

**LETTER OPINION  
2003-L-32**

July 23, 2003

Honorable Amy Warnke  
State Representative  
PO Box 12982  
Grand Forks, ND 58208-2982

Dear Representative Warnke:

Thank you for your letter asking whether N.D.C.C. ch. 53-01 and N.D.A.C. ch. 72-02.2-01.1 apply to a “mixed martial arts” match proposed to be held in Grand Forks at the Ralph Engelstad Arena.<sup>1</sup>

Section 53-01-07, N.D.C.C., provides, in part:

The secretary of state shall supervise all boxing, kickboxing, or sparring exhibitions held in the state and may:

1. Adopt rules governing the conduct of boxing, kickboxing, and sparring exhibitions.

In 1997, the Secretary of State promulgated administrative rules contained in N.D.A.C. ch. 72-02.2-01.1. Section 72-02.2-01.1-03, N.D.A.C., provides, in part:

The [athletic advisory] board and the commissioner<sup>2</sup> have sole direction, management, control, and jurisdiction over all professional boxing or sparring matches to be conducted or held within the state of North Dakota and over all licenses to any and all persons who participate in boxing or sparring.

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<sup>1</sup> Although the background memo you submitted with your request indicated that the Ralph Engelstad Arena had signed an agreement to host the event, a faxed message issued on June 19, 2003, to the promoters indicated that the Ralph Engelstad Arena, Inc., was “officially passing on the [mixed martial arts] event” due to a lack of “support” by the state.

<sup>2</sup> The commissioner is the Secretary of State. N.D.C.C. § 53-01-02.

The commissioner will not approve the following type of boxing matches:

1. Matches containing both amateur and professional contests on the same card.
2. Matches in which more than two contestants appear in the ring at the same time.
3. Matches in which members of the opposite sex are matched against each other.
4. Any barroom type brawls, "so you think you're tough" type contests, roughneck type matches, or matches of a similar character or nature if any contestant receives remuneration directly or indirectly whether or not a contestant has prior organized amateur or professional training.
5. Matches in which there are no gloves used by the contestants.

(Emphasis supplied.)

In accordance with this provision, a representative of Ralph Engelstad Arena, Inc., contacted the Secretary of State regarding a proposed mixed martial arts event at that arena. Staff at the Secretary of State's office stated they had not received an application for a promoter's license concerning this event. Accordingly, the Secretary of State has not made a formal determination concerning the event, although he did express concern over the event with management at the Ralph Engelstad Arena on two grounds. First, the Secretary of State indicated his belief that he was not authorized to approve the event under the provisions of N.D.A.C. §72-02.2-01.1-03(4).<sup>3</sup> Furthermore, the Secretary of State noted that the 2003 Legislative Assembly had rejected a bill which would have given his office the authority to approve and regulate mixed fighting style competitions which he viewed as being essentially the same as mixed martial art competitions. See S.B. 2161, 2003 N.D. Leg.; E-mail from Al Jaeger to Chris Semrau (June 18, 2003).

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<sup>3</sup> Neither N.D.C.C. ch. 53-01 nor N.D.A.C. ch. 72-02.2-01.1 authorize any specific civil penalties or remedies to enforce the law or rules. However, criminal penalties do apply for a violation of the law or rules. N.D.C.C. § 53-01-19 makes it a class B misdemeanor for a person to violate the chapter or any rule adopted under it.

From the background information you provided with your request, it is apparent the promoters of the Grand Forks event disputed the characterization of the event as the type prohibited by N.D.A.C. § 72-02.2-01.1-03(4), i.e., that it would be a barroom type brawl, roughneck type match, or match of a similar character or nature. The promoters argue that their match could be differentiated in that it does not use holds or techniques not allowed in the Olympics; that this type of match is sanctioned by several sanctioning bodies; that there is a system of rules for licensing and qualifying participants; and that the match would have trained referees, contestants would wear gloves, and bouts would have set time limits.

The issues raised by your letter and the background memo essentially relate to whether the mixed martial arts matches are regulated by the state and, if so, whether they constitute a match which the Secretary of State may not approve under N.D.A.C. § 72-02.2-01.1-03(4). In expressing concern about the match, the Secretary of State cited two factors, as indicated above. One is that the Legislature specifically rejected passage of Senate Bill No. 2161 which would have permitted the Secretary of State to supervise mixed fighting style competitions and issue rules governing such exhibitions. While it was undoubtedly prudent and practical for the Secretary of State to take note of the rejection by the Fifty-eighth Legislative Assembly of Senate Bill No. 2161, as a matter of law, courts generally do not determine legislative intent based on the Legislature's failure to act on a measure. "[T]he defeat of legislation is not indicative of legislative intent, for public policy is declared by the Legislature's action, not by its failure to act." Warner and Company v. Solberg, 634 N.W.2d 65, 71 (N.D. 2001) (citing James v. Young, 43 N.W.2d 692 (N.D. 1950)). See also Coles v. Glenburn Public School District No. 26, 436 N.W.2d 262, 265, n.2 (N.D. 1989).

Consequently, the public policy of the state regarding regulation of mixed fighting style competition or mixed martial arts may not be directly determined based on the Legislature's rejection of Senate Bill No. 2161. Thus, the questions remain whether the proposed match is subject to state regulation and, if so, whether the Secretary of State is barred from approving it.

The above-cited statute and rules regulate boxing and kickboxing matches. "Boxing" is defined as "a contest or match in which the act of attack and defense is practiced with fists by two contestants." A "match" means "any bout, contest, or sparring, in which participants intend to and actually inflict punches, blows, or employ other techniques to temporarily incapacitate an opponent in a match, regardless of whether the object of the participants is to win or display their skills without striving to win." N.D.A.C. § 72-02.2-01.1-01(2) and (7).

According to the information in the background memo, each mixed martial arts bout is limited to two contestants and the participants are required to wear gloves. Mixed martial arts uses holds or techniques from judo, tae kwon do, wrestling, and boxing that presumably involve contests practicing the act of attack and defense. The participants intend to and actually inflict punches, blows, or employ other techniques to temporarily incapacitate an opponent in a match. Thus, it is my opinion that a match such as described in the background memo could be fairly and reasonably characterized, at least in substantial part, as a boxing match within the meaning of the rules and is therefore subject to regulation.

The other factor cited as a concern by the Secretary of State was that his office viewed mixed martial arts competitions as being barred by N.D.A.C. §72-02.2-01.1-03(4). As noted above, nothing in the materials presented by the promoter indicates that these competitions resemble a barroom type brawl, roughneck type contest, etc. As such, there does not appear to be a prohibition under paragraph 4. Having said that, however, whether the "boxing match" would be prohibited under N.D.A.C. § 72-02.2-01.1-03(4) is a factual matter beyond the scope of the opinion process. See, e.g., N.D.A.G. 2002-F-07. Whether the match is a barroom type brawl, roughneck type match, or match of a similar character or nature is a matter that should be resolved by the Secretary of State and the State Athletic Advisory Board. They are the officials with the relevant experience and charged by law with implementing the applicable statutes and rules. The promoters may wish to contact the Secretary of State directly with their position and apply for appropriate licensing under N.D.C.C. ch. 53-01.

Sincerely,

Wayne Stenehjem  
Attorney General

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