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August 24, 2023

Honorable Kristi Noem
Office of the Governor
500 E. Capital Avenue
Pierre, SD 57501

OFFICIAL OPINION No. 23-02

Re: Regulation of Slap Fighting Contests by the South Dakota Athletic Commission

Dear Governor Noem,

As Governor of the State of South Dakota you have requested an official opinion from the Attorney General's Office on the following question:

QUESTION:

Does the South Dakota Athletic Commission have jurisdiction to regulate slap fighting contests or exhibitions?

ANSWERS:

No, the South Dakota Athletic Commission does not have jurisdiction to regulate slap fighting contests or exhibitions under current state law.

FACTS:

Slap fighting is held out as a combat sport were participants, wearing no gloves or protective headgear, trade open hand blows to the face. The Nevada Athletic Commission determined that slap fighting met the Nevada

statutory definition of unarmed combat, and concluded it fell under the jurisdiction of the Nevada Commission. The South Dakota Athletic Commission has fielded inquiries regarding its jurisdiction and authority to regulate slap fighting contests in South Dakota.

IN RE QUESTION:

Based upon the above facts, you have asked whether the South Dakota Athletic Commission (Commission) has jurisdiction to regulate slap fighting contests or exhibitions?

The Commission is vested with the authority to regulate all “contests and exhibitions of boxing, kickboxing, and mixed martial arts competitions and sparring exhibitions held in the State[.]” SDCL 42-12-9.

When interpreting a statute to determine its meaning, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Commission*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “When the language in a statute is clear, certain and unambiguous, there is no reason for construction[.]” *In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (internal citations omitted). When the intent of the statutory language is unclear, “the intent of the [L]egislature is derived from the plain, ordinary and popular meaning of the statutory language.” *Id.*

Based upon the unambiguous language of SDCL 42-12-9, slap fighting must fall within the statutory definitions of either boxing, kickboxing, or mixed martial arts for the Commission to have authority to regulate slap fighting contests or exhibitions.

“Boxing” is defined by state law as “the sport or practice of fighting with fists in which participants wear boxing gloves.” SDCL 42-12-7.1(3). I conclude, based upon this definition, that slap fighting cannot be considered boxing under State law. Slap fighting does not involve the use of fists, and slap fighting participants generally do not wear boxing gloves.

“Kickboxing” is statutorily defined as “the sport of attack and defense in which participants wear boxing gloves and throw punches as in boxing and kick with bare feet as in karate.” SDCL 42-12-7.1(4). As with boxing, I conclude slap fighting does not meet the statutory definition of kickboxing. Again, slap fighting does not generally involve the use of boxing gloves. Slap fighting also does not involve the “[throwing of] punches as in boxing” or “kick[ing] with bare feet as in karate.” *Id.* “Mixed martial arts” is defined as “the sport of fighting in which participants inflict or employ kicks, punches, blows, holds, and other

techniques to injure, stun, choke, incapacitate, or disable an opponent, using a combination of boxing, kickboxing, wrestling, grappling, or other martial arts.” SDCL 42-12-7.1(5). As established above, slap fighting does not meet the statutory definition of boxing or kickboxing. Wrestling is commonly defined as “a sport in which two competitors attempt to unbalance, control, or immobilize each other by various holds and maneuvers.” *Wrestling*, American Heritage Dictionary, <https://www.ahdictionary.com/word/search.html?q=wrestling> (last visited 05/26/2023). Grappling is defined as “a struggle or contest in which the participants attempt to wrestle with each other by clutching or gripping.” *Grapple*, American Heritage Dictionary, <https://www.ahdictionary.com/word/search.html?q=grapple> com (last visited 05/26/2023).

The act of slapping another individual with an open hand blow does not meet the generally accepted definition of wrestling or grappling. “Martial art[s]” are defined as “the arts of self-defense, such as aikido, judo, karate, or tae kwon do, often practiced as sports.” *Martial arts*, American Heritage Dictionary, <https://www.ahdictionary.com/word/search.html?q=martial+arts> com (last visited 05/26/2023). In comparison to those sports traditionally considered to be martial arts, I conclude slap fighting is not a “martial art” as that term is used in SDCL 42-12-7.1(5). While slap fighting participants inflict blows upon each other to incapacitate or disable their opponent, I conclude these blows are not delivered using a combination of “boxing, kickboxing, wrestling, grappling, or other martial arts.” *Id.* As such, slap fighting is not a mixed martial art as defined by state law.

CONCLUSION

I conclude that slap fighting does not meet the definition of any of the fighting styles referenced in SDCL 42-12-9. As such, the Commission does not have the authority to regulate slap fighting contests or exhibitions in South Dakota. At this time, the Legislature has not authorized the Commission to regulate slap fighting contests or exhibitions in the State.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/SRB/dd