

3157.

BOXING AND WRESTLING COMMISSION, COUNTY—SHERIFF HAS NO AUTHORITY TO APPOINT SUCH COMMISSION TO SUPERVISE BOXING AND WRESTLING MATCHES HELD WITHIN COUNTY—SECTIONS 12802, 12803 G. C.

SYLLABUS:

A sheriff does not, under Section 12803, General Code, or any other provision of law, possess the authority to appoint a county boxing and wrestling commission to supervise boxing and wrestling matches held within the county.

Columbus, Ohio, December 21, 1940.

Bureau of Inspection and Supervision of Public Offices,
State House Annex,
Columbus, Ohio.

Gentlemen:

This will acknowledge your communication of December 9, 1940, which is as follows:

"In lieu of the written permission, provided for by Section 12803, General Code, the sheriff of a county in this state has appointed a five-member boxing commission for the purpose of supervision of boxing and wrestling matches held in the county. This commission organized and adopted rules and regulations along the lines of the plan used by City Boxing Commissions.

During the period of time this commission has functioned, it has assessed and collected as fees certain percentages of the gate receipts of the matches supervised, which fees have accumulated, no disbursements have been made.

Your opinion is respectfully requested upon the following:

1. May this commission continue in its present capacity, and assess and collect fees as outlined above?
2. If your answer to question No. 1 is in the affirmative, should such fees collected be considered (a) as fees earned by the office of the sheriff, to be turned over to the county; or (b) may the accumulated fees mentioned above, and future collections be turned over to charitable organizations by the boxing commission?"

Your question may be resolved by adverting to the familiar and elemental rule that public officers have only those powers specifically granted by statute and in addition such powers as must be necessarily implied to carry into operation the specifically granted powers. In 32 O. J. at page 933, Section 74, the rule is stated thus:

"As a general rule, public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated."

A corollary flowing from that rule is that where a statute grants a power to a public officer, the power may be exercised only in the manner specified by the statute. See *Frisbie Company vs. East Cleveland*, 98 O. S. 266; also 32 O. J., page 934, wherein it is stated:

"It is equally well settled that where the statute prescribes the mode by which the power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of the power granted."

Section 12803, General Code, to which you refer in your letter as the statute under which the sheriff purports to act, is as follows:

“The next preceding section shall not apply to a public gymnasium or athletic club, or any of the exercises therein, if written permission for the specific purpose has been obtained from the sheriff of the county, or, if the exercises or exhibition are within the limits of a municipal corporation, from the mayor of such corporation.”

The “next preceding section” referred to is Section 12802, General Code, which provides a fine for public boxing exhibitions. A reading of Section 12803, *supra*, will suffice to show, when the above rule is applied, that the grant of power to the sheriff to give written permission for such exhibits is a denial of the power of the sheriff to appoint a commission to permit or to supervise boxing and wrestling matches. It follows that there being no authority in law for the sheriff to appoint a boxing commission, such boxing commission acts without authority in attempting to permit or to supervise boxing and wrestling matches or to assess fees on boxing and wrestling matches held in the county.

A similar question involving the power of a mayor to appoint a boxing commission under Section 12803, General Code, was considered by a past Attorney General in an opinion dated September 27, 1933 and found in *Opinions of the Attorney General for 1933*; Vol. II, page 1493. The same conclusion as is here reached is found in the third paragraph of the syllabus of that opinion and is as follows:

“Section 12803 does not empower a mayor of a municipality to create or appoint a boxing commission or advisory board for the purpose of approving applications for permission to hold boxing exhibitions within a municipality or for the purpose of supervising and regulating such events after permission to hold the same has been granted by the mayor. Neither does section 12803 authorize the mayor of a municipality to charge a fee for granting permission to hold a boxing exhibition within a municipality.”

Your first question having been answered in the negative, it is unnecessary to consider the second question you present.

You are accordingly advised and it is my opinion that a sheriff does not, under Section 12803, General Code, or any other provision of law, possess the authority to appoint a county boxing and wrestling commission to supervise boxing and wrestling matches held within the county.

Respectfully,

THOMAS J. HERBERT,
Attorney General.