

SUNSET EVALUATION REPORT
BOXING CONTESTS
Chapter 440, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of boxing contests under Chapter 440, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate boxing contests to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the State Boxing Commission, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

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Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 440, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the regulation of boxing contests and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Chapter 2

BACKGROUND

Chapter 440, Hawaii Revised Statutes, regulates boxing contests. No one may conduct a boxing contest or be a participant in such contests without being licensed by the State. This chapter provides background information on boxing and its regulation.

Occupational Characteristics

Boxing today is the sport of fighting with padded gloved fists between two participants in a roped-in square. Only the gloved fists can be used as weapons for punching an opponent. Defensive tactics include evasive maneuvers and the blocking of punches with the gloves or arms.

History. The first evidence of boxing as a sport dates back to 4000 B.C. in Egyptian hieroglyphics. As civilization spread, so did boxing. The first written history of boxing comes from ancient Greece in the accounts of Homer and others who described fistic contests.¹ In addition to being a popular sport, boxing was used to provide physical training for warriors. At first, the Greeks used soft leather wrapping to protect the hands. Later, the wrapping was changed to a *cestus* (leather-thong wrapping) which extended up the forearm and was covered with metal studs and spikes.² This form of boxing with the *cestus* being used as a weapon

1. *Encyclopedia Americana*, v. 4, Danbury, Conn., Grolier Incorporated, 1984, pp. 377-378.

2. *The World Book Encyclopedia*, v. 2, Chicago, World Book Inc., 1985, p. 439.

became popular with the Romans after they brought Greek warriors to Rome as slaves. Most of these contests ended with the death of one of the contestants. The sport was banned after the fall of the Roman Empire.

Boxing as a sport did not surface again until the early 1700s when bare-knuckle fighting became popular in England.³ There were no weight requirements but most boxers were heavyweights (weighed more than 175 pounds). Kicking, gouging, and other brawling tactics were allowed as the contestants fought without rest until one had obviously won.

In the mid-1700s, Jack Broughton, who is considered "the father of boxing," attempted to civilize the sport by establishing a code of rules and outlawing brawling tactics. Broughton's rules were refined in 1838, revised in 1853, and became known as the London Prize Ring rules.⁴ These rules required boxing contests to be conducted in a roped-in square and be officiated by a referee and two umpires. Each round lasted until there was a knockdown which was followed by a 30-second rest period. Certain tactics such as kicking or gouging were prohibited. These rules governed bare-knuckle boxing until the end of its era in the late 1800s.

Modern boxing. About 1872, the Marquess of Queensberry rules were introduced and have been the foundation for all boxing regulations since then.⁵ Among other aspects, the Queensberry rules prescribed the use of gloves, three-minute rounds, and a ten-count knockout. The Queensberry rules were initially used only for amateur boxing but later superseded the London Prize Ring rules for professional boxing as well.

3. *Encyclopedia Americana*, p. 378.

4. *Ibid.*, p. 379.

5. *The World Book Encyclopedia*, p. 442.

Organization, regulation, and control of boxing began with the amateurs. In England, the Amateur Boxing Association was established in 1880 to govern the sport. The Amateur Athletic Union (AAU) was founded in 1888 to regulate amateur boxing in the United States. The first international organization was formed in 1903 and was reorganized in 1946 as the Amateur International Boxing Association.⁶

The United States of America/Amateur Boxing Federation (USA/ABF) has replaced the AAU as the national governing body for the regulation of amateur boxing in the United States. The USA/ABF has jurisdiction over the administration, eligibility, sanctioning, representation, and rules of competition for men's amateur boxing in the United States.⁷ The USA/ABF represents the United States in the International Amateur Boxing Association. The USA/ABF is organized into several committees including an Olympic Committee which is responsible for selecting competitors and support staff to represent the United States in the Pan American, Olympic, and World Games and an International Committee which is responsible for selecting competitors and coordinating the participation of United States teams in "other" international competition.

From its beginnings and still today, professional boxing has not been as well organized or regulated as amateur boxing. There are several international professional boxing organizations. The most powerful are the World Boxing Association and the World Boxing Council (WBC). The North American Boxing Federation, representing the United States, Canada, and Mexico, is one of seven federations within the WBC. Other organizations include the International Boxing

6. *The New Encyclopedia Britannica*, v. 2, 15th ed., Chicago, Encyclopedia Britannica Inc., 1985, p. 443.

7. *1985 Official United States of America Amateur Boxing Federation, Inc. Rulebook*, Colorado Springs, Colo., United States of America Amateur Boxing Federation, Inc., 1985, pp. 76-77.

Federation/United States Boxing Association.⁸ The primary purpose of all of these organizations is to rank boxers, sanction championship fights, and recognize champions. While each organization has its own rules of boxing and medical safety standards, the requirements are only applicable and imposed for sanctioned boxing events which are normally championship fights. The actual regulation and control of boxing in the United States is provided by individual state regulatory commissions.

Regulation of Boxing in the United States

Boxing began to attract interest as a spectator sport in the early 1800s in the United States. However, it was not until the era of John L. Sullivan that boxing gained prominence and popularity.

In those early days, boxing was illegal in most areas of the United States and therefore the contests had to be conducted with an element of secrecy. Sullivan claimed the bare-knuckle championship of the world in 1882.⁹

During the next several years, Sullivan had to defend his title under clandestine conditions to avoid arrest. The last bare-knuckle championship fight was held in 1889 when Sullivan retained his title after 75 rounds of boxing in which each round was terminated by a knockdown.¹⁰

After learning that local officials would allow boxing contests that were held under the Queensberry rules (use of gloves, three-minute rounds, and ten-count for knockdowns), Sullivan went on tour fighting all challengers. Sullivan was knocked

8. New Jersey Commission of Investigation, *Interim Report and Recommendations of the State of New Jersey Commission of Investigation on the Inadequate Regulation of Boxing*, March 1, 1984, p. 16.

9. *The New Encyclopedia Britannica*, p. 443.

10. *Encyclopedia Americana*, p. 379.

out in 1892 by James Corbett in the first championship bout fought under the Queensberry rules.¹¹

Since the time of Sullivan, the United States has been the boxing center of the world. It was not until 1920, however, that boxing attained full legal status when New York created a state boxing board and established a licensing law for boxing.¹² This law was used as the model for legislation in other states.

An act of Congress legalized boxing in the Territory of Hawaii in 1929. That same year, Hawaii enacted a law to regulate boxing because of the widespread demand for legalized professional boxing. Today, over 40 states regulate boxing. Hawaii, like many other states, has emphasized the regulation of professional boxing and has delegated the authority for supervision and control of amateur boxing to the USA/ABF.

There are no federal regulatory requirements for professional boxing, but in recent years, Congress has expressed its concern about safety standards and other matters and has held hearings to consider establishing a federal boxing commission to enforce boxing standards.

Boxing Safety

Professional boxing has come under fire in recent years because the sport can result in death or long-term brain injury. Boxing critics claim that safety will always be a problem because the intent of the sport is to hurt or render the opponent unconscious. The American Medical Association (AMA) has taken the official position that boxing should be banned.

11. *The World Book Encyclopedia*, p. 442.

12. *Encyclopedia Americana*, p. 380.

The AMA has expressed concern about the dangers of boxing for many years. Several studies have shown that many boxers suffer from brain damage as the result of head blows received during their boxing career. The AMA Council on Scientific Affairs appointed an Advisory Panel on Brain Injury in Boxing to "study the matter of brain injury in boxing and report the results of the study along with such remedies as may be appropriate."¹³ The resulting study, which was published in the January 14, 1983 issue of the *Journal of the American Medical Association* (JAMA), reached the following conclusion:

"Boxing is a dangerous sport and can result in death or long-term brain injury. However, other sports may also result in accidental death or brain injury for participants.

"Amateur boxing is fairly well supervised in this country through several national organizations. Professional boxing is less well controlled since the supervision of the sport is carried out worldwide through numerous uncoordinated national, state, and local boxing commissions. Therefore, it is difficult to determine the medical chronology of injuries in boxers.

"No reliable test exists to identify boxers at risk for sudden death or impending brain injury. To reduce this risk, central administrative regulations and strict medical supervision should be required for the sport of boxing."¹⁴

The study also reported: "Some would favor banning boxing completely, but this is not a realistic solution to the problem of brain injury in boxing. Moreover, the sport does not seem any more dangerous than other sports presently accepted by society."¹⁵

As a result of the study, the Council on Scientific Affairs recommended that the AMA implement the following measures:

13. American Medical Association, Council on Scientific Affairs, "Brain Injury in Boxing," *Journal of the American Medical Association*, v. 249, no. 2, January 14, 1983, p. 254.

14. *Ibid.*, p. 256.

15. *Ibid.*

- . Encourage the establishment of a "National Registry of Boxers" which would be computer-based for recording all ring results and medical history.
- . Plan a conference for boxing and medical officials to review criteria for physical examinations, to determine other comprehensive medical measures to prevent brain injury, and develop specific criteria for stopping a boxing contest.
- . Recommend to all boxing jurisdictions that the ring physician be allowed to stop action, examine the boxer, and if necessary, terminate the bout.
- . Urge boxing commissions to conduct frequent medical training seminars for all ring personnel.
- . Recommend that boxing contests not be held unless ringside advanced life-support systems, a comprehensive evacuation plan for injured boxers, and emergency room neurosurgical services are provided for.
- . Inform state legislatures that "tough man" boxing contests are very dangerous and should be condemned.
- . Urge boxing commissions to mandate certain safety equipment and to encourage further development of safety equipment.
- . Urge boxing commissions to extend all safety measures to sparring partners.
- . Urge boxing commissions to upgrade, standardize, and strictly enforce medical examinations.

The same January 14, 1983 issue of JAMA included an editorial, however, which called for the banning of boxing. The editorial referred to the report, *Brain Injury in Boxing*, as "solid, balanced and reasonable" but noted that two new studies had found evidence of chronic brain damage in many boxers. The editorial

concluded that boxing should be banned because "the principal purpose of a boxing match is for one opponent to render the other injured, defenseless, incapacitated, unconscious." The editorial also noted that "in contrast to boxing, in all other recognized sport, injury is an undesired by-product of the activity."¹⁶

On May 25, 1984, another editorial in JAMA again recommended that boxing be banned. The editorial said that the recommendations in the AMA Council on Scientific Affairs report could and should be implemented to improve boxing safety. However, it concluded that there "is no reason to believe that the most serious problem, that of chronic brain damage will be altered."¹⁷ The editorial recommended that boxing be abolished, but if not, that blows to the head be made illegal.

In December 1984, while meeting in Honolulu, the AMA House of Delegates adopted the following resolution on boxing:

"Resolved, That the American Medical Association:

- "1. Encourage the elimination of both amateur and professional boxing, a sport in which the primary objective is to inflict injury;
- "2. Communicate its opposition to boxing to appropriate regulating bodies;
- "3. Assist state medical societies to work with their state legislatures to enact laws to eliminate boxing in their jurisdictions; and
- "4. Educate the American public, especially children and young adults, about the dangerous effects of boxing on the health of participants."¹⁸

16. George D. Lundberg, M.D., "Boxing Should be Banned in Civilized Countries," *Journal of the American Medical Association*, v. 249, no. 2, January 14, 1983, p. 250.

17. George D. Lundberg, M.D., "Boxing Should be Banned in Civilized Countries—Round 2," *Journal of the American Medical Association*, v. 251, no. 20, May 25, 1984, p. 2696.

18. 1984 *AMA House of Delegates Handbook*, Honolulu, December 14, 1984, p. 53.

Boxing supporters have taken the counter-position that boxing injuries and deaths are the result of the lack of regulatory control and inadequate medical and safety standards. They say that amateur boxing is safe and that professional boxing could be safe if certain regulatory requirements were established. They point to studies that have shown that boxing is not as dangerous as other sports in terms of mortality rates.

As a result of boxing deaths during the 1980s and the ensuing publicity and controversy over the dangers of professional boxing and the problems of adequately enforcing regulatory requirements for the sport, congressional hearings were held in 1983 and again in 1985. The purpose of the hearings was to obtain testimony on proposed legislation to establish federal control either through a governing body or by promulgating minimum federal regulations. Various boxing administrators and officials admitted in their testimony that there were serious regulatory problems but, for the most part, they were of the opinion that the potential dangers of professional boxing could be minimized by creating a central recordkeeping system for ring results and medical history and by establishing minimum medical and safety standards.¹⁹ No federal legislation has been enacted to date.

Statutory History

Boxing contests have been regulated in Hawaii since 1929. Public Law 710 that year legalized "pugilistic encounters" (boxing contests) in Alaska and Hawaii

19. See U.S., Congress, House, Committee on Energy and Commerce, *Boxing Reform, Hearings Before the Subcommittee on Commerce, Transportation, and Tourism on H.R. 1778*, 98th Cong., 1st sess., February 15, and March 18, 1983; U.S., Congress, House, Committee on Education and Labor, *The Federal Boxing Protection Act of 1983, Hearing Before the Subcommittee on Labor Standards on H.R. 1751*, 98th Cong., 1st sess., May 5, 1983; and Testimony on H.R. 1689 submitted by Harry Reid, Sig Rogich, Bernie Mankoff, and Bela Szilagy, to the Subcommittee on Labor Standards of the Committee on Education and Labor, May 30, 1985.

provided that such boxing contests were in compliance with the requirements specified in the federal statute and in conformity with the laws of the respective territories.

The Territorial Legislature enacted Act 216 in 1929, which implemented the federal requirements for boxing contests and provided for the regulation of all phases of boxing in Hawaii. The act created a three-member Boxing Commission which was "vested with the sole direction, management, control and jurisdiction over all boxing contests or exhibitions." The Senate Committee on Judiciary stated in its committee report:

"The bill submitted complies in all respect to the Act of Congress and, in addition, there are contained in the measure provisions which have as their purpose the safeguarding of the public and participants in such boxing contests or exhibitions. It has been found necessary in order to accomplish this purpose, to give the commission rather broad powers.

"[I]n consideration of the apparent desire on the part of a great portion of the population of the Islands for such legalized boxing contests or exhibitions, your committee recommends that this bill pass. . . ."20

The commission was authorized to adopt rules and regulations, appoint a secretary with the authority to subpoena witnesses and administer oaths and penalties, and appoint inspectors to be official representatives at boxing contests.

The commission was authorized to license any person or group desiring to conduct boxing contests. The act required such applicants to file a performance bond in the sum of \$2,000 with the commission to qualify for licensure. The commission was also empowered to assess qualifications and issue licenses to professional boxers and all other participants involved in boxing contests. A license was required for the physician, referee, judge, timekeeper, manager, trainer, and second. The duties of the referee, judge, and physician were described, but no

20. Senate Standing Committee Report No. 274 on House Bill No. 87, Regular Session of 1929.

minimum qualifications were prescribed for licensing any of the participants in a boxing contest except for boxers and physicians. The boxer had to be physically fit and 18 years of age, and the physician had to be licensed to practice medicine in Hawaii.

The law defined amateur boxing contests and contestants and authorized the commission to place such contests under the control and supervision of any recognized national amateur athletic association.

Act 216 authorized the commission to suspend or revoke licenses for conducting or participating in a sham or fake boxing contest as well as for failure to pay a gross receipts tax. Sanctions included fines or imprisonment or both for violating any provision of the act.

Since 1929, the statute has been amended several times. Some of the more significant amendments include the following.

In 1937, Act 213 increased the commission membership to five and required two members to be selected from the delegates to the Hawaiian association of an amateur athletic union of the United States of America. The act did not specify any qualifications for the other three members of the commission.

Act 264, SLH 1949, amended the law by expanding the authority of the commission to appoint deputy commissioners to supervise boxing on the outer islands. The act also empowered the commission to limit the number of licenses as well as the number of boxing contests. The House Committee on Recreation, Youth and Juvenile Affairs in its committee report stated that "[t]he purpose of the bill is to clarify and broaden the powers and duties of the Territorial Boxing Commission."²¹

21. House Standing Committee Report No. 323 on House Bill No. 706, Regular Session of 1949.

Act 241, SLH 1983, raised the qualifying standards for a promoter's license. The Boxing Commission recommended the revisions because two licensed promoters had issued "bad checks" to boxing participants and commission officials during 1981 and 1982. The act increased financial requirements for promoters in several respects. The amount of the required performance bond was increased from \$2,000 to \$5,000. The act also required the promoter to file: (1) a current credit report for the five years prior to applying for licensure; (2) a current financial statement certified by a registered public accountant or certified public accountant; and (3) a state tax clearance statement. Additionally, the act required promoters to provide proof of major medical insurance coverage for boxing participants.

In its committee report, the House Committee on Consumer Protection and Commerce stated:

"Since 1980, the financial problems of two licensed promoters have caused monetary losses to participants and commission officials. Your Committee feels that tougher qualifying requirements, especially in the area of financial integrity, an increase in the required surety bond and payment from the bond to aggrieved parties could alleviate the problem to a large degree.

"The proposed bill contains a number of changes to Chapter 440 in an effort to keep up with the ever-changing boxing game."²²

Act 241 also updated certain regulatory requirements so that they would conform with accepted practices within the boxing profession. The revisions included allowing the commission to use a nonvoting referee and three judges for the scoring of boxing contests.

In 1983, Act 50 gave the commission authority to take summary disciplinary action without holding a hearing as required by the Administrative Procedure Act (APA). The commission was empowered to withhold moneys, assess fines, or impose

22. House Standing Committee Report No. 220 on House Bill No. 287, Regular Session of 1983.

immediate temporary suspensions of up to 60 days. After being notified by the commission in writing of any such action, the licensee may make a written request for a formal hearing in accordance with the APA.

The Senate Committee on Consumer Protection and Commerce stated in its committee report:

"At present, the Commission legally may not take any forms of immediate disciplinary action, thus allowing a violator to continue unscathed in the sport of boxing until the results of a hearing are established. The time span involved in the hearing process precludes any meaningful, immediate disciplinary action when it is most needed and appropriate.

"This bill would allow the Boxing Commission to take immediate, temporary disciplinary action for violations."²³

Nature of Regulation

The commission. Boxing contests in Hawaii are regulated by a five-member Boxing Commission appointed by the Governor and placed for administrative purposes in the Department of Commerce and Consumer Affairs (DCCA). The department provides staff support to the board.

One member is designated the chairman of the commission by the Governor. The law specifies that one of the five members must be a member of the Hawaiian association of an amateur athletic federation of the United States of America. There are no specific qualifications for the chairman or the other three commission members although traditionally they have been individuals who have demonstrated an interest in boxing. Commission members serve without pay but are reimbursed for expenses incurred in performing their duties.

23. Senate Standing Committee Report No. 523 on Senate Bill No. 1288, Regular Session of 1983.

Chapter 440 gives the commission sole regulatory authority over all boxing contests. The Director of DCCA is authorized to appoint deputy commissioners and employ inspectors to act as official representatives at boxing contests under the direction and control of the commission. Other powers and duties granted by statute to the commission include the authority to grant, suspend, revoke, or refuse to renew licenses for boxers and other participants; keep records of its proceedings; conduct hearings; and adopt, amend, and repeal rules. In addition, the law authorizes the commission to limit the number of licenses and boxing contests and to take summary disciplinary action without a formal hearing.

Scope of regulation. Under Chapter 440, the Boxing Commission "is vested with the sole jurisdiction, direction, management, and control over all professional and amateur boxing, to be conducted, held, or given within the State. No professional or amateur boxing contest shall be conducted, held, or given within the State except in accordance with this Chapter and the rules adopted by the commission pursuant thereto."

The commission's emphasis has been on administering and enforcing its powers and responsibilities relating to professional boxing. The commission has adopted rules for amateur boxing, but it is not actively involved in regulating amateur boxing. Instead, as authorized by statute, the commission has delegated the authority for the control and supervision of amateur boxing to the Hawaiian association of the USA/ABF. The commission requires the amateur association to submit certain reports and to comply with the statutes and rules. The commission provides nominal approval of amateur boxing programs.

Section 440-9 specifies that the commission "shall not allow any professional boxing contest unless the contestants use gloves not less than five ounces in weight and does not consist of more than fifteen rounds of a duration of more than three

minutes each with an interval of one minute between each round and the succeeding round, and unless each contestant is at least eighteen years of age and one hour prior to the contest is examined by a licensed physician who shall certify in writing to the referee of the contest that the contestant is physically fit to engage therein."

To implement the statutory requirements for boxing contests, the commission has adopted extensive rules which provide definitions and establish standards for all aspects of boxing in Hawaii. The rules cover a wide range of items such as facilities, equipment, ring officials and other participants, scoring criteria, fouls and penalties, contracts, and other physical and safety requirements.

The commission requires all proposed professional boxing contests to have its approval. In determining whether a contest should be approved, the commission verifies the records of the contestants and reviews such records in terms of winning percentages, knockouts, and quality of opponents. The primary purpose of the commission's approval is to avoid mismatches and minimize the danger to boxing contestants. A secondary reason is to ensure evenly matched competitive contests to provide a good show for the public.

The commission requires a promoter to have a minimum of five approved boxing bouts totaling at least 26 rounds of boxing with an approved standby contest before it will approve a boxing slate.

Licensing requirements. To carry out its regulatory responsibilities, the commission licenses promoters who conduct boxing contests and all the other participants of such contests, including boxers, physicians, referees, judges, matchmakers, managers, timekeepers, seconds, and announcers. The statute as well as the extensive rules do not specify the licensing standards or guidelines that must be met for most types of licenses. Current licensing requirements focus primarily on financial responsibility for promoters but have few requirements for licensure for

the other participants of boxing contests. Instead, the statute and rules emphasize the duties, responsibilities, and performance standards for these individuals.

To qualify for a license to participate in a boxing contest, applicants must meet the following requirements:

Promoter. A promoter must demonstrate financial capability and responsibility by filing: (1) a current credit report for the five-year period prior to making application, (2) a current financial statement certified by a registered public accountant or certified public accountant, (3) a state tax clearance statement, and (4) a performance bond in the sum of \$5,000. Also, the applicant must provide proof of major medical insurance coverage for boxing participants.

Professional boxer. A boxer must be between 18 and 38 years of age, not on medical suspension, and of satisfactory physical condition as determined by a physician appointed by the commission.

Physician. A physician must be licensed to practice medicine in Hawaii.

Judge. There are no specific written requirements. However, there is an unwritten requirement that an applicant must pass a written examination.

Referee. A referee must pass a written examination with a minimum score of 75 and pass a physical and eye examination. Successfully passing the examinations does not guarantee licensure according to the rules.

Manager. There are no specific written requirements. Unwritten requirements are said to include passing a written examination and having contract rights for a boxer.

Second. There are no written qualifications, but an unwritten requirement that an applicant must pass either a written or oral examination depending on the applicant's reading ability.

Matchmaker, timekeeper, and announcer. No qualifications or requirements for licensure are in writing.

There are unspecified boxing experience and qualification requirements for referee, judge, manager, second, physician, timekeeper, matchmaker, and announcer applicants. The above applicants must provide references and describe all applicable experience and qualifications on the application forms for licensure.

Inspectors. The statute authorizes the commission to employ inspectors to act as its official representatives to ensure that all boxing contests comply with the law and the rules. Inspectors are responsible for specific duties relating to ticket procedures, dressing room activities, boxing equipment and gloves, and ringside activities.

Penalties. The commission may suspend or revoke any license to participate in a boxing contest "upon cause as it deems sufficient after due hearing." The rules provide that a license may be suspended for any participant "who is guilty of unfair dealings, ungentlemanly conduct or of violating any of the rules of the commission." The statute specifies that conducting or participating in a sham or false boxing contest shall result in license revocation or suspension. Other grounds for revoking or suspending licenses are listed in different sections of the rules.

In cases involving disciplinary action, DCCA, acting on the commission's behalf, is required to give the person proper notice and a fair hearing in conformity with the Administrative Procedure Act. In its proceedings, the department has the power to administer oaths, compel the attendance of witnesses, require the production of documentary evidence, and examine witnesses.

Chapter 440 empowers the commission to take immediate summary disciplinary action including assessing fines, withholding purse money, and imposing temporary suspension against a licensee for violations of the law or the rules. The

commission must notify the licensee in writing of any action taken and of the right to a formal hearing in accordance with the APA.

Persons violating any of the provisions of Chapter 440 are subject to a maximum fine of \$500 or imprisonment up to one year or both.

Chapter 3

EVALUATION OF THE REGULATION OF BOXING CONTESTS

This chapter contains our evaluation of the regulation of boxing contests under Chapter 440, Hawaii Revised Statutes, including our assessment of the need for regulation and the effectiveness of current regulatory operations.

Summary of Findings

1. Boxing contests must continue to be regulated to protect the contestants. Even with regulation, contestants may suffer serious injury or even death; without regulation, boxing should be banned. Regulation of boxing differs from other occupational licensing programs in that it protects the principal licensee—the boxer.

2. Boxing is not defined in the statutes; consequently, the Boxing Commission has been hampered in its attempts to establish control over certain events.

3. Both the statutes and the rules are outdated and in need of revision. The Boxing Commission has acted arbitrarily by imposing various licensing requirements which are neither in the statutes nor the rules of the Boxing Commission.

4. The Boxing Commission has imposed various requirements to ensure payment to participants by the promoter and to provide for medical coverage for boxers. These requirements should be simplified and formalized in the board's rules.

5. The commission regulates some activities that have little to do with health and safety. This kind of overregulation should be discontinued.

6. The commission has a tradition of requiring a large number of complimentary boxing tickets for commission use. The acceptance of some of these

tickets may violate the ethics code. In addition, the commission does not account for their distribution, making it impossible to determine whether State Ethics Commission guidelines for these tickets are being followed.

7. There has been conflict between the commission and the Department of Commerce and Consumer Affairs (DCCA) because the commission's penchant for taking immediate disciplinary action conflicts with the Administrative Procedure Act (APA). In addition, the law does not contain adequate grounds for taking disciplinary actions.

8. While the commission has been concerned with questions of boxing safety, it can do more in this regard by conducting seminars and workshops on medical safety.

Need for Regulation

State regulation of boxing as an athletic event creates an anomaly in comparison with other occupational licensing programs. Regulation of the sport is not necessary to protect the general public or the consumers of boxing shows. The need for the State to regulate boxing can only be justified on the basis of providing for the protection of the licensees, the boxing contestants.

During the sunset review, members of the Boxing Commission reported that the purpose of regulation is to provide dual protection for both the boxing contestants and the public. They say that regulation provides public protection in two areas, in ensuring a good show and providing an honest fight. Neither of these two reasons justify state licensing.

Provide a good show. The need to provide this type of protection for boxing shows is no greater than for any other entertainment or sporting event. The public is capable of evaluating the entertainment value of boxing shows. The only

potential harm to the dissatisfied consumer here is the payment of a ticket price for a poor boxing show. The State should not be involved in providing assurances of entertaining boxing shows. Although the commission requires all boxing contests to be approved in terms of the contestants being equally matched, this cannot guarantee a good show. It should be noted that the primary purpose of requiring this approval of matches is to avoid mismatches where one of the boxers might be injured.

Provide honest boxing contests. Even though the commission controls all aspects of boxing (i.e., all participants must be licensed, all matches must be approved, and all contests must be conducted according to commission rules), boxing regulation cannot guarantee an honest performance by boxers. Regulation can deter, but not prevent, bribes or fight fixing. The various regulations and the fact that the commission members and commission officials attend all boxing shows may minimize the chances of a "dive" occurring. However, ensuring an honest contest does not justify a licensing law for boxing.

We conclude that the regulation of boxing is not needed to protect the public health, safety, and welfare. The benefits of regulation are negligible for the general public and for the consumers of boxing events.

Need to protect licensees. The sunset law makes it clear that regulation of an occupation is justified only if there is a need to protect the consumer. The law states that the purpose of regulation must be to protect the consuming public and not the regulated occupation. In the case of boxing, however, it is apparent that regulatory requirements and activities are directed primarily at protecting the licensee—the boxing contestant rather than the public. Boxing is unique and differs from other occupational licensing programs in this respect.

Initially, we questioned whether the regulation of boxing as an athletic event is a proper function of state government since other sports are unregulated. We concluded that state regulation of boxing, especially professional boxing, is necessary because without it, there would be no provisions for protecting the safety of boxing contestants.

The potential harm of serious injury or even death from boxing is real and significant. The responsibility for preventing injury to boxers rests with state regulatory commissions. Unlike other professional sports which have governing bodies that establish standards and rules for the conduct of the sport and impose disciplinary sanctions, professional boxing is without any national regulatory organization. Consequently, the State must step in.

Dangers of professional boxing. Professional boxing is a brutal sport, but it is viewed by many disadvantaged youths as one of the few ways to improve their station in life. Professional boxing is very dangerous because the best way to succeed in this sport is to injure, incapacitate, or even better, render your opponent unconscious by a knockout. The scoring rules favor the aggressive boxer, and extra points are awarded for knockdowns. Professional boxing differs from other violent professional sports such as football in that the intent of boxing is to injure your opponent; with other sports, injuries are a by-product, and rules are established to prevent or minimize them.

Even with licensing, boxing represents a considerable risk to those who participate. Without regulation, the risk would increase significantly. The only limit on the potential harm of unregulated boxing would be the ground rules that are established for each contest or are agreed upon by the participants.

Serious injuries or even death can occur in professional boxing. There have been over 430 ring fatalities since 1918.¹ There have been two boxing related deaths since the sport was legalized in Hawaii in 1929. One death occurred in 1932 and the other in 1949.² Since 1980, there has been only one serious injury. The boxer had to undergo surgery twice to remove blood clots from his brain. In that case, certain information on the boxer's physical and medical condition had been withheld from the Boxing Commission.

As noted earlier, several studies have shown that many boxers suffer from brain damage as the result of head blows received during their boxing career. The official position of the American Medical Association (AMA) is to encourage the elimination of both amateur and professional boxing, to work with state legislatures to enact laws to eliminate boxing, and to educate the public on the dangerous effects of boxing on the health of boxing participants.

Although this represents the official position of the AMA, a national survey of 665 physicians showed that they did not favor the banning of boxing. The survey included the question, "Should boxing be placed under stricter supervision, banned or left as is?" Only 25 percent responded that it should be banned, and 68 percent felt that it needed stricter supervision.³

A decision on whether boxing should be banned is a determination that must be made by the Legislature. However, we conclude that if boxing is permitted, there

1. David MacDonald, "Why Boxing is on the Ropes," *Readers Digest*, May 1983, p. 33.

2. "Death in the Ring! Even with precautions it can happen any time," *Honolulu Star-Bulletin & Advertiser*, July 20, 1980.

3. George D. Lundberg, M.D., "Boxing Should be Banned in Civilized Countries--Round 2," *Journal of the American Medical Association*, v. 251, no. 20, May 25, 1984, p. 2926.

must be an authorized body to supervise and regulate boxing contests. The potential dangers involved are simply too great to allow unregulated professional boxing, and there is no regulation of professional boxing other than that provided by the State.

Regulation of boxing. Our concern is primarily with professional boxing although we believe both amateur and professional boxing should continue to be regulated by the State.

Amateur boxing. Amateur boxing is regulated by the United States of America/Amateur Boxing Federation (USA/ABF). The United States Olympic Committee is required by federal law to recognize only one organization as the national governing body for each amateur sport. The USA/ABF has been recognized as the national governing body for amateur boxing, and it controls amateur boxing in the United States. The USA/ABF has promulgated rules for amateur boxing.

Hawaii is one of 13 geographic regions under the USA/ABF, and its local association is responsible for regulation within the State.⁴ The Boxing Commission has delegated its authority over amateur boxing to the Hawaiian association of the USA/ABF. The commission requires the Hawaiian association to obtain a license as an amateur boxing promoter and to submit various reports. The president of the association is a member of the Boxing Commission.

Professional boxing. Professional boxing is without a comparable national regulatory organization. There are national and international organizations or associations, but their primary purpose is to rank boxers for championship fights which they sanction for a fee. Each organization has rules, but they only apply to fights that are sanctioned by that particular organization. These are either

4. 1985 *Official United States of America Amateur Boxing Federation, Inc. Rulebook*, Colorado Springs, Colo., United States of America Amateur Boxing Federation, Inc., 1985 pp. 38-40.

championship fights or, in some cases, contests between top contenders. There are no national, uniform rules for professional boxing in the United States.

Since there is no nationally accepted organization to govern boxing, individual states have assumed the responsibility for regulating professional boxing. Various states have enacted laws and rules to provide for the safety of boxing contestants. Over 40 states have athletic or boxing commissions or commissioners charged with the responsibility for regulating boxing.⁵ Three states, Ohio, Florida, and Georgia, recently created state boxing commissions.⁶ Sunset evaluations of boxing licensing laws have been conducted in several states during the past eight years. Generally these evaluations concluded that licensing was necessary to protect the safety of boxers.

In recent years, there has been much adverse publicity about the inadequate control over professional boxing's recordkeeping system, safety, and medical standards. The criticism intensified after the death of Korean boxer Deuk-Koo Kim, who died following a knockout witnessed on national television in November 1982.

Bills were introduced in Congress and hearings were held in 1983 to consider the creation of a federal boxing commission to regulate boxing or the establishment of minimum federal boxing standards. Neither of these bills were passed by Congress.

5. U.S., Congress, House, Committee on Energy and Commerce, *Congressional Advisory Commission on Boxing*, 98th Cong., 1st sess., Washington, D.C., May 16, 1983, p. 3.

6. See "Boxing; Discharging Firearms; Dueling," Chapter 3773, Baldwin's Ohio Revised Code Annotated, 1985; "Pugilistic Exhibitions," Chapter 548, West's Florida Statutes Annotated, 1985; and Georgia, Department of Audits, *Performance Audit State Boxing Commission*, September 1985.

In 1985, hearings were again held to consider creating a national boxing commission. Numerous boxing experts, officials, and journalists testified at these hearings. It was concluded that the most significant problem was the lack of a central computerized recordkeeping system that the state commissions could use to obtain current information on a boxer's ring record as well as his medical history. It was recommended that a "national passport license" be required for all professional boxers for recording all ring and medical history data.

Testimony at these hearings demonstrated that the professional boxing system was a nonsystem composed of over 40 state commissions where "the quality of regulation varies widely from state to state."⁷

The chairman of the Michigan Athletic Board of Control testified before the Subcommittee on Labor Standards that boxing regulation at the state level was insufficient:

"Ideally if all States had athletic commissions, and if all States were effective with their power; and if all States were not laden with budgetary problems; and if all States cooperated with one another, then we would not need Federal regulation. Unfortunately, idealism falls short of realism . . . the absence of a strong organization leaves the boxers more susceptible to exploitation and physical harm."⁸

It was concluded during the hearings that minimum state standards were needed for every aspect of boxing regulation, particularly medical and safety standards to protect the safety and health of professional boxers.

We conclude that to protect the health, safety, and welfare of professional boxers, the State must continue regulating boxing through the Boxing Commission.

7. U.S., Congress, *Congressional Advisory Commission on Boxing*, p. 3.

8. U.S., Congress, House, Committee on Education and Labor, *The Federal Boxing Protection Act of 1983, Hearing Before the Subcommittee on Labor Standards on H.R. 1751*, 98th Cong., 1st sess., Washington, D.C., May 5, 1983, pp. 73-74.

Regulation should emphasize the commission's responsibilities for protecting the safety of professional boxers. The commission should continue delegating the authority for active control of amateur boxing to the Hawaiian association of the USA/ABF.

Scope of regulation A statutory definition of boxing is needed to clarify the commission's scope of authority. Chapter 440 does not include a definition of boxing. Although boxing is a generally understood term, the fact that it is not explicitly defined in the statutes has presented enforcement problems. The commission has been hampered in its attempts to establish its authority over certain events or to prevent the holding of such events.

In the past, the commission has asked the Department of the Attorney General (AG) about its jurisdiction over martial arts. The AG responded that these tournaments did not fall within the jurisdiction of the Boxing Commission. This conclusion was reached because full-contact martial arts events include not only boxing techniques involving attack and defense with the fists, but also several other different art styles or methods of attack and defense involving the use of knees, feet, and elbows in addition to the fists. The AG concluded that Chapter 440 did not grant the Boxing Commission jurisdiction and control over other athletic events "involving other art styles or methods of attack and defense."⁹

In a report submitted by DCCA to the Legislature during the 1979 session, the department noted that an amendment was needed to Section 440-1 *Definitions* which would define the practice of boxing. The department explained: "Clarifications of the term 'boxing' appears necessary in light of recent 'martial arts' and 'street fighting' shows conducted in Hawaii. Jurisdictional questions have

9. Letter from Randall Y. Iwase, Deputy Attorney General, to Dick H. Okaji, Licensing Administrator, DCCA, August 16, 1984, p. 3.

arisen in this area, especially when licensed professional boxers are participants in these activities."¹⁰

In the 1980s, various types of "tough man" boxing shows became the new boxing fad in the United States. These "tough man" shows involved bouts between novice boxers. The rules for such shows varied.

When these shows began to spring up in Hawaii, the commission had difficulty controlling the shows or preventing their occurrence. The promoters of these shows often had rules that allowed tactics such as wrestling which clouded the jurisdictional question. The commission was able to regulate the shows held by one promoter. In other cases, the commission was able to shut down the promotion of the shows for unlicensed activity through the complaint resolution process.

The commission requested an opinion from the AG on its jurisdiction over "tough man" type shows. The AG concluded: "Where the contest is primarily a boxing match, we do not believe that the Commission is bereft of jurisdiction merely because the promoters of the event choose to permit incidental wrestling." The AG suggested, however, "that the Commission establish clear and specific guidelines (either through statutory or rule amendments) which set forth when and under what circumstances the commission will act to assert jurisdiction over boxing matches which involve incidental wrestling."¹¹

The commission has yet to suggest any amendments that would establish a statutory definition of boxing. As a result, the authorized scope of regulation is likely to become an issue again when some innovative promotion involving boxing techniques surfaces. The commission should develop and suggest to the Legislature

10. Hawaii, Department of Regulatory Agencies, *Impact Statement, Boxing Commission*, 1979, n.p.

11. Letter from Randall Y. Iwase, August 16, 1984, p. 4.

a definition of boxing that would ensure its authority over contests that might be injurious to the participants.

Regulatory Operations

The Boxing Commission has significantly greater powers than most other occupational licensing boards. Chapter 440 vests the commission with the "sole jurisdiction, direction, management, and control over all professional and amateur boxing to be conducted, held, or given within the State." In 1983, the commission was also given the authority to take summary disciplinary action against licensees. The commission may fine, withhold purse money or fees, and issue immediate temporary suspensions against licensees.

The commission has used these powers aggressively, and it has been relatively effective in protecting the safety of boxers. It has imposed numerous requirements and procedures for protecting the health and safety of boxers and for ensuring the financial integrity of promoters.

However, the commission has not always recognized sufficiently that it is a public agency with the obligation and responsibility to follow legal procedures in carrying out its duties. Many of the requirements that the commission imposes on licensees are not in the statutes or its own rules. In fact, some of its current requirements deviate from the statutes or the rules. As a result, some commission actions are open to legal challenge, expose the State to liability, and give the commission the appearance of acting in an arbitrary or abusive manner.

Appointment to the commission is both a privilege and a responsibility. It is important that commission members appreciate this dual aspect of the office and take steps to ensure that they do not abuse their privileges and that they live up to the responsibilities of their office.

Our review of the commission's regulatory operations indicates that the rules are badly in need of revision. They should be updated to bring them into conformance with current practices and to clarify the commission's requirements. They should also be revised so that they better support the purpose of protecting the safety and welfare of boxers. Requirements which are aimed at such objectives as providing a better show for consumers are unnecessary and should be eliminated.

The commission has been slow in making the necessary changes to its own rules and in suggesting needed statutory amendments to the Legislature. Consequently, we find the following problems:

- . Licensing requirements are vague and unspecified. Only the commission knows what they are.
- . The commission requires examinations of certain licensees, but this is not specified in the statute or the rules. The current value of these examinations is questionable.
- . Commission practices are frequently in conflict with its own rules. It imposes and rescinds requirements as it pleases, and often, there is no clear public record of when or why new requirements are imposed.
- . Commission requirements for protecting the financial welfare of boxers could be improved, and new procedures are needed. Requirements for medical insurance for boxers should also be formalized and clarified.
- . The commission intrudes unnecessarily into the promotion of boxing shows by requiring promoters to stage a certain number of bouts.
- . The commission may be requiring an excessive number of complimentary tickets to boxing contests, and it has yet to adopt procedures for the distribution of these tickets, thereby opening itself up to charges of conflict of interest.

- . The commission takes an aggressive stance in policing boxing events and in taking summary disciplinary actions. However, more regard should be shown for the rights of licensees and the requirements of the Administrative Procedure Act.

Vague licensing requirements. The statutes require the following participants in boxing contests to be licensed: boxer, physician, promoter, referee, judge, manager, second, matchmaker, timekeeper, and announcer. The statute provides few standards for licensure. For example, it provides no licensing qualifications for referees, judges, managers, seconds, matchmakers, timekeepers, or announcers.

The commission has adopted some rules that establish licensing standards for some of the categories of licensure. For example, the rules require referees to pass a physical and eye examination. However, for the most part, licensing requirements are unwritten and unspecified. Table 3.1 shows the categories of licensure, the requirements for each category under Chapter 440, the requirements established by the commission under its rules, and unofficial requirements that are actually being imposed by the commission.

It would appear from the statute and the rules that for many types of licenses, applicants need only apply and pay a fee. In fact, there are unwritten licensing requirements for all participants in boxing contests. Besides the requirement in the rules for a referee's written examination, the commission currently requires written examinations for applicants for judge, manager, and second licenses.

In addition, the commission requires all applicants, except boxers and promoters, to provide three references (five for applicants for a manager's license) and describe all applicable experience and qualifications on the application forms. However, the commission has not formally established any criteria or guidelines for evaluating the adequacy of this experience/qualifications requirement either in terms of length of experience or number of boxing events.

Table 3.1
Requirements for Licensure

<i>License</i>	<i>Requirements Under Chapter 440</i>	<i>Requirements Under Commission Rules</i>	<i>Unofficial</i>
Boxer	Eighteen years old, pass physical examination	Thirty-eight years old maximum, medical examination	Not on medical suspension
Physician	Licensed to practice in Hawaii		Experience and qualifications, three references
Promoter	Current credit report for five-year period, current certified financial statement, state tax clearance, \$5,000 bond, proof of major medical insurance for boxer	Certified check equal to fighters purse and fees	\$15,000 line of credit in lieu of certified check
Referee		Physical and eye examination, licensing examination	Experience and qualifications, three references
Judge			Licensing examination, experience and qualifications, three references
Manager			Licensing examination, experience and qualifications, five references, have contract rights for boxer
Second			Licensing examination, experience and qualifications, three references
Matchmaker			Experience and qualifications, three references
Timekeeper			Experience and qualifications, three references
Announcer			Experience and qualifications, three references

In addition to requiring all boxing participants to be licensed, the statute authorizes the commission to employ inspectors to act as official representatives of the commission in enforcing the law during boxing contests. The rules specify the duties and responsibilities of the inspectors. However, neither the statute nor the rules contain any criteria related to qualifications or experience for persons employed as inspectors.

The commission should review its licensing requirements and determine whether all ten categories of licensure are necessary to protect the welfare of

boxers. Some participants may not need to be licensed. If the commission has no licensing *standards* for some of these licensees, it should reassess the need to license these participants particularly since the commission must approve and appoint all participants for a boxing contest anyway. With respect to one licensing category, that of announcer, licensing is clearly not needed. The activities of an announcer have nothing to do with safety in the ring, and the State should not be in the business of judging the qualifications of a person who introduces sports notables and contestants and announces the results of the match and future events.

Examinations. As noted earlier, there are no statutory requirements for written examinations for any applicants for licensure. However, the commission has adopted a rule requiring a written examination for referee applicants, and the commission has an informal requirement for written examinations for judge, second, and manager applicants.

The current examinations are deficient. None of the four examinations has been tested for validity or reliability. A passing score of 75 percent was selected because that is the standard used for most licensing examinations administered by DCCA.

Judges and referees. The examinations for judges and referees were developed at least eight years ago. The purpose of the examinations is to ensure that applicants have a complete understanding of the law and rules relative to scoring, knockdowns, fouls, safety precautions, and overall duties and responsibilities. They consist mostly of essay or discussion questions and are subjective.

The executive secretary admits that these examinations need to be revised because of their age and subjective nature. The commission has not consulted with the examination branch of DCCA, because it does not consider revision of the

examinations to be much of a priority since there have been few applicants for licensure. In the past five years, there have been only three applicants for referee licensure and four for judge licensure. No one has failed the examinations.

Managers and seconds. The commission decided during a meeting in July 1983 that no new managers or seconds would be licensed until a licensing examination was developed, because the members were concerned that some of the recent licensees were incompetent as "corner men." The examinations were developed by the commission's executive secretary in September 1983. Since then, the commission has required all applicants for licensure as a manager or second to pass the examination.

Both examinations consist of questions in a true-false format. According to the executive secretary, the purpose of these examinations is to ensure that the applicants understand their duties and responsibilities. Applicants who have reading problems are allowed to take the examination orally. Applicants who fail are allowed to retake the examination.

We believe that the board is correct in requiring examinations for judges, referees, managers, and seconds. These individuals play key roles in boxing contests and in ensuring the safety of the boxer. They should be required to demonstrate their knowledge of the statute, rules, and other matters relating to boxer safety.

At the same time, the commission must take steps to formalize its requirements in the rules. The commission should also work with the examination branch of DCCA to develop valid and reliable examinations.

Other unofficial requirements. The Boxing Commission rules are badly outdated. They have been under revision since 1983. However, formal action has still not been taken. Instead, the commission has arbitrarily changed several major

regulatory requirements by simply approving such changes or by approving an emergency rule. The following are some examples.

The system that has been used to score all professional fights in Hawaii since April 1982 was simply "adopted" by the commission during a meeting in March 1982. According to commission members, the ten-point "must system" was adopted because it was widely used in boxing and was considered a preferred system. The commission's rules still specify a five-point "must system."

To protect the safety of boxers, the rules provide for an automatic medical suspension of a boxing license for 30 days when a boxer receives a severe beating on the head or loses by a knockout. Since at least July 1983, the commission has been imposing up to 60 days no-contact medical suspensions for boxers who lose by knockout, technical knockout, or receive severe punches to the head. It is not clear from the minutes of commission meetings when this increased period of medical suspension was approved.

During a meeting in March 1985, the commission adopted an "emergency" rule specifying that a boxer cannot be saved by the bell (from being counted out for a knockout) except in the last round. The commission also adopted a "standing eight-count" emergency rule in January 1983 but rescinded that rule in February 1984, because it concluded that the rule was not good for the safety of the boxers after all.

During the 1983 legislative session, Act 241 added a requirement that promoters must provide major medical insurance coverage for boxers participating in shows. In March 1984, the commission approved minimum coverage requirements as well as a maximum deductible limit. According to the minutes of that meeting, the coverage limits of \$10,000 for accidental death and dismemberment and \$20,000 for medical and dental with a maximum deductible of \$5,000 were to be "put into

the rules, which are presently being adopted." These requirements have not been promulgated as rules and remain unofficial.

The commission plans to recommend certain statutory amendments during the 1986 session. In addition, it plans to hold a public hearing for the purpose of amending the rules. These actions are long overdue. Although the regulation of boxing is unique in many ways, the commission must follow formal procedures when making changes in regulatory requirements. Emergency rulemaking is appropriate when immediate issues of health or safety are involved, but emergency rules are effective for only 120 days. The legality of requirements that are imposed without being specified in either the statute or the rules is questionable and subject to challenge.

Irregular commission practices. The commission's informal approach may result in inadequate financial and medical protection for boxers. Instead of revising its rules to make them more effective, the commission has merely superimposed additional requirements as the need arises. These irregular practices may expose the State to liability.

Financial protection for participants. One of the purposes of regulation is to ensure that boxers and other participants are paid properly for their work. In 1981, a licensed promoter wrote several checks to boxing participants and boxing commission officials which were not honored because of insufficient funds. The same situation occurred in 1982 when another licensed promoter issued "bad checks" to several individuals.

The Boxing Commission sought to take action against the promoters' performance bonds. However, the language of Chapter 440 at that time required bond moneys recovered by the AG to be paid into the state treasury. No action was taken against the bonds because the commission wanted to get redress for the

individuals who had suffered the monetary losses. Restitution was eventually obtained from the promoters for most of the monetary losses.

Because of the financial problems of the two promoters, the Boxing Commission recommended legislative changes to increase the financial requirements for a promoter's license. Act 241, SLH 1983, increased the amount of the required performance bond from \$2,000 to \$5,000. In addition, the law was amended to specify that money recovered from a forfeited bond would be paid to "any aggrieved party for monetary damages sustained as a result of the applicant's default in performance." The act also added the requirement that a promoter applicant must file: (1) a current credit report for the five-year period prior to making application; (2) a current financial statement certified by a registered public accountant or certified public accountant; and (3) a state tax clearance statement.

In addition to these financial requirements, the commission adopted a rule requiring a promoter to provide the commission with a certified or cashier's check for an amount equal to the fighters' purses and the fees of the commission officials. In actual practice, the commission deviates from its own rule by requiring the promoter to provide a \$15,000 line of credit statement from a bank.

There is concern that the State would be liable for any bad checks issued by a promoter. The commission's executive secretary actually administers the boxing show "payoff," i.e., payments. The promoter delivers all checks for the boxers, other boxing participants, and commission officials to the executive secretary prior to the boxing show. There are no written procedures for handling the "payoff."

At a March 1985 meeting, the chairman indicated that "he is very concerned with the current 'boxer payoff' system. He stated that the commission 'technically' could be held liable for bad checks or nonpayment by a promoter, because it

'supervises' the payoffs."¹² Although the commission planned to study methods of changing the current system, no action had been taken as of October 1985.

Commission members say that the purpose of these requirements is to protect the financial interests of the boxers primarily but also all other persons associated with the boxing contest. Current regulations impose many requirements but still fail to achieve their purpose of guaranteeing that the promoter's check is good. A promoter after meeting all the requirements could simply stop payment on the checks. Action could be taken against the performance bond, but \$5,000 would be insufficient to cover the total "payoff" for a boxing show.

The commission needs to consider establishing an escrow or trust account to be administered by either a trust or escrow company or a bank. Under an escrow account system, the promoter would deposit a certified check into the account one week prior to the boxing show and the trust company would issue all necessary checks (an estimated 30 checks) for delivery to the executive secretary. Such a system could be established with a nominal service fee charged for each boxing show. If a trust/escrow account system is created by the Boxing Commission, all the other extensive financial requirements could be dropped and the commission objective of guaranteeing the soundness of a promoter's check would be achieved.

Medical insurance requirement. The commission's activities with respect to ensuring medical coverage for boxers are irregular and of questionable legality. Act 241, SLH 1983, added the requirement that promoters must provide proof of "major" medical insurance coverage for boxing participants. Previously, medical expenses of injured boxers were covered by money from the boxers welfare fund which is administered by the Hawaii Boxers Welfare Association (HBWA). HBWA is

12. Minutes of the Boxing Commission, March 5, 1985, p. 2.

a nonprofit organization which was originally created by the commission in the late 1940s to provide reimbursements for medical expenses to boxers for boxing injuries. It is funded by money withheld from boxers' purses by the commission.

The Boxing Commission recommended to the Legislature during the 1983 session that the major medical insurance requirement be added because of a serious injury to a boxer that resulted in severe brain damage. The boxer had to undergo surgery twice to remove blood clots from his brain. This injury placed the HBWA in a precarious financial situation when the boxer's medical bills totaled over \$20,000, and the fund account had only about \$24,000.

At a March 1984 meeting, the commission informally approved minimum coverage requirements as well as a maximum deductible limit for the major medical insurance to be provided by promoters. According to the minutes of that meeting the following coverage limits were approved: \$10,000 for accidental death and dismemberment; \$20,000 for medical and dental with a maximum deductible of \$5,000. The HBWA is supposed to cover medical and dental expenses up to the deductible amount of \$5,000.

Boxers can decide whether they want coverage by electing to have money withheld from their purses. The deduction is supposed to be voluntary. However, whether the deductions are really voluntary is questionable, particularly for mainland boxers, since the authorization to deduct the money is included in the commission's "Official Boxing Contract" form. The authorization is in a stipulation in the small print section of the contract, and the contract is silent concerning the voluntary aspect of the deduction. These contracts are simply sent to the mainland by the promoter for the boxer's signature. It should also be noted that the contract stipulates only a 2 percent deduction of the boxers' purse when in fact, the commission has been deducting 3 percent since January 1983. Although not

stipulated in the contract, the deduction is supposed to provide coverage for medical/dental expenses up to \$5,000 from the HBWA.

HBWA is currently registered as a nonprofit corporation with the State of Hawaii. The board of directors consists of five members, one of whom is a boxing commissioner. The other four directors are elected by the membership of the HBWA which consists of all licensed promoters, licensed managers, and professional boxers in the State of Hawaii.

The commission's relationship with HBWA and its activities with respect to HBWA are highly irregular. HBWA is a creature of the Boxing Commission. Initially, the commission actually administered the HBWA fund. Later, a separate organization was established to administer the fund. HBWA was incorporated in 1978 but still receives its mail care of the Hawaii State Boxing Commission. HBWA's only source of revenue, except for interest earnings, is the money that the commission deducts from the boxers' purses.

The five directors, by majority vote, make decisions concerning reimbursement of medical/dental expenses for injured boxers. Reimbursement of medical/dental expenses is authorized only when the injured boxer has no other means for paying such expenses. The Boxing Commission plays no official role in the decisionmaking process by the HBWA directors.

The Boxing Commission's relationship with HBWA is unofficial and informal. Nothing in the Boxing Commission rules describes its connection with HBWA or the boxers welfare fund, or the commission's policies and procedures for deducting the 3 percent from boxers' purses, or the coverage amount that is to be provided by HBWA.

The fund balance for HBWA has been declining in recent years. According to commission members, one problem that has contributed to this declining balance has

been HBWA's approval of reimbursements for medical expenses that may not have resulted from boxing injuries.

Because of its concern over the declining balance of the boxers welfare fund, the commission plans to take action in two areas. The commission is going to propose to the Legislature that the word "major" be deleted from the statute in reference to the promoter's medical insurance. The commission has already informally approved a proposal to reduce the promoter's deductible amount from \$5,000 to \$1,000. The commission also plans to meet unofficially with the HBWA directors to establish stricter standards for reimbursement of medical/dental expenses.

The Boxing Commission has played down its direct connection with HBWA. The commission would like to continue its unofficial, informal relationship with HBWA.

We believe that it is appropriate at this point for the commission to reassess its relationship with HBWA. It is questionable whether the commission has the legal authority to have boxers pay into the fund even though this is supposed to be voluntary. Certainly, the commission should not be deducting 3 percent from the purses when the contract says 2 percent.

While according to the commission, HBWA has always approved reimbursements for boxers' medical/dental expenses, the Boxing Commission has no control over these decisions. If HBWA did refuse to reimburse medical/dental expenses, it would appear that the State could be held liable for such expenses. Claimants could contend that the Boxing Commission created HBWA, uses commission contract forms for authorization of deductions, and deducts the money from the boxers' purse to give the fund its only source of revenue.

The commission should obtain a legal opinion concerning the present system of making deductions from boxers' purses and using commission contract forms to obtain authorization for such deductions with no explanation of the voluntary nature of such authorization. If it is determined that the commission has the legal authority to administer the deductions, the informal arrangement with HBWA should be changed. The Boxing Commission should formalize the relationship by adopting rules that define the commission's policies, requirements, and procedures related to fund accountability, commission deductions, and medical/dental reimbursement payments.

Unnecessary regulation of boxing shows. The commission will not approve any boxing shows unless the promoter has a minimum of five approved bouts consisting of at least 26 rounds plus an approved emergency bout (to be used as a back-up if one of five bouts cannot be held). These requirements have no bearing on the safe conduct of a boxing show, the purpose for regulating boxing. They should be eliminated.

This rule appears to result in many unnecessary problems for promoters. The requirement is actually for a minimum of six bouts because the boxers for the standby bout are also subject to all commission requirements. They must be licensed, signed to a contract, obtain commission approval to fight, and pass the physical examinations. As a result, the promoter often pays the boxers for the standby bout extra money to box a four-round bout. Matchmaking for the four-round fifth and sixth bouts for a show may take more time and effort than the main event.

A boxing show held on May 1, 1985, provides a good example of the problems that the commission's rule can cause. The commission would not approve one of the promoter's proposed bouts for the show. The commission considered the bout to be

a potential mismatch because of the difference in the professional experience of the boxers. One of the boxers was also over the weight limit. The promoter was left without the required standby bout and after attempts to match another bout failed, the commission threatened to cancel the show. However, an agreement was reached, and the show was held. The promoter agreed to pay a \$500 fine and sign a consent order that he had violated Rule 16-74-195 for failure to provide a standby bout.

The requirement should be rescinded because it creates unnecessary work and expense for promoters, and there is no valid health and safety reason for such a requirement. The number of bouts or rounds for a boxing show should be left up to the promoter.

Commission tickets. The commission may be in violation of the state ethics code in its use of complimentary tickets to boxing contests. Its current practices are open to charges of abuse of privilege.

The Boxing Commission has traditionally designated *all* seats around the apron of the boxing ring as the "commission working seats." The 56 apron seat tickets are stamped as commission tickets and cannot be sold under any circumstances. The executive secretary is responsible for distributing commission tickets and arranging for the ringside or apron seatings. The executive secretary and the commission members are each allotted four tickets for all boxing shows. Certain commission officials, inspectors, and members of the media receive apron seat tickets. The remainder go to other persons designated by the commission.

Until 1980, it was commission policy to accept an additional four complimentary ringside seats for each commission member from the promoter. Apparently, the commission's policy of accepting these four additional tickets and

allotting themselves four apron tickets was a tradition dating back to the establishment of the Boxing Commission.

In June 1979, the commission policy of allotting each member four apron tickets and four additional reserved tickets from the promoter was questioned as being a conflict of interest. The Boxing Commission asked the State Ethics Commission for a ruling on its ticket policy.

The Ethics Commission issued an advisory opinion concerning the propriety of commission members receiving the admission tickets for their personal use. The Ethics Commission concluded that the commission ticket policy violated two sections of the ethics code.

First, the acceptance of tickets from promoters was held to be prohibited by the gifts section of the ethics code, Section 84-11, HRS, which specifies that:

"No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties, or use the information for his personal gain or for the benefit of anyone."

Second, the Ethics Commission concluded that the policy of allotting four apron tickets to each commission member and the executive secretary was prohibited by the fair treatment section of the ethics code, Section 84-13, HRS, which provides:

"No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted exemptions, advantages, contracts, or treatment, for himself or others."¹³

This conclusion was based on the fact that the Boxing Commission rules did not permit apron tickets to be issued to persons not involved in the regulation of the

13. State Ethics Commission, *1979 Opinions*, Opinion No. 395, December 19, 1979, pp. 57-58.

boxing event. Therefore, the commission violated the fair treatment section by granting itself a privilege that was prohibited by its own rules.

In response, the commission proposed two alternative rules for distributing "commission" tickets (56 apron tickets) and requested the Ethics Commission to assess the propriety of the two rules. The proposed rules were:

"A. Board tickets will be distributed by the board, through its staff, to appropriate individuals.

"B. Board tickets will be distributed by the board staff to the following classes of people:

- Board Members and the Staff
- Event Officials
- Event Inspectors
- Press/Media
- Other Government Officials on official business
- Visiting Dignitaries
- Representatives of Boards from Other States
- Show Promoter
- Special Guests"

The Ethics Commission issued another opinion which stated that the first proposed rule (Rule A) should be eliminated because the term "appropriate" was not specific enough. However, the plan proposed by Rule B would be in compliance with the ethics code provided that "the additional modifications and guidelines set out in this opinion were complied with by the members of the board."¹⁴

The Ethics Commission had no reservations about the first four classes of people (commission members and staff, officials, inspectors, and members of the press), because these people had duties to perform at the boxing events. However, the Ethics Commission cautioned the Boxing Commission that the distribution of commission tickets to others had to be in accordance with the gifts provision and

14. State Ethics Commission, *1980 Opinions*, Opinion No. 408, April 15, 1980, p. 27.

the fair treatment section of the ethics code. The Ethics Commission also provided the following guidelines for the distribution of tickets:

- . All persons having a working relationship to an event, including the press, must be provided with sufficient tickets before any other allotments are made.
- . Government officials who have jurisdiction over the board or the participants in the events should not receive commission tickets.
- . Commission tickets should not be issued to persons with whom the members had a business relationship.

Although the Ethics Commission continued to have certain reservations, it concluded that the ethics code could not be interpreted as prohibiting the distribution of commission tickets not needed for official purposes to family members and close friends. The limited use of tickets for personal reasons could not be prohibited.

The Boxing Commission adopted a rule in 1981 concerning the distribution of commission tickets. The rule is very general and fails to incorporate the guidelines provided by the Ethics Commission. It says:

"Section 16-74-279 Commission tickets. Commission tickets shall include all tickets situated around the apron of the ring and a stipulated number of 'riser' seats for commission members, executive secretary of the commission, inspectors detailed by the commission for duty, press and other officials as designated by the commission."

The executive secretary does not maintain a record of who receives the commission tickets. The executive secretary and the commission members still allot themselves four tickets each. Although there is currently a vacancy on the Boxing Commission (only four members), the four extra apron tickets for the vacant member are also allotted to the commission members.

In addition to the 56 apron tickets, the commission receives another 25 complimentary tickets for "riser" seats from the promoter that are distributed to the nonworking officials (referees and judges) and their guests. The acceptance of these 25 tickets from the promoter by the commission appears to be in violation of the gifts provision of the ethics code. The commission should request an opinion from the Ethics Commission on this policy.

For the commission's own protection, it should have a clearer and more specific policy on the distribution of tickets. It should be able to account publicly for the manner in which tickets have been distributed. Without a detailed accounting for the distribution of the 56 commission tickets, it is impossible to determine whether the Ethics Commission guidelines are being followed. Such an accounting would also enable the commission to assess whether it needs *all* of the apron seats or whether some of these could be made available for sale to the public. The Boxing Commission should maintain a public record, perhaps as part of its minutes, of the distribution of the commission tickets to prevent any questions concerning the integrity of the board.

Complaints. Since 1981, only nine complaints relating to boxing have been filed with DCCA. While few in number, these complaints have resulted in much controversy between DCCA and the Boxing Commission. This has been particularly true since 1982 when certain complaint functions were delegated from the commission to the department under Act 204, SLH 1982. Act 204 requires all boards and commissions placed within DCCA to delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the department.

At a meeting on November 9, 1982, the commission unanimously refused to approve this delegation of authority. The complaints and enforcement officer of DCCA met with the commission on November 16, 1982 to clarify the issue of

delegation. It was suggested that the commission should pursue authorization to take summary disciplinary action subject to a hearing because of the commission's reluctance to delegate its authority and its desire to take immediate action on alleged violations. After discussion, the commission agreed to the delegation of authority.

Act 50, SLH 1983, granted the commission authority to take summary disciplinary action without holding a hearing in accordance with the Administrative Procedure Act. The commission was empowered to withhold moneys, assess fines, or impose immediate temporary suspensions of up to 60 days. These sanctions could be imposed subject to a formal hearing for final adjudication as required by the APA. The Senate Committee on Consumer Protection and Commerce stated in its committee report that: "The time span involved in the hearing process precludes any meaningful, immediate disciplinary action when it is most needed and appropriate."

The controversy between the Boxing Commission and DCCA did not end when the commission was granted the authority to take summary disciplinary action in exchange for the delegation of its authority to DCCA to receive, arbitrate, investigate, and prosecute complaints. There remains an ongoing conflict between the Boxing Commission's regulatory philosophy that it must be aggressive in enforcing all its requirements by imposing immediate sanctions for violations and DCCA's concern that APA procedures be followed so that the State's position will not be compromised in a contested case during the hearing process.

DCCA officials admit that the regulation of boxing does not fit well within the overall disciplinary structure of the Regulated Industries Complaints Office (RICO). DCCA officials agree that the commission must sometimes take tough, swift action against licensees. This is particularly true for out-of-state boxers where fines must

be imposed before the boxer leaves the State. However, the department is concerned because the law and rules do not contain adequate grounds for imposing sanctions, and commission members and staff may make prejudicial statements to licensees and the press concerning the violation and the sanctions that will be taken.

The commission chairman complains about bureaucratic red tape. For example, in 1984, the commission held up the purse of a boxer for not giving an honest performance and had intended to impose fine and licensure sanctions during its next meeting. The DCCA, however, required that a formal hearing be held regarding the matter. The chairman felt that this was unnecessary because the boxer had already admitted in a letter to the commission that he did not give an honest performance. The chairman was also disappointed that the commission could not take action against certain licensees in a case where a boxer received severe brain damage during a fight on August 31, 1982. In that case, RICO concluded that disciplinary action could not be taken because the rules were vague and ambiguous.

DCCA officials recognize that the regulation of boxing is unique and that the commission's concerns for taking immediate disciplinary action are sometimes valid. The department attempts to expedite the investigations for the Boxing Commission but are hampered because neither the law nor the rules include a section on disciplinary action that specifies violations or grounds for imposing sanctions.

While the conflict between the need to take aggressive regulatory actions and also follow the APA procedures may not be solved completely, it can be alleviated by changes to the statute and the rules. The commission should recommend statutory changes and amend its rules to provide specific grounds for taking disciplinary actions. The commission should also recognize that infractions that

have no immediate bearing on health or safety may not need immediate disciplinary action.

Grounds for disciplinary actions. Chapter 440 fails to provide adequate grounds for imposing sanctions against licensees. The statute has no list of violations that would serve as a basis for suspending or revoking licenses. Instead, the statute merely states that any license "may be suspended or revoked by the commission upon cause as it deems sufficient after due hearing. Also, Section 440-34 states that violators of the chapter "shall be fined not more than \$500 or imprisoned not more than one year."

The rules also fail to clarify the basis for disciplinary actions. Rule 16-74-50 concerning suspension notes that a license of a boxing contestant, his manager, or seconds may be suspended if guilty of "unfair dealings, ungentlemanly conduct or of violating any of the rules of the commission." Different sections of the rules also mention general grounds for revoking or suspending licenses. These are inadequate.

Boxing Safety

As discussed earlier, professional boxing has come under increasing fire in recent years because the sport can result in death or long-term brain injury. Boxing critics claim that safety will always be a problem, because the intent of the sport is to hurt or render the opponent unconscious. The AMA has taken an official position that boxing should be banned.

Currently, various state boxing commissions are proposing the formation of an Association of Boxing Commissions which would establish standardized boxing requirements, minimum medical and safety standards, and a central computerized recordkeeping system for member commissions. The Hawaii Boxing Commission is interested in this proposal.

Boxing commissions in many states, particularly in the "major" boxing states, have adopted many requirements to provide better safety measures for boxing participants. These safety measures include more comprehensive medical/physical examinations, automatic medical suspension of boxers who are knocked out or suffer a severe beating, and requirements for neurological examinations before a suspended boxer is allowed to fight again.

Many states have adopted a three-judge scoring system with a nonvoting referee who can concentrate on the boxers' condition. Several states have given the ringside physician the authority to stop the fight for medical reasons. Seminars or clinics have been conducted on medical safety with required attendance for physicians, referees, and "corner men." In addition, several states have adopted one or more boxing rules concerning knockdowns or knockouts to provide better protection for the boxer's safety.

Another safety measure that has received much publicity in recent years is the use of "thumb-less" gloves to protect boxers from eye injuries. However, New York is the only state to have adopted the requirement for the use of thumb-less gloves, but it exempts championship contests and all champions as well as ex-champions from the requirement to use these gloves.

The Hawaii Boxing Commission has kept abreast of the movement to improve boxing safety and the various changes that have been implemented by the "major" boxing states. Certain safety requirements have been in effect for several years in Hawaii.

Boxers must pass a medical/physical examination administered by a commission physician. In addition, boxers must pass a physical examination at the weigh-in on the day of the fight and again that night before entering the ring. The commission requires at least one licensed commission physician (actually there are

two physicians for most boxing matches) to be in attendance at ringside for all professional boxing matches. All officials and "corner men" who participate in boxing contests must be licensed. The commission appoints inspectors to ensure that all boxing rules and requirements are followed by the boxing participants. In addition, the commission members and the executive secretary sit at ringside at all boxing shows to provide oversight of the officials and the conduct of the boxing contests.

During the 1980s, the Boxing Commission adopted several measures, some formally, others informally, related to boxer safety. The commission adopted a rule requiring a 30-day automatic medical suspension for boxers who are knocked out or receive several pounding about the head. In actual practice, the suspensions are for 30 or 60 days for boxers who lose as the result of a knockout or a technical knockout or who receive a severe beating. The length of suspension depends on the number of head blows suffered. The rules specify that a neurological examination may be required before the boxer can participate in boxing again. In two instances involving prominent local boxers who were knocked out, neurological examinations were required. In one case, the examination included a CAT scan. An EEG was required for the other boxer.

The commission also recommended an amendment to the statute to provide for a three-judge scoring system with a nonvoting referee. This was done so that the referee as the third man in the ring can concentrate on protecting the boxers from serious injury rather than be distracted from this crucial task by having to score the fight as well.

The commission has adopted an emergency rule whereby a boxer cannot be saved from being counted out (knockout) by the bell ending the round except in the last round. Another emergency rule was adopted providing for a standing eight

count (referee steps in when a boxer is hurt but still on his feet and gives him an eight count before deciding whether to stop the fight by a technical knockout) but later was rescinded because the commission felt that its value as a protective measure was questionable.

The commission plans to take further action in the near future. The medical consultant to the Texas Department of Labor and Standards which regulates boxing in that state has prepared an extensive set of medical and safety regulations. The commission plans to adopt most of these regulations when it formally amends the boxing rules. One significant rule change would give the ringside physician authority to stop the fight after consulting with the referee. New York, California, and New Jersey allow the ringside physician to stop the fight from outside the ring without consulting the referee. The Hawaii commission members prefer a system where the physician can signal the referee to call time so the physician can examine the boxer. The physician would have the final authority for stopping the fight when the safety of the boxer is in question.

The commission is to be applauded and encouraged for its interest in boxing safety. There is an area, however, that needs more commission attention—medical safety education. The commission needs to conduct formal seminars or clinics on medical safety for officials and licensees. No formal training sessions were held during 1985 and only one since 1980. We believe that the commission needs to assign a higher priority to medical safety clinics because it is imperative that commission officials and "corner men" be able to recognize the early danger signs of potentially serious injuries.

The commission should also amend its rules to make the requirement for a neurological examination mandatory after a knockout instead of being decided on a case-by-case basis. The potential for brain injury from a knockout is considerable.

The commission should enforce strict medical standards so that any potentially dangerous condition is diagnosed as soon as possible.

The commission should also amend its rules to require an eye examination by an ophthalmologist as part of the annual medical examination. Eye injuries are very common in boxing. Early detection of eye problems is important, because they may impair the boxers' ability to perform.

Recommendations

We recommend that:

1. *Chapter 440, Hawaii Revised Statutes, be reenacted to continue the regulation of boxing contests. In reenacting the statute, consideration should be given to making the following amendments:*

- . defining "boxing;"*
- . establishing specific grounds for taking disciplinary actions;*
- . establishing a trust/escrow fund account system to administer the payoff for boxing show participants and commission officials;*
- . reducing requirements for various financial reports and a performance bond from promoters;*
- . requiring written licensing examinations for judges, referees, managers, and seconds; and*
- . deleting announcers from those persons required to be licensed.*

2. *The Boxing Commission review its current requirements and propose statutory revisions and amend its rules to formalize requirements that it is imposing without proper authority. In doing so, the commission should eliminate rules that serve no health and safety purpose such as its rule for a minimum number of rounds and bouts for boxing shows.*

3. *The Boxing Commission work with the Department of Commerce and Consumer Affairs to revise its examinations to provide for objective, valid, and reliable testing of manager, second, referee, and judge applicants.*

4. *The Boxing Commission obtain a legal opinion regarding its practice of deducting money from boxers' purses for the Hawaii Boxers Welfare Association, and if legal, formalize procedures for fund accountability, commission deductions, and medical/dental reimbursement payments.*

5. *The Boxing Commission maintain a public record accounting for the distribution of the 56 commission tickets for all the apron seats and ensure that the State Ethics Commission guidelines for these tickets are followed. The commission should also request an opinion from the Ethics Commission on the propriety of accepting an additional 25 complimentary tickets from promoters.*

6. *The Boxing Commission limit its powers to take summary disciplinary action to those infractions that pose dangers to health and safety and show due regard for the requirements of the Administrative Procedure Act.*

7. *The Boxing Commission arrange to conduct seminars and clinics on medical safety for boxers.*

8. *The Boxing Commission amend its rules to make a neurological examination mandatory for any boxer who is knocked out and to require an eye examination by an opthamologist as part of the annual medical examination.*

APPENDIX

RESPONSES OF AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 12, 1985 to the Hawaii State Boxing Commission and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3.

The Boxing Commission comments that it is in total agreement with all of our recommendations except for the following three items. *First*, the commission agrees that it should obtain a legal opinion regarding its practice of deducting money from the boxers' purses for the Hawaii Boxers Welfare Association, but if this practice is found to be legal, the commission views the association as an independent organization and does not wish to become involved with fund accountability. However, as we noted in the report, the commission's relationship with the association has been informal, but if the commission should continue to deduct moneys for the fund, the relationship should be formalized by rules which define the commission's policies and procedures relating to fund accountability, deductions, and medical/dental reimbursement payments.

Second, the commission contends that a public accounting for the apron seat tickets to boxing events is available and apologizes for not providing this information to our analyst. To avoid future misunderstanding, the commission should formally approve the ticket distribution list and include this as part of its official minutes. The commission also believes that it is not necessary to request an

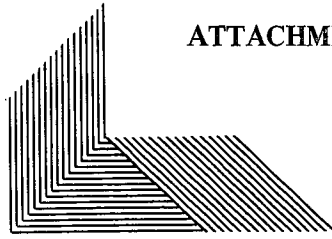
opinion from the State Ethics Commission on the propriety of accepting an additional 25 seats from the promoter. We believe this matter could be questioned, and therefore any doubts on this matter should be removed by requesting such an opinion even if the commission believes it to be unnecessary.

Third, the commission does not agree that its powers to take summary disciplinary action should be limited to issues of health and safety. It points to the need for timeliness of action when visiting boxers might leave the State after a violation. We agree that certain violations may require immediate action. However, the need to take summary disciplinary action should be clarified by commission rules to provide specific grounds for these actions.

The Department of Commerce and Consumer Affairs is in general agreement with our evaluation of the Boxing Commission. In commenting on our recommendation to revise its examinations, the department states that it has contracted with a professional testing agency to develop and revise the examinations.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA
AUDITOR

December 12, 1985

COPY

Mr. Robert M. Lee, Chairperson
State Boxing Commission
Department of Commerce and Consumer Affairs
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Lee:

Enclosed are six preliminary copies, numbered 4 through 9, of our *Sunset Evaluation Report, Boxing Contests, Chapter 440, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Russel Nagata, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of boxing contests. If you have any comments on our recommendations, we would appreciate receiving them by January 13, 1986. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

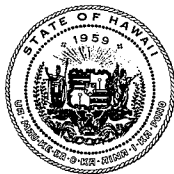
Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

GEORGE R. ARIYOSHI
GOVERNOR



RUSSEL S. NAGATA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

HAWAII STATE BOXING COMMISSION

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

January 13, 1986

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OFF. OF THE AUDITOR
STATE OF HAWAII

The Honorable Clinton T. Tanimura
Legislative Auditor
The Office of the Auditor
State of Hawaii
465 So. Beretania St., Room 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Re: Sunset Evaluation Report (Boxing Contests)

Thank you for the opportunity to comment on the recommendations contained in the preliminary sunset evaluation report relating to Chapter 440, Hawaii Revised Statutes, and the Boxing Commission.

The Commission, after reviewing the report, commends you on its comprehensiveness.

We are in total agreement with the following recommendations, and have included comments where appropriate:

- (1) The reenactment of Chapter 440, HRS;
- (2) Including a definition of the term "boxing" in the statutes;
- (3) Establishing specific grounds for taking disciplinary actions (The Commission has already prepared legislative proposals for the 1986 Legislature relating to this recommendation.);
- (4) Establishing a trust/escrow fund account system to administer the payoff for boxing show participants and Commission officials (The

Commission, in years past, had informally attempted to set up such an account on numerous occasions but was always informed that it was not permissible.);

- (5) Reducing requirements for various financial reports and a performance bond from promoters (We concur, provided the escrow account mentioned in Item (4) above can be established.);
- (6) Requiring written licensing examinations for judges, referees, managers and seconds (This is already being done, however, proposed legislation to "legalize" this recommendation has been prepared for submission to the 1986 Legislature.);
- (7) Deleting announcers from those persons required to be licensed;
- (8) Reviewing current requirements and proposing statutory revisions and amending its rules to formalize requirements being imposed without proper authority (The review of rules and requirements is in progress.);
- (9) Eliminating rules requiring a minimum number of rounds and bouts for boxing shows;
- (10) In conjunction with the Department of Commerce and Consumer Affairs, reviewing the Commission's examinations to provide for objective, valid and reliable testing of manager, second, referee and judge applicants (The revision of examinations is already in progress with ACSI, Inc., a testing agency contracted to write or revise our boxing examinations.);
- (11) Arranging and conducting seminars and clinics on medical safety for boxers; and
- (12) Amending Commission's rules to make a neurological examination mandatory for any boxer who is knocked out and to require an eye examination by an opthamologist as part of the annual medical examination.

The Commission, while agreeing with portions of the following recommendations, does not concur with other sections for reasons indicated below:

- (1) It was recommended that the Commission obtain a legal opinion regarding its practice of deducting money from boxers' purses for the Hawaii Boxers Welfare Association (We concur with this portion). If it is legal, then the recommendation is to formalize procedures for fund accountability, Commission deductions, and medical/dental reimbursement payments. The Commission does not concur with this recommendation as the Hawaii Boxers Welfare Association is not an "arm," "agency," or "creature" of the Boxing Commission. It is an independent association formed for the benefit and welfare of boxers, which the Commission assists in a very practical sense, by deducting the contribution of a fighter from his purse for the association. The Commission does not desire to get involved with the fund accountability or the medical/dental reimbursement payments as the association has its own by-laws and rules with officers and directors, who oversee the operation of the fund. The Commission would agree to emphasize or publicize to all fighters that contributing to the Welfare Association for coverage is strictly voluntary and not compulsory.
- (2) It was recommended that the Commission maintain a public record accounting for the distribution of the 56 Commission tickets for all apron seats and ensure that the State Ethics Commission's guidelines for these tickets are followed.

We agree with the intent of this recommendation, but contend that a public record accounting for the 56 apron tickets is available from the executive secretary at any time and apologize to your analyst for our omission in this area, which led him to believe that there was no available accounting of these tickets. The Commission also contends that it has attempted to adhere as best as possible to the guidelines set forth by the Ethics Commission relative to these tickets.

Further, concerning tickets, the report recommends that the Commission request an opinion from the Ethics Commission on the propriety of accepting an additional 25 complimentary tickets from promoters.

The Commission contends that an opinion from the Ethics Commission relative to the acceptance of the additional 25 complimentary tickets from the promoter is not necessary as the reason for obtaining these tickets was a change in Blaisdell Center's policy which now requires all people entering the arena to have a ticket. Previously, Commission or talent passes were used to enter the arena. When Blaisdell Center started requiring everyone to have a ticket, it became necessary for the Commission to obtain an additional number of complimentary tickets to accommodate Commission referees, judges, boxing inspectors and other officials attending the show.

- (3) The report then recommends that the Commission limit its powers to take summary disciplinary action to those infractions that pose dangers to health and safety and show due regard for the requirements of the Administrative Procedures Act (APA).

The Commission does not concur with the recommendation to limit the Commission's powers to take summary disciplinary action to only those infractions that pose dangers to health and safety, because it would tend to defeat the purpose for which this statute was enacted.

The statute allowing the Commission to take summary disciplinary action was enacted because the time span involved in the hearing process precluded any meaningful, immediate disciplinary action, when it is most needed and appropriate. "Health and safety" were not factors in the enactment of this statute. Timeliness of action, particularly when a visiting boxer or second who is leaving the islands, has violated Commission rules, was the basis for this statutory power.

The Honorable Clinton T. Tanimura
Page 5
January 9, 1986

The statute finally gave the Commission legal recourse and leverage in dealing with visiting boxers and seconds who are here today and gone tomorrow.

We also believe that the summary disciplinary action provision itself provides for compliance with the APA with language that states "The licensee shall have a right to a hearing in accordance with Chapter 91."

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert M. Lee".

ROBERT M. LEE, Chairman
Hawaii State Boxing Commission

ATTACHMENT 3



GEORGE R. ARIYOSHI
GOVERNOR

RUSSEL S. NAGATA
Director
COMMISSIONER OF SECURITIES

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

ROBERT A. ALM
DEPUTY DIRECTOR

January 9, 1986

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OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Suite 500
Honolulu, HI 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your "Sunset Evaluation Report Boxing Contests."

The Department of Commerce and Consumer Affairs is in general agreement with the observations and evaluation you have made of the Boxing Commission. You and your staff should be commended for the accurate and thorough assessment of the regulation of boxing contests.

At this time we wish to comment on Recommendation 3 which directs the "Boxing Commission work with the Department of Commerce and Consumer Affairs to revise its examinations to provide for objective, valid, and reliable testing of manager, second, referee and judge applicants."

Commencing on September 1, 1985, the department contracted with a professional testing agency to develop and/or revise the boxing examinations. At the December 3, 1985 Commission meeting, samples of the multiple choice format of examinations for referees, judges, managers, and seconds were reviewed and approved by the Commission. It is anticipated that one examination will be completed and can be administered as early as February 1986. The department plans to have the examination branch administer and grade the examinations. We plan to continue in our efforts to have the examinations revised and appreciate your comments in this area.

Very truly yours,

Russel S. Nagata
Director