

MINUTES
S. C. Auctioneers' Commission

10:00 a.m., November 6, 2000

110 Centerview Drive, Kingstree Building, Room 111

Columbia, South Carolina

Mr. Archie Moody, Chairman, of Darlington called the regular meeting to order at 10:00 a. m., Monday, November 6, 2000, with a quorum present. Other members participating during the meeting included: Mr. Fred Mullis, of Lancaster; Mr. Jeffrey Shaw of West Columbia; and Ms. Rebecca Frierson, of Newberry.

Members of staff participating during the meeting included: Ms. Lou Ann Pyatt, Administrator; Ms. Jackie Carter, Administrative Assistant; Mr. Randall Bryant, Assistant Deputy Director; Ms. Sharon Dantzler, Deputy General Counsel, LLR-Office of General Counsel; Mr. Larry Hall, LLR Investigator; Mr. Blain Mosher, Administrative Assistant; and Ms. Sandra Dickert, Administrative Assistant.

Mr. Moody announced the meeting was being held in accordance with the Freedom of Information Act [(30-4-80(e))] by notice mailed to The State newspaper, Associated Press, WIS-TV and all other requesting persons, organizations, or news media. In addition, notice was posted on the bulletin boards located at both of the main entrances of the Kingstree Building where the board office is located.

Invocation

Mr. Moody delivered the invocation.

Approval of the August 7, 2000 Meeting Minutes

Mr. Shaw moved the minutes from the August 7, 2000 meeting be approved as submitted. Mr. Mullis seconded the motion, which carried unanimously.

Chairman's Remarks

Mr. Moody presented a plaque to former commission member, Mae Buzhardt. He expressed his appreciation on behalf of the board and noted that she would be greatly missed.

Mr. Moody welcomed all present to the meeting.

Administrator's Remarks

Ms. Pyatt echoed Mr. Moody's remarks regarding Ms. Buzhardt. She further stated it has been a pleasure for her to work with Ms. Buzhardt.

Ms. Pyatt introduced Ms. Jackie Carter. She indicated Ms. Carter has transferred from the agency's Health Related Professions. She noted Ms. Carter would be the primary person for handling the auctioneer licenses and would be working as an Administrative Assistant to her in other areas.

Ms. Pyatt stated one of Ms. Carter's primary responsibilities would be the printing of the rosters and the new law. Ms. Carter would also be working on getting the new applications printed within the next couple of weeks.

Ms. Pyatt stated staff has already scheduled the continuing education classes. The first class would be conducted on Monday, November 13, 2000 at Greenville Tech. She noted staff is pleased to have Mr. Ivan Broadwell assisting staff in presenting this class. She indicated Mr. Broadwell has also agreed to assist with the other classes. She went on to say another continuing education class would be held on January 22, 2001 on James Island and planning to have a class in Columbia in March 2001. A location for the Columbia class has not yet been found. Another class will be held on May 28, 2001 at Florence/Darlington Tech.

Ms. Pyatt stated the next auctioneer exam is scheduled for December 4, 2000.

Ms. Pyatt presented a copy of the LLR Career Close Up featuring the auctioneers, which ran last week. She noted the agency has been working on Career Close Up page for some time and that the page appears in The State newspaper every week. The page featuring different careers located within the agency.

Ms. Pyatt stated that as of today, there are 987 licensees, 155 firms and three auctioneer apprentices who have renewed.

List of Licenses Issued

Ms. Pyatt presented the members with a list of licenses issued since the August 7, 2000 meeting. She pointed out that approximately 35 licenses have been issued. She noted that most of the licenses issued have been for licensees, however, three of the licenses have been issued to firms.

Strategic Plan

Mr. Bryant shared with the commission members the agency's strategic plan, which is a road map as to how the agency would proceed over the next five to ten years.

Legislative Update

Ms. Dantzler stated the proposed regulations were published in the State Register. A

possible hearing before the Administrative Law Judge was been set for 1:30 p.m., Thursday, December 14, 2000. All comments regarding the proposed regulations must be received by 5:00 p.m., November 27, 2000. She asked that some of the commission members be available to attend the hearing should a one be held. She noted staff would not be able to inform the commission if there will not be a hearing until after November 27th.

Ms. Dantzler stated that if no hearing is held the proposed regulations would be pending before the General Assembly when it convenes in January 2001.

Mr. Moody stated being a member of the commission is an honor and a job because the members represent all of the auctioneer licensees. He also indicated the commission appreciates staff's assistance in all matters.

Mr. Moody welcomed Ms. Rebecca Frierson as a new member to the commission.

Mr. Moody expressed the commission's condolences to Mr. Shaw on the loss of his mother.

Advisory Opinions

There were no advisory opinions given during the November 6, 2000 meeting.

New Business

1. Applications

Jonathan Patrick Ammons

Mr. Ammons has taken and passed the exam. However, he has an arrest record and has some items on his credit report that needed to be addressed.

Mr. Ammons stated he had been a police officer in Whitmire when he was involved in a shooting incident in which he had been injured. He further stated he had taken the incident to court over a worker's comp claim. He subsequently lost his job which caused the items to appear on the credit report. He said he had been arrested prior to becoming a police officer and had thought his record had been expunged.

Mr. Ammons stated he has an opportunity to work with two different auctioneer firms, however, he has not yet committed to either one.

Michael William Jones

Mr. Jones did not appear at today's meeting and will be rescheduled for the next meeting.

Theodore Wayne Fleisnor

Mr. Fleisnor holds an auctioneer's license in Wisconsin. However, he does have an arrest record and there are some items on his credit report to be addressed.

Staff has made special arrangements for Mr. Fleisnor to take the exam today.

Mr. Fleisnor stated he is working with Mr. Chris Pracht, of Chris Pracht Auctioneers. Mr. Pracht stated Mr. Fleisnor contacted his office several weeks ago. He went on to say Mr. Fleisnor has obtained the national contract with Winn Dixie, EDI to dispose of their business inventories. He went on to say Mr. Fleisnor had informed him he is not licensed in South Carolina and had asked him to assign the sale to him. Mr. Fleisnor would be happy to have Mr. Pracht hire him to set up the sale. However, the earnest money would come through Pracht Auctioneers escrow account.

Mr. Fleisnor stated his arrest record is an old WI. He noted his credit record shows items that are medically related and are administration fees his insurance company did not pick up. He is also involved in litigation with an automobile dealership for \$2,000 and will continue the litigation until it is resolved.

Terry L. Hyatt

Mr. Hyatt did not appear at today's meeting and will be rescheduled for the next meeting.

A. David Loeser, Jr.

Mr. Loeser did not appear at today's meeting and will be rescheduled for the next meeting.

Sean James Rucker

Ms. Carter stated Mr. Rucker has two items on his credit report.

Mr. Rucker stated he received two credit cards while he was in college and got in over his head. He explained that he has satisfied the Dillard's account. He went on to say the other account shows it has been paid in full.

David Allen Sanenbacher

Mr. Sanenbacher did not appear at today's meeting and will be rescheduled for the next meeting. Ms. Carter stated Mr. Sanzenbacher would be taking the exam on December 4th.

Reciprocal Applicants

Alan D. Loeser, Sr.

Ms. Carter stated Mr. Loeser is currently out of the country and would not be appearing at

today's meeting. She went on to say Mr. Loeser would be rescheduled for the next meeting.

Ms. Carter stated Mr. Loeser is planning to take the exam December 4th. She also noted he has two credit collections and two judgements. He had been asked to provide an explanation regarding his judgements. He holds an auctioneer license in Pennsylvania. She also stated he was scheduled to take the exam on September 11th, however, he did not appear to take the exam.

Guerry Dell Wise, Sr.

Mr. Wise did not appear at today's meeting and will be scheduled to appear at the next meeting.

Firm Applicants

PIMA Realty and Auction Sales

This applicant has satisfied the items on his credit report and was not required to appear. Ms. Pyatt had informed him he just needed to send in a photograph.

RGO Trading Company

Ms. Carter stated Mr. Owenby falsified his answer to the question regarding being arrested and failed to answer the question regarding being convicted of a crime of moral turpitude. His arrest record indicates at least four arrests and convictions.

Mr. Owenby stated these arrests and convictions had taken place approximately twenty years ago. He was under the impression the arrests and convictions had been expunged. He pulled his arrest records from the county November 1, 2000, which indicates "No criminal record". He didn't feel it was necessary to put the arrests and convictions on the application since the records were twenty years old.

Mr. Owenby stated that if he were granted a license he would be operating in Spartanburg. He is in the wholesale business and would like to have an outlet to run his excess inventory through.

Ms. Dantzler asked Mr. Owenby about his arrest in 1990. Mr. Owenby stated that arrest was for DUI, however, he never went to court in that matter and the charges were dropped.

Review of Investigative Process

Ms. Dantzler asked the commission allow her to discuss this matter at the next meeting.

Public Comments

Mr. Ivan Broadwell, Legislative Chairman, SC Auctioneers' Association, there are a couple problems developing within the state. He went on to say one of the problems deals with sales tax on charities. He presented the members with a letter he prepared to the South Carolina Department of Revenue (attached) on behalf of the South Carolina Auctioneers' Association. The Department of Revenue has determined that any time a charity, even though it is already exempt, uses a licensed auctioneer to conduct that sale, that auctioneer must collect sales tax on the sale. The charity loses its sales tax-exempt status because it uses a licensed auctioneer. The Department of Revenue is basing this determination on the tax law 12-36-70, which defines a retailer as an auctioneer. The Department of Revenue also uses the auctioneer law, section 40-6-20, which states that if a licensed auctioneer conducts a charity auction, that auctioneer comes under South Carolina auction law.

Mr. Broadwell stated there is an assumption that an auctioneer is a retailer, which is not a true assumption. He further stated that most of the auctioneers work for other individuals and do not hold retail tax numbers. These auctioneers are employees of the retailers who do hold the retail tax numbers. He points out that if an auctioneer works for a charity, particularly if he is non-paid, then he is an employee of that charity.

Mr. Broadwell stated he also points out that the Department of Revenue refers to section 40-6-20 as saying that "charity is an exempt organization from South Carolina Auctioneer Law unless they use a licensed auctioneer in which case he must comply with the law". He has no problem with that, however, it does not make him a retailer. He noted that this is a ruling, as opposed to being law.

Mr. Broadwell stated the association, by way of this letter, is asking the Department of Revenue to rescind its ruling so that a nonprofit organization may use a licensed auctioneer in a non-paid status to conduct the auction with having to have sales tax collected on the auction. He went on to say the association does not have an objection with an auctioneer being paid to conduct a charity auction if it is his course of business to conduct charity auctions. In that case the auctioneer becomes the agent and is required to collect sales tax.

Mr. Broadwell stated in addition there is a current problem regarding the auction law prohibiting any municipality from requiring auctioneers to have a license in that municipality to act as an auctioneer. He went on to say there seems to have been information distributed that South Carolina auction law governs the auctioneer, licenses the auctioneer, regulates the auctioneer, disciplines the auctioneer, however, it does not tax the auctioneer. Therefore the municipality can tax auctioneer. He indicated his problem with this premise is that a tax is a license.

Mr. Broadwell asked the commission to address this problem with the municipalities through the its general counsel.

Mr. Broadwell asked the commission to make a decision regarding the ruling made by the Department of Revenue and to perhaps support the association in petitioning the department to make a change in the ruling to that effect.

Mr. Shaw moved to endorse the South Carolina Auction Association on the matter of the ruling by the Department of Revenue. Ms. Frierson seconded the motion, which carried unanimously.

A discussion ensued regarding the municipalities taxing the auctioneers. During the discussion Ms. Dantzler informed the board that if section 40-6-190 were rewritten to directly address local taxation powers, the legislature would not pass it. She advised the commission to direct the legislative liaison to be very alert to any of the places where the larger question is getting taken up and that the auctioneers join their special needs into the larger question. She indicated it might prove useful for the association to meet with the League of Municipalities and the Association of Counties in attempt to come to an agreement in the matter.

Executive Session

Mr. Shaw moved the commission enter executive session to seek legal advice and to discuss disciplinary actions. Mr. Mullis seconded the motion, which carried unanimously.

Return to Open Session to Report on Executive Session

Mr. Moody noted for the record that no votes were take while the commission was in executive session.

Mr. Shaw moved the commission pass the Dismissal Report as submitted. Mr. Mullis seconded the motion, which carried unanimously.

Jonathon Ammons

Ms. Frierson moved the commission issue Mr. Ammons a probationary license for one year; that he provide the commission with a credit report, at his own expense, at the end of that year; and that he provide proof that the judgements are satisfied. The motion was seconded by Mr. Mullis and unanimously carried.

Theodore Wayne Fleisnor

Mr. Shaw moved the commission grant Mr. Fleisnor a license subject to successful passage of the exam. The motion was seconded by Mr. Mullis and unanimously carried.

Sean J. Rucker

Mr. Shaw moved the commission grant Mr. Rucker a license. Ms. Frierson seconded the motion, which carried unanimously.

RGO Trading Company

Mr. Shaw moved the commission deny this company a firm license. The motion was seconded by Mr. Mullis and unanimously carried

Adjournment

There being no further business, Mr. Mullis moved the meeting be adjourned. Mr. Shaw seconded the motion, which carried unanimously. The November 6, 2000 meeting of the S. C. Auctioneers' Commission adjourned at 12:10 p.m.

The next meeting of the S. C. Auctioneers' Commission has been scheduled for 10:00 a.m., Monday, February 26, 2000.



[Back to the Auctioneers' Commission Homepage](#)



[Go to the LLR Homepage](#)
