

Boxing Contests, Prohibited. Prize Fighting, Prohibited. Census of Territory, How Ascertained. Inhabitants, Number of in District, How Determined. Kiley Boxing Law, Repealed.

The only method of determining the number of inhabitants residing within a certain area is by actual count.

Section 8576, Revised Codes, prohibits boxing, wrestling, slugging matches, etc., and such action has not been repealed nor amended.

June 3, 1915.

Hon. Frank A. Wright,
County Attorney,
Lewistown, Montana.

Dear Sir:

I am in receipt of your letter of the 29th ultimo, submitting for the consideration of this office the questions:

1. What is the method of procedure in determining the number of bona fide inhabitants residing within the quarter mile limit as prescribed in Section 2, Chapter 87, Laws 1914?
2. Is there any law now in existence in the State of Montana prohibiting boxing contests?

Section 2, Chapter 87, Laws of 1914, is mandatory in its terms, in so far as it prohibits the issuance of a license to any retail liquor dealer "in any place having a population of less than fifty inhabitants, who are bona fide residents for at least six months, within a radius of one quarter mile of the location of the license." In case of a dispute or doubt, the only method of determining the number of inhabitants residing within such area, would be by actual count, either by the treasurer, the sheriff, the board of county commissioners, or someone authorized to make such count, or by any evidence which would prove the fact, for this is wholly a question of fact to be proven in the same manner that similar questions are proved.

Section 8576, Revised Codes of 1907, which prohibits boxing, wrestling or slugging matches, except as specified in that section, is still the law of this state, the same never having been repealed, or amended. It was so recognized by the Supreme Court of this state, in

Brown vs. Independent Publishing Co., 48 Mont. 374.

Chapter 97, Laws of 1913, known as the "Kiley Boxing Law" by its terms amended said Section 8576, but said Kiley Bill never finally became a law. Hence, it is ineffective, either to amend or repeal the former law. This question was directly passed upon by the Supreme Court of this state, with reference to the Military Bill, known as the "Donohue Bill," wherein the court said:

"The passage of the Donohue Bill by the legislature was not final, and never became effective by virtue of the referendum. It required the approval of the people before becoming a law and this it never had. If it did not become a law for constructive purposes, it could not be one for repealing purposes. (State ex rel Hay vs. Alderson, 49 Mont. 387, 142 Pa. 210)."

In re McDonald et al. 49 Mont. 454, 477; 143 Pac. 947.

If in the above quotation we strike out the phrase "Donohue Bill" and insert in lieu thereof "Kiley Bill," we then have the positive statement from the Supreme Court that an Act, which, upon submission to the people for their approval or rejection, is rejected, never finally became a law for any purpose. Hence, said Section 8576, Revised Codes, is still the law of this state relating to boxing, etc., contests.

Yours very truly,

J. B. POINDEXTER,

Attorney General.