

OPINION NO. 2004-009**Syllabus:**

A person who conducts a "public boxing or wrestling match or exhibition," as defined by R.C. 3773.31(F), is required to comply with the provisions of R.C. 3773.31-.57 when the contestants in the match or exhibition are not paid and none of the exceptions set forth in R.C. 3773.31(G) or R.C. 3773.32 apply.

To: Paul Amodio, Executive Director, Ohio Athletic Commission, Warrensville Heights, Ohio

By: Jim Petro, Attorney General, March 19, 2004

You have requested an opinion concerning the regulation of public boxing and wrestling matches and exhibitions. According to your letter and a telephone conversation between you and a member of my staff, you wish to know whether a person who conducts a public boxing or wrestling match or exhibition must comply with the provisions of R.C. 3773.31-.57 when the contestants in the match or exhibition are not paid and none of the exceptions set forth in R.C. 3773.31(G) or R.C. 3773.32 apply.

To help understand your inquiry, we must first briefly examine the provisions of R.C. 3773.31-.57, which prescribe the conditions under which public boxing or wrestling matches or exhibitions¹ are to be conducted. R.C. 3773.32 provides, in part:

No person shall promote, sponsor, or conduct a public boxing match or exhibition unless such person is licensed under section 3773.36, secures a

¹For purposes of R.C. 3773.31-.57, R.C. 3773.31(F) defines a "[p]ublic boxing or wrestling match or exhibition" as "any public or private competition that involves the sports of boxing, kick boxing, karate, tough man contests or tough guy contests, professional wrestling, or any other form of boxing or martial arts." See 8 Ohio Admin. Code 3773-1-01(Q).

permit to conduct the match or exhibition under section 3773.38, and otherwise complies with sections 3773.31 to 3773.57 of the Revised Code.

No person shall promote or conduct a professional wrestling match or exhibition unless such person is licensed under section 3773.36, secures a permit to conduct the match or exhibition under section 3773.38, and otherwise complies with applicable provisions of sections 3773.31 to 3773.57 of the Revised Code.

See generally R.C. 3773.99(B) (a person who violates R.C. 3773.32 is guilty of a misdemeanor of the first degree).

R.C. 3773.35, in turn, requires a person who wishes to conduct a public boxing or wrestling match or exhibition to apply to the Ohio Athletic Commission (OAC) for a promoter's license. *See* R.C. 3773.32. Each application for a promoter's license must be accompanied by the application fee prescribed in R.C. 3773.43 and by a cash bond, certified check, bank draft, or surety bond of not less than five thousand dollars conditioned for compliance with R.C. 3773.31-.57 and the rules of the OAC. R.C. 3773.35. In addition, under certain circumstances, R.C. 3773.54 requires an applicant to file with his application a copy of a certificate verifying the filing with, and approval by, the Treasurer of State of a bond conditioned for the payment of the tax imposed by R.C. 3773.54.² Upon an applicant's compliance with R.C. 3773.35 and R.C. 3773.54, if applicable, the OAC shall issue a promoter's license to the applicant if it finds that "the applicant is not in default on any payment, obligation, or debt payable to the state under R.C. 3773.31-.57, is financially responsible, and is knowledgeable in the proper conduct of [public boxing or wrestling] matches or exhibitions." R.C. 3773.36.

A person who holds a promoter's license issued pursuant to R.C. 3773.36 and who desires to conduct a public boxing or wrestling match or exhibition where one or more contests are to be held must obtain a permit from the OAC allowing the match or exhibition. R.C. 3773.38; *see* R.C. 3773.32. Upon receipt of an application for a permit to hold a public boxing or wrestling match or exhibition under R.C. 3773.38 and the permit fee prescribed by R.C. 3773.43, the OAC may, if it determines that the applicant has met all of the requirements specified in R.C. 3773.39(A),³ issue the applicant a permit allowing the match or

²R.C. 3773.54, which requires a "person who conducts a public boxing match or exhibition to which [R.C. 3773.31-.57] apply ... to pay to the [OAC] a tax of five per cent of the gross proceeds from the sale of tickets to the match or exhibition[.]" provides, in part, as follows:

The commission before granting a promoter's license under [R.C. 3773.36] to any person other than a promoter of professional wrestling, shall obtain from the applicant a bond in the sum of not less than one thousand dollars, to be approved in form and sufficiency of its sureties by the treasurer of state. The bond shall be payable to the treasurer of state and shall be conditioned for the payment of the tax imposed by this section. Upon the filing and approval of the bond, the treasurer of state shall issue to the applicant two copies of a certificate verifying the filing and approval. The applicant shall file one copy in the office of the commission with the license application. No license shall be issued until the certificate is filed.

³R.C. 3773.39(A) provides, in part, as follows:

exhibition described in the application. R.C. 3773.39(B).⁴ A person who holds a permit allowing a public boxing or wrestling match or exhibition may "conduct only the match or exhibition named in the permit." R.C. 3773.39(C).

Various provisions in R.C. 3773.31-.57 regulate the activities of, and impose duties upon, a person who holds a permit allowing a public boxing or wrestling match or exhibition. *See* R.C. 3773.32. *See generally* R.C. 3773.47(A) (a person who holds a permit allowing a public boxing or wrestling match or exhibition may not violate a provision of R.C. 3773.31-.57 or any rule of the OAC); 8 Ohio Admin. Code 3773-1-10(A) (same). *See generally also* R.C. 3773.99(B) (a person who violates R.C. 3773.47 is guilty of a misdemeanor of the first degree). R.C. 3773.40 provides that a person who holds a permit allowing a public boxing or wrestling match or exhibition may not hold the match or exhibition at any time or place other than that stated on the permit, allow a person who is not a contestant named in the application for the permit to participate in the match or exhibition, allow an unauthorized substitute to participate in the match or exhibition, charge a higher admission price for the match or exhibition than that stated in the application for the permit, or pay a greater compensation or percentage of the gate receipts to any contestant than that stated in the application for the permit. R.C. 3773.50 prohibits the person from exceeding the authorized capacity of the facility or that part of the facility used for the public boxing or wrestling match or exhibition. The person also may not knowingly permit a person less than eighteen years of age to participate in the match or exhibition, permit gambling, betting, or wagering on the result of a contingency in connection with the match or exhibition, or conduct or allow to be conducted a sham or fake match or exhibition unless the sport is professional wrestling. R.C. 3773.46.

In addition, a person who holds a permit allowing a public boxing or wrestling match or exhibition is required to provide each contestant in the match or exhibition with life insurance and insurance for hospital, nursing, and medication expenses and for physicians' and surgeons' services. R.C. 3773.44. Also, the person is required to insert into each advertisement of the match or exhibition the price of admission, R.C. 3773.49, sell tickets only at the box office on the premises in which the match or exhibition is held or additional

[T]he Ohio athletic commission shall determine if the applicant holds a valid promoter's license issued pursuant to [R.C. 3773.36]. Upon receipt of an application for a permit to hold a public boxing match or exhibition, the commission also shall determine if the contestants are evenly and fairly matched according to skill, experience, and weight so as to produce a fair and sportsmanlike contest, and whether the applicant is financially responsible and is able to pay to each contestant the compensation or percentage of the gate receipts named in the application. The commission may, if applicable, require the applicant to deposit with it within forty-eight hours before the match or exhibition the total compensation or estimated portion of gate receipts to be paid all contestants named in the application made under [R.C. 3773.38].

⁴Pursuant to R.C. 3773.57, the OAC may not issue a permit allowing a public boxing or wrestling match or exhibition in a municipal corporation or the unincorporated portion of a township if the commission determines that the municipal corporation or township, respectively, has in effect an ordinance or resolution prohibiting such matches or exhibitions.

locations authorized by the OAC, *id.*, and pay the OAC a tax of five percent of the gross proceeds from the sale of tickets to a public boxing match or exhibition,⁵ R.C. 3773.54.

There are instances, however, when a person who conducts a public boxing or wrestling match or exhibition is not required to comply with the provisions of R.C. 3773.31-.57. First, R.C. 3773.01(G) provides, in part:

Sections 3773.31 to 3773.57 of the Revised Code *do not apply* to elementary or secondary school, college, or university boxing, karate, or wrestling coaches who receive compensation for teaching or coaching boxing, karate, or wrestling only from the school, college, or university; to amateur boxers; or to *boxing, karate, or wrestling matches and exhibitions in which all of the contestants are amateur boxers, amateur participants in a karate match or exhibition, or amateur wrestlers from an elementary or secondary school, a college, or a university.* (Emphasis added.)

Secondly, R.C. 3773.32 provides, in part, as follows:

Sections 3773.31 to 3773.57 of the Revised Code do not apply to any boxing, karate, or wrestling match or exhibition conducted as part of an interscholastic or intercollegiate athletic program, or as part of an amateur athletic program sponsored by or under the supervision of the national amateur athletic union or the American olympic association in which all contestants are amateur boxers, amateur participants in a karate match or exhibition, or amateur wrestlers, or to any boxing, karate, or wrestling match or exhibition conducted under the supervision or control of the Ohio national guard, the state militia, or reserve officers' associations in which all contestants are members of the guard, militia, or officers' association.

Accordingly, a person who conducts a public boxing or wrestling match or exhibition is not required to comply with the provisions of R.C. 3773.31-.57 when (1) all of the contestants in the match or exhibition are amateur boxers, amateur participants in a karate match or exhibition, or amateur wrestlers from an elementary or secondary school, a college, or a university, (2) the match or exhibition is conducted as part of an interscholastic or intercollegiate athletic program, or as part of an amateur athletic program sponsored by or under the supervision of the national amateur athletic union or the American Olympic Association in which all contestants are amateur boxers, amateur participants in a karate match or exhibition, or amateur wrestlers, or (3) the match or exhibition is conducted under the supervision or control of the Ohio National Guard, the state militia, or reserve officers' associations in which all contestants are members of the guard, militia, or officers' association.

We will now turn to your specific question, which is whether a person who conducts a public boxing or wrestling match or exhibition must comply with the provisions of R.C. 3773.31-.57 when the contestants in the match or exhibition are not paid and none of the exceptions set forth in R.C. 3773.31(G) or R.C. 3773.32 apply. As explained above, the plain language of the statutory scheme governing the holding of public boxing and wrestling matches and exhibitions clearly states that any person who conducts a public boxing or

⁵As used in R.C. 3773.31-.57, "[p]ublic boxing match or exhibition' means any public or private competition that involves the sports of boxing, kick boxing, karate, tough man contests or tough guy contests, or any other form of boxing or martial arts, but does not include professional wrestling." R.C. 3773.31(D); *see* rule 3773-1-01(P).

wrestling match or exhibition is required to comply with the provisions of R.C. 3773.31-57 unless one of the exceptions set forth in R.C. 3773.31(G) or R.C. 3773.32 applies. Because your question concerns situations in which none of the listed exceptions apply, your question is, in essence, whether a person who conducts a public boxing or wrestling match or exhibition must comply with the provisions of R.C. 3773.31-57 when the contestants in the match or exhibition are not paid.

It is a well-established precept that exceptions to the application or operation of the provisions of a statutory scheme shall be recognized only when such exceptions are set forth clearly and unambiguously by statute. *Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one); *Siegfried v. Everhart*, 55 Ohio App. 351, 353, 9 N.E.2d 891 (Summit County 1936); 2003 Op. Att’y Gen. No. 2003-007 at 2-46. See generally *Columbus-Suburban Coach Lines, Inc. v. P.U.C.O.*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8 (1969) (“[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used”). Thus, “what is not clearly excluded from the operation of a law is clearly included therein.” *Pioneer Linen Supply Co. v. Evatt*, 146 Ohio St. 248, 251, 65 N.E.2d 711 (1946).

The General Assembly’s detailed description in R.C. 3773.31(G) and R.C. 3773.32 of the situations in which persons who conduct public boxing and wrestling matches and exhibitions are excepted from the provisions of R.C. 3773.31-57 indicates its intention that these are to be the sole exceptions. See generally *Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997 (1997) (the rule of statutory construction, *expressio unius est exclusio alterius*, means that “the expression of one thing is the exclusion of the other,” and “[u]nder this maxim, ‘if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded’” (citations omitted)); *Scheu v. State*, 83 Ohio St. at 157-58, 93 N.E. 969 (“we must observe the rule that an exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience”). Thus, if the circumstances incident to a public boxing or wrestling match or exhibition are such that the match or exhibition does not meet all of the requirements of an exception set forth in R.C. 3773.31(G) or R.C. 3773.32, the person who conducts the match or exhibition is required to comply with the provisions of R.C. 3773.31-57, regardless of any other facts, including the fact that the contestants in the match or exhibition are not paid. See generally *Moss v. Ohio Ass’n of United States of Am./Amateur Boxing Fed’n, Inc.*, No. 2266, 1987 Ohio App. LEXIS 6357, *5-6 (Clark County Apr. 2, 1987) (“[t]he state has intervened by requiring licenses for those promoting, sponsoring or conducting prize fights or boxing exhibitions. R.C. 3773.31 et seq. These statutes, however, exempt *particular* amateur boxing activities from coverage” (emphasis added)). Therefore, a person who conducts a public boxing or wrestling match or exhibition must comply with the provisions of R.C. 3773.31-57 when the contestants in the match or exhibition are not paid unless one of the exceptions listed in R.C. 3773.31(G) or R.C. 3773.32 applies.

Based on the foregoing, it is my opinion, and you are hereby advised that a person who conducts a “public boxing or wrestling match or exhibition,” as defined by R.C. 3773.31(F), is required to comply with the provisions of R.C. 3773.31-57 when the contestants in the match or exhibition are not paid and none of the exceptions set forth in R.C. 3773.31(G) or R.C. 3773.32 apply.