

The State of South Carolina



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March 27, 1991

The Honorable Harriet Keyserling
Member, House of Representatives
State of South Carolina
220-C Solomon Blatt Building
Columbia, South Carolina 29211

RE: Whether the S.C. State Athletic Commission is a
"Professional Occupational Licensing Agency"
within the Meaning of Proviso 129.38 of the
1990-91 Appropriations Act

Dear Representative Keyserling:

As directed by the Attorney General's January 30, 1991, letter to you, this is to respond to your January 28th memorandum requesting an opinion on the above-referenced question.

It appears that the General Assembly itself has never considered or addressed the question, and its own resolution thereof would be most proper and in order. At present, there are contradictory and inconclusive indications; the answer is not free from doubt, and only a court of competent jurisdiction in a proper case could render a determinative opinion. Until then, the interpretation of the agency charged with administering the proviso, the Budget and Control Board, that Professional Occupational and Licensing Agency means such agencies as specified in section 11-5-210, is reasonable and there are no clear and cogent reasons to overturn it.

Proviso 129.38 of the 1990-91 Appropriations Act applies to "Professional and Occupational Licensing Agencies." The capitalization suggests a proper noun. The Proviso provides no definition of the proper noun, and neither does the Appropriations Act or the South Carolina Code Ann. of 1976, as amended.

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The only "Professional and Occupational Licensing Agencies" in South Carolina is the organization by that name which goes by the acronym POLA and will be so designated hereafter. It is a voluntary organization of professional and occupational licensing agencies created in 1982 by the directors of the agencies in the "regulation of professions" Functional Groupings designated by May 19, 1982, memorandum of Director of Budget and Control Board William T. Putnam (which of course, did not address the Athletic Commission's status, as neither it nor its predecessor existed).

Your request's statement that section 11-5-210 established the Professional Occupational Licensing Agencies is correct in several respects. It is the only legislation which in any sense even lists the agencies constituting the group, organization, or proper noun in South Carolina; i.e. POLA. The members of POLA, with the exception of the Athletic Commission (which was invited to, and did, join upon its creation in 1984) are all listed in the section. However, the Registered Sanitaricians Board is listed in section 11-5-210 and the Budget and Control Board's Functional Grouping, but is not on POLA's membership list. It is also correct that, when section 11-5-210 was enacted in 1981, there was no State Athletic (or Boxing) Commission. There were only county boxing commissions which did not in any way license professionals, occupations or individuals, but merely "permitted" boxing contests. However, since its creation, in 1984, the State Boxing Commission, and its successor, the State Athletic Commission, have never been listed in section 11-5-210.

Section 11-5-210 of the Code (1990) does include most, if not all, professional and occupational licensing agencies. However, it also includes the State Cemetery Board, which licenses cemeteries, not cemeterians. On the other hand, the Cemetery Board is a member of POLA, and prior to May 29, 1990, POLA also included the South Carolina Land Resources Conservation Commission, which does not license professionals or occupations either. Furthermore, the body of the language of the section contains no reference to professional or occupational, let alone to "Professional and Occupational Licensing Agencies."

Most importantly, section 11-5-210 requires the specified boards' and agencies' "assessments, fees and licenses [be] levied in an amount sufficient to at least equal the amount appropriated annually in the general Appropriations Act for those boards and commissions," which is the exact subject matter of Proviso 129.38, with the exception of the Proviso's increase to 110%. Consequently, although there is nothing in section 11-5-210 to indicate it establishes, refers to, or recognizes the existence of the proper noun, or an identifiable or specific group of "Professional and Occupational Licensing Agencies," the facts that the section and

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the Proviso refer to the same subject of required amounts of fees to be charged, and all but one or two of the section's listed agencies are professional and occupational licensing agencies, would support the Budget and Control Board and Athletic Commission interpretation that, since it is not included in the section, it is not included in the substantively related Proviso. A similar indication is that most, if not all, of the agencies listed in section 11-5-210 have provisions in their authorizing chapters which also require them to set fees so as to raise the amount of their budgets. The Legislature indicated it did not intend for the Athletic Commission to do so by omitting it from section 11-5-210.

The only reference in the South Carolina Code to "Professional and Occupational Licensing Boards" is in the title of Chapter 73 of Title 40, "Reports of Professional and Occupational Licensing Boards." Section 40-73-10 defines a "licensing board" as used in Chapter 73 to mean "any agency...charged by law with the responsibility of policing or otherwise regulating an occupation or profession within the State of South Carolina."

Determining whether the Athletic Commission is an occupational and professional licensing agency could be a threshold question. The Commission certainly licenses professional boxers, kickboxers, wrestlers, referees, timekeepers, judges, promoters, managers, seconds and matchmakers, although the vast majority of such licensees are only peripherally engaged in such endeavors.

Chapter 7 (Athletic Commission) of Title 52 (Amusements and Athletic Contests) clearly requires the Athletic Commission to police and regulate professional boxing, kickboxing and wrestling and those participants listed above. The relevant subsidiary question then, is whether any of those participants are engaged in occupations or professions. Within the plain and ordinary meaning of "occupational and professional," there can be no serious question that at least some of the listed participants are so engaged. On the other hand, whereas professional wrestling, boxing and kickboxing are clearly professions and occupations, in one sense, they are also sports, amusements or athletics. In the final analysis, however, the Commission meets the definition of a professional and occupational licensing agency in Chapter 73 of Title 40, in that it unquestionably licenses some professions or occupations.

Equally contradictory are the indications from the conduct and interpretations of the Athletic Commission itself. It has considered itself to be a professional and occupational licensing agency to the extent that it belongs to POLA and attends its meetings. It considers itself a professional and occupational licensing agency within the meaning of section 40-73-10 and files reports thereun-

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der. However, it has not considered itself to be a professional and occupational licensing board within the meaning of the Proviso.

The agency charged with administering Chapter 73 of Title 40, section 11-5-210, and the Proviso has not considered the Athletic Commission to be an "Occupational and Professional Licensing Agency or Board" within the meaning of the Proviso, and the interpretation of a statute of the agency charged with administering it is entitled to great weight and should not be overturned without clear and cogent reasons.

The final statutory indicia of its status under the South Carolina Code are that its statute is found in Title 52, Amusements and Athletic Contests, not Title 40, Professions and Occupations, and there is no reference to it under the profession and occupation entries in the index to the Code; but the first is largely a carry-over from when the boxing commissions were county permitting agencies, and the second probably signifies little and counts for less. However, the professions and occupations licensed by the Athletic Commission are qualitatively different from the other agencies and professions as indicated above, in their primarily hobby or avocation, almost amateur, status, the rarity of anyone so engaged making a living therefrom, and the fact that the Athletic Commission's mandate is to protect the participants from each other, as opposed to protecting the consumers from the professionals.

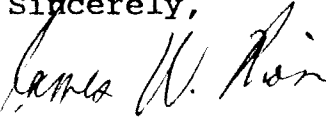
The least strained interpretation is that the Athletic Commission is a professional and occupational licensing board within the plain and ordinary meaning of those words. It is most probably a "professional and occupational licensing board" within the meaning of Chapter 73 of Title 40. Although the indicia of whether it is a "Professional and Occupational Agency or Board" are many, contradictory, and somewhat inconclusive, their greater weight, and the more plain, ordinary, reasonable and cautious interpretation would be that the Athletic Commission is a professional and occupational licensing agency, as well as a professional and occupational licensing agency, since it is a POLA agency.

However, the Budget and Control Board's interpretation that the General Assembly meant "Professional and Occupational Licensing Boards," as listed in section 11-5-210 is reasonable, and there are indications the General Assembly has determined the Athletic Commission should not be a section 11-5-210 agency and charge license fees of 100% of its budget. There are no indications that the General Assembly has considered whether it is a professional and occupational board within the meaning of the Proviso. Consequently, there are no clear and cogent reasons to overturn the interpretation of the agency charged with administering the Proviso, and a

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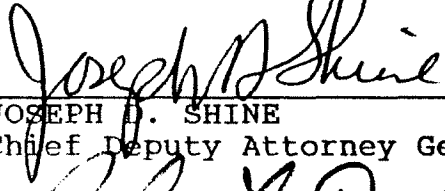
court would most probably allow it to stand pending legislation
which addresses the question.

Sincerely,

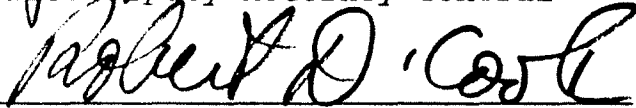


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