state.

Section 8 of Article 614 provides for the application for a license by "any person" before said person can act as a wrestler.

Finally, in Section 11, "matters prohibited" are enumerated. We find no inhibition against a wrestling match between a duly licensed wrestler, under the Act, and a bear. Subsection (e), of Section 11, which reads as follows, would not apply:

"Knowingly conduct or give or participate in or permit any sham or fake fistie combat match, boxing, sparring or wrestling contest or exhibition except it be as a burlesque."

After a careful consideration of all the terms, provisions and conditions of Article 614, i.e., the Texas Boxing & Wrestling Law, we have reached the conclusion that it was not the intention of the Legislature to include within the coverage of this law an exhibition matched between man and beast and furthermore it was not its intention to prohibit such an exhibition.

It is necessary to transcend and go beyond the confines of the Texas Boxing & Wrestling Law to determine the answer before us.

We do not profess to be an authority on the Genus Ursus, but we do feel that the courts will take judicial knowledge of the record of old Bruin in captivity and his susceptibility to training by man. It is not our intention to write a dissertation on the talents and human characteristics of bears, but we point out that they have always been popular subjects for training, partly because they are very handy in captivity and comparatively easy

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to obtain and transport. During the last century itinerant showmen exhibited trained bears from village to village throughout Europe. Some peasants made a business of capturing cubs for which there was always a good market, and there arose even "academies of bears" where the bears were taught tricks. Trained bears have not always in this country been confined to circuses, zoos, and side shows. Today the trained bear is not an uncommon sight in both Europe and America. The brown bear (*Ursus Arctus*) is the commonest species in captivity and can be trained to "dance" to music and to "wrestle". See 3 Encyclopedia Britannica 256.

A careful review of the Texas statutes both criminal and civil, reveals no express or implied prohibition against an exhibition wrestling match between a man and a wrestling bear.

Such a match is of the nature of a zoological exhibition in our opinion, and if staged in connection with a program of wrestling matches should be assessed an occupation tax under Article 7047 (25) (a). This tax question is not directly before us, but it is determinative of the main question and we assert this opinion upon our own motion.

The sole legal barrier which remains to be considered in connection with a grappling contest between man and Bruin is whether or not the cruelty-to-animals laws of Texas would be contravened.

Article 160, Revised Civil Statutes, 1925, reads as follows:

"As used in this subdivision, the word, 'animal' includes every living dumb creature; the words 'torture' and 'cruelty' include every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief. The words 'owner' and 'person' include corporations, and the knowledge and acts of agents and employes of corporations in regard to animals transported, owned, used by or in custody of the corporation shall be held to be the knowledge and acts of such corporation."

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Article 182, Revised Civil Statutes, 1925, provides:

"It shall be unlawful for any person to overdrive, willfully overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelty beat, or needlessly mutilate or kill any animal or carry any animal in or upon any vehicle, or otherwise, in a cruel or inhuman manner, or cause or procure the same to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink or cruelty abandons it."

Article 1374 of the Penal Code, 1925, fixes the penalty for cruelty to animals, as follows:

"Whoever overdrives, wilfully overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, or needlessly mutilates or kills any animal, or carries any animal in or upon any vehicle, or otherwise, in a cruel or inhumane manner, or causes or procures the same to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink, or cruelly abandons it, shall be fined not exceeding two hundred dollars. As used in this article the word 'animal' includes every living dumb creature, and the words 'torture' and 'cruelly' includes every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief."

Articles 4597 and 4598, Revised Civil Statutes, 1925, create and provide duties for a State Bureau of Child and Animal Protection, in the following language:

"The Governor shall appoint a State Bureau of Child and Animal Protection which shall not have less than nine nor more than twenty-one members from the members of the directorate of the Texas State Humane Society. The Governor

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the Superintendent of Public Instruction and the Attorney General shall be ex-officio members of the Board of Directors of said State Bureau.

"It shall be the duty of said bureau to secure the enforcement of the laws for the prevention of wrongs to children and dumb animals as now or hereafter defined by law; to appoint local and State agents to assist in this work; to assist the organization of district and county societies, and to give them representation in the State Bureau; to aid such societies and agents in the enforcement of the laws for the prevention of wrongs to children and dumb animals as prescribed by law; and to promote the growth of education and sentiment favorable to the protection of children and dumb animals."

Bear-baiting was a sport very popular in England for 700 years, but it was suppressed on account of cruelty in 1835. Bear shows in Russia with Old Bruin in a burlesque costume, with bells and spangles, in which he danced and went through pantomime performance, were the rage for centuries, but the training of the bears was conducted with such cruelty that it caused vigorous complaints and finally in 1867 the Russian Government prohibited the bear shows. "Wild Animals In and Out of the Zoo", W.M. Mann, Smithsonian Scientific Series, Vol. 6, page 97.

The "cruelty to animals" laws of this state were enacted to prevent any treatment of dumb animals which characterized bear-baiting and the Russian bear shows. The human race has progressed a long ways since the days of Merry England and Czarist Russia in its attitude toward dumb beasts, and the courts of this state would not tolerate a cruel or inhuman treatment of animals in any public exhibition. We wish to point out, however, that it cannot be said that the participation of a trained bear in a wrestling match with a man is prima facie evidence of cruelty to the bear. The presumption of cruelty points rather to the human participant, but ~~homo sapiens~~ ^{homo} has been known to get into a cage full of lions. ~~It is his constitutional right.~~

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It is our opinion that an exhibition wrestling match between a man, whether he is a duly licensed wrestler or not, and a bear is legal in Texas provided it does not violate Article 188 of the Revised Civil Statutes, 1925, and Article 1374 of the Penal Code, 1925, i.e., the cruelty-to-animals statutes, and that such a match is outside of the jurisdiction and authority conferred upon the Commissioner under Article 614 of the Penal Code, Vernon's Annotated Statutes, i.e., the Texas Boxing & Wrestling Law.

Trusting that we have fully answered your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Dick Stout
Dick Stout
Assistant

DS:ob

APPROVED OCT 25, 1939

Charles B. Mann

ATTORNEY GENERAL OF TEXAS

