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OPINION	:	No. 83-814
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of	:	<u>JANUARY 4, 1984</u>
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THE HONORABLE JOSEPH B. MONTOYA, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following questions:

1. May the State Athletic Commission license one of its members as a professional boxing referee?
2. Does the State Athletic Commission have authority to license a person as a professional boxing referee with a provision that the license is not valid within California?

CONCLUSIONS

1. The State Athletic Commission may license one of its members as a professional boxing referee.

2. The State Athletic Commission does not have the authority to license a person as a professional boxing referee with a provision that the license is not valid within California.

ANALYSIS

The first inquiry is whether the State Athletic Commission may license one of the commission members as a professional boxing referee. The State Athletic Commission (hereinafter "commission") and the regulation in this state of boxing and wrestling are provided for in section 18600 et seq. of the Business and Professions Code.¹ The commission consists of eight members, six of whom are appointed by the Governor, with the remaining two members being appointed by the Senate Rules Committee and the Speaker of the Assembly. (§ 18620.) "The commission has the sole direction, management, and control of and jurisdiction over all boxing contests, sparring and wrestling matches, and wrestling exhibitions which are conducted, held, or given within this state. . . ." (§ 18670.) The commission, as part of its licensing functions " . . . may license clubs to conduct, hold, or give, and may license *referees*, matchmakers, assistant matchmakers, announcers, ticket sellers, doormen, ushers, corporation treasurers, box-office employees, and timekeepers to participate in, or be employed in connection with, professional or amateur boxing contests, sparring or wrestling matches, or wrestling exhibitions. . . ." Such licenses are required to hold such contests, matches or exhibitions or be employed in them. (§ 18673; emphasis added.)

Nothing in the act regulating boxing and wrestling expressly prohibits the commission from licensing one of its members as a professional boxing referee.² Accordingly, we must determine whether some general statute or common law principle prohibits such action. We are aware of no common law doctrine which absolutely forbids the concurrent holding of a public office and private employment which may give rise to personal conflicts of interest. (But see 25 Ops.Cal.Atty.Gen. 295 (1955).)³ The common

¹ All section references are to the Business and Professions Code unless otherwise indicated.

The commission was initially established to regulate boxing and wrestling by initiative measure in 1924. (See Stats. 1925, p. LXXXIX.) In 1932 the California Constitution was amended to add section 25 3/4 to article IV giving the commission and the regulation of boxing and wrestling constitutional status. In 1966, as part of the constitutional revision, those constitutional provisions were repealed, leaving the commission as a statutory body.

² A boxing referee is in no way an agent or employee of the commission, but is an employee of the organization which conducts the boxing match. (See 34 Ops.Cal.Atty.Gen. 135 (1959).)

³ The concurrent holding of two incompatible *public offices* if prohibited by the common law. (See, e.g., 66 Ops.Cal.Atty.Gen. 176, 177-179 (1983).) Such common law prohibition, however,

law doctrine prohibiting conflicts of interest has been applied on a transactional basis. Accordingly, when a conflict arises between a public officer's official duties and his personal interests, he need only abstain from participation therein and from influencing any other public officer or employee with respect to the particular transaction. (See, e.g., 61 Ops.Cal.Atty.Gen. 88, 92 (1978); 58 Ops.Cal.Atty.Gen. 345, 355-356 (1975).)

The statutory law relating to conflicts of interest which is applicable generally to state appointive officers such as the commissioners herein is found in sections 1090 et seq., 8920 et seq. and 87100-87103 of the Government Code. The starting point in conflicts of interest analysis is sections 87100-87103 of the Government Code which are found in the Political Reform Act of 1974 (PRA). This is so since that act prevails over any conflicting legislation. However, additional requirements may be imposed upon public officials so long as those requirements do not prevent the person from complying with the PRA. (Gov. Code, § 81013.)

Section 87100 of the Government Code is the basis prohibition section of the PRA. It states:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."⁴

As is evident from the language of this section, the PRA, as with the common law doctrine, does not prohibit a public official from holding an office or public employment which may give rise to conflicts of interest. It, like the common law doctrine, merely requires complete abstention with respect to the conflicting transaction either in the way of participation or exerting influence. (See, generally, *Commission on Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.* (1977) 75 Cal.App.3d 716, 723; *Witt v. Morrow* (1977) 70 Cal.App.3d 817, 822-823; 63 Ops.Cal.Atty.Gen. 916, 918-919 (1980);

does not extend to the concurrent holding of a public office and an incompatible public employment. (See, e.g., 65 Ops.Cal.Atty.Gen. 316, 317 (1982).)

⁴ Section 87101 of the Government Code sets forth an exception for situations of "necessity," that is, when the public official's "participation is legally required for the action or decision to be made."

Section 87103 contains the detailed enumeration of when an official is deemed to have "a financial interest in a decision within the meaning of section 87100."

The Fair Political Practices Commission, which administers the PRA, has adopted detailed regulations with respect to sections 87100-87103 of the Government Code, which are found in title 2, sections 18700-18705 of the California Administrative Code.

59 Ops.Cal.Atty.Gen. 604, 606-611 (1976).) Accordingly, sections 87100-87103 of the Government Code would not prohibit the commission from licensing one of its members as a professional boxing referee. They would merely require that the commissioner, if licensed, neither participate in nor influence governmental decisions of the commission in which he has a "financial interest" as defined in those sections and the rules of the Fair Political Practices Commission.

We next consider the provisions of section 1090 et seq. of the Government Code.⁵ Section 1090 prohibits a public officer or employee from being financially interested in contracts made by him in his official capacity, or by any board or commission of which he is a member.⁶ Section 1091 sets forth certain "remote interests," which, when the procedures specified therein are observed, will nevertheless authorize the public contract. Section 1091.5 defines certain "noninterests," that is, "interests" which are removed completely from the prohibition.

As with the common law doctrine and with sections 87100-87103 of the Government Code, section 1090 is transactional in nature. It prohibits entering into the specified contracts to prohibit "self-dealing." It, however, is not intended to prohibit an individual from *holding* public office or employment. (See generally, 66 Ops.Cal.Atty.Gen. 156 (1983) and cases cited therein.) Nor are we aware of any contracts the commission might make in which a commissioner who was also a boxing referee might have a financial interest. Accordingly, section 1090 et seq. would not prohibit the commission from granting one of its members a license as a professional boxing referee.

We consider finally the provisions of section 8920 et seq. of the Government Code. These provisions, which are denominated a "Code of Ethics," are primarily aimed at members of the Legislature. However, the basis prohibition, contained in section 8920, is directed towards state elective and state appointive officers as well. Accordingly, the

⁵ Section 1090 provides in full:

"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

"As used in this article, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

⁶ In 59 Ops.Cal.Atty.Gen. 604, 617, *supra*, we concluded that section 1090 was not impliedly repealed by the PRA and can coexist with it.

basis prohibition is applicable to members of the commission. As material to our consideration herein, section 8920 of the Government Code provides:

"(a) No Member of the Legislature, *state* elective or *appointive* officer, or judge or justice *shall, while serving as such,* have any interest, financial or otherwise, direct or indirect, or *engage in any* business or transaction or *professional activity*, or incur any obligation of any nature, *which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state.*" (Emphasis added.)

Section 8921 of the Government Code defines "substantial conflict" as contemplated by section 8920 as follows:

"*A person subject to this article* has an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state or a personal interest, arising from any situation, within the scope of this article, if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. He *does not have an interest which is in substantial conflict* with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state or a personal interest, arising from any situation, within the scope of this article, *if any benefit or detriment accrues to him as a member of a business, profession, occupation, or group to no greater extent than any other member of that business, profession, occupation, or group.*" (Emphases added.)⁷

Thus, a member of the commission would be prohibited from *engaging in* any activity as a referee if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss *by reason of his official activity where such gain or loss would accrue to him differently than to other licensed boxing referees.*⁸ While we need not determine whether any actual engagement as a referee by a licensed

⁷ Section 8923 of the Government Code excepts the "remote interests" and "noninterests" set forth in sections 1091, 1091.1 and 1091.5 of the Government Code as well as the receipt of campaign contributions.

⁸ A similar exclusion is provided in the PRA when the official activity does not affect the official differently than "the public generally." See FPPC Rule 18703 regarding when an industry, trade or profession constitutes a "significant segment of the public generally" so as to remove the official's act from the PRA's prohibition.

commissioner would constitute preferential treatment, it is clear that the mere possession of a license would not, of itself, establish any such preference or detriment. It is sufficient for purposes of this analysis to note that the fact of licensure *per se* does not necessitate engagement in the licensed activity. Accordingly, it is concluded that section 8920 of the Government Code does not prohibit a member of the commission from concurrently holding a license as a professional boxing referee. It follows that the commission may license one of its members as a professional boxing referee.

The second inquiry is whether the commission has the authority to license an individual as a professional boxing referee with a provision that the license is not valid within California. The commission's jurisdiction with respect to licensing is found in article 4 of chapter 2 of division 8 of the Business and Professions Code (§§ 18670-18683). Section 18670 provides:

"The commission has the sole direction, management, and control of and jurisdiction over all boxing contests, sparring and wrestling matches, and wrestling exhibitions *which are conducted, held, or given within this State*, and no boxing contest, sparring or wrestling match, or wrestling exhibition shall be conducted, held, or given within the State except in accordance with this chapter." (Emphasis added.)

Succeeding sections set forth specific licensing provisions with respect to organizations which hold boxing and wrestling matches, participants therein, and personnel connected with such contests. Section 18673 provides the specific licensing power with respect to referees:

"The commission may license clubs to conduct, hold, or give, and may license referees, matchmakers, assistant matchmakers, announcers, ticket sellers, doormen, ushers, corporation treasurers, box-office employees, and timekeepers to participate in, or be employed in connection with, professional or amateur boxing contests, sparring or wrestling matches, or wrestling exhibitions.

"No club may conduct, hold, or give, and no person performing tasks for which licensure is required by the commission may participate in, or be employed in connection with, any such boxing contest, sparring or wrestling matches, or wrestling exhibitions unless the club or person has been licensed for that purpose by the commission."

It is patent that section 18673 and other sections in article 4 of chapter 2 of division 8 of the Business and Professions Code must be read in the context of section

18670, the commission's basic jurisdiction which is solely over boxing and wrestling matches "which are conducted, held or given within this State," and over the organizations and personnel conducting them, including referees. "Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.)

Furthermore, an examination of the Business and Professions Code fails to disclose any statutory provision which appears to have been intended to grant the commission authority to issue a professional boxing referee's license which would be valid only extraterritorially.⁹ The commission, as a state agency, has only such powers as are expressly granted or as are necessarily implied from the powers granted. (See, e.g., 66 Ops.Cal.Atty.Gen. 131, 132 (1983); 28 Ops.Cal.Atty.Gen. 210 (1956).) Certainly, one need not imply a power to issue a license which is not valid in California to further the regulation of boxing within California.

That the commission's jurisdiction is to license referees and other personnel for boxing and wrestling matches only within and for California is further supported by the Arguments To The Voters submitted at the November 4, 1924 general election when the initiative measure to regulate boxing and wrestling in this state was adopted by the people. The "Argument in Favor of Boxing and Wrestling Contests Initiative" begins as follows:

"This proposed act, if it becomes law, will legalize boxing and wrestling contests *in California* and put them under state supervision."
(Emphasis added.)

Such arguments are persuasive as to the intent of the people in adopting this measure, from which the present statutory scheme is directly derived.¹⁰ *If* there is any uncertainty in the language of the statutes, such arguments may be used as an aid in interpreting that language. (See *Board of Supervisors v. Lonergran* (1980) 27 Cal.3d 855, 866.)

⁹ Since the State of California has no jurisdiction over boxing and wrestling matches conducted in other states or countries, it could not issue a referee's license which another state or country would be *required* to honor. However, as a matter of comity, reciprocity or other form of agreement, the other state or country could honor a California license. (Compare, e.g., *Foreman v. George Foreman Associates, LTD.* (9th Cir. 1975) 517 F.2d 354, California Law applied to boxing management contract under choice of law principles.)

¹⁰ The provisions of present section 18670 may be found in section 3 of the measure. The provisions with respect to licensing referees may be traced to section 4 of the measure. (See Stats. 1925, pp. XC, xc1.)

Accordingly, it is concluded that the commission may not issue a professional boxing referee's license which is not valid in California, but is only valid extraterritorially.
