

MINUTES

South Carolina Auctioneer's Commission
Board Meeting
10:00 A.M., August 16, 2004
Synergy Business Park
110 Centerview Drive, Kingstree Building, Room 108
Columbia, South Carolina

Rebecca Frierson, Chairman, of Newberry, called the regular meeting of the S.C. Auctioneer's Commission to order at 10:00 a.m. Other Commission members present for the meeting included: Archie Moody, Vice Chairman, of Darlington; James Blocker; of Walterboro; Harriett McCoy, of Hopkins; and Fred Mullis, of Lancaster.

Staff members participating during the meeting included: Lenora Addison-Miles, Program Coordinator; Randy Bryant, Assistant Deputy Director; Sharon Dantzler, Deputy General Counsel-LLR Office of General Counsel; Sandra Dickert, Administrative Assistant; and Linda Holman, Administrative Assistant.

Members of the public attending the meeting included: Johnathon Ammons, Michael Atwater, Esq., Michael Bailey, Myron Bowling, Ivan Broadwell, Barry Kelley, Rodney Lee, Representative Walt McLeod, David Rogers, Dean Strickland, Cheryl Whipple, and Thomas Whitehead.

Meeting Called to Order

Ms. Frierson announced that public notice of this meeting was properly posted at the S. C. Auctioneer Commission office, Synergy Business Park, Kingstree Building, Room 108 and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

Invocation

Mr. Moody delivered the invocation.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Approval of the May 24, 2004 Meeting Minutes

Ms. Frierson stated she remembers a phrase from the May 24, 2004 meeting regarding grandfathering and Robert Revels in 1979.

MOTION

Mr. Mullis moved the Commission table approving the minutes of the May 24, 2004 meeting until the correction is made. Ms. McCoy seconded the motion, which carried unanimously.

Chairman's Remarks - Rebecca Frierson

Ms. Frierson stated this meeting is a formal meeting that is being recorded, transcribed and posted to the Commission's web page once approved by the Commission. She further stated that all remarks made should be true and the meeting is being conducted under the rules of parliamentary procedure.

Administrator's Remarks - Lenora Addison-Miles

Ms. Addison-Miles stated as of August 16, 2004, 1,003 auctioneers and 160 auction firms are currently licensed. She further stated that expired license letters and cease and desist orders were mailed on August 4, 2004 to those individuals and firms that have not renewed licenses for fiscal year 2005. She indicated those letters were not mailed to the individuals appearing before the Commission today. She said that on July 28, 2004 staff mailed probation letters to those individuals who are currently on probation and require either a new credit report or a new criminal history report at the end of that year period. She went on to say that pursuant to the Commission's order the end of the one-year would be September 9, 2004. She noted the letters were mailed as reminders to give the individuals thirty-day notice to submit the reports.

Ms. Addison-Miles stated during the June 4, 2004 exam there were six candidates, of which four passed. She further stated the average score was 77, with the high score being 89 (made by two individuals) and the low score being 51. She went on to say the next exam is scheduled for September 10, 2004.

Ms. Addison-Miles stated the Commission has received correspondence from NALLOA requesting all member boards send information regarding final disciplinary orders to NALLOA headquarters to be forwarded to member states. She further stated NALLOA is encouraging representation from each member state at its meetings. She noted that the next meeting is scheduled for February 7, 2005 in Reno, Nevada.

Ms. Addison-Miles stated that as of May 31, 2004 there was a cash balance of \$267,000 in the auctioneer's account and \$132,000 in the recovery fund.

Ms. Frierson asked that Ms. Addison-Miles send NALLOA a list of lapsed licenses.

Advisory Opinions, If Needed, Office of General Counsel

There were no advisory opinions given during the August 16, 2004 meeting.

Legislative Update, If Needed, Legislative Liaison Office

There was no legislative update given during the August 16, 2004 meeting.

Unfinished Business

There was no unfinished business to be discussed.

New Business

1. Request by Exam Candidate

a. Michael Bailey

Ms. Addison-Miles stated Mr. Bailey had appeared at the May 24, 2004 meeting to ask for the Commission's approval to take an oral exam. She went on to say he had requested to appear today in regard to the exam.

Michael Bailey appeared before the Commission at this time.

Mr. Bailey stated he attended Southeastern Auctioneer School in February 2004 and passed the school exam with an 84. He continued by saying he took the commission's exam in March 2004 and made a score of 53. He went on to say he took the exam again in June 2004 and made a 67. He has done everything in his power to understand the laws and this is the best he has gotten. He further stated he is asking the Commission to grant his license based on his score of 67. The passing score for the exam is 70. He indicated his wife holds a firm license and they have other auctioneers assisting them with auctions. However, with the holidays approaching those auctioneers would be holding their own auctions and would not be able to assist him.

Ms. Dantzler stated Section 40-6-230 of the auctioneer practice act states that applicants must pass the exam with a score approved by the Commission.

Mr. Bailey asked the Commission if he would be able to take an oral exam. Ms. Frierson stated he would be required to submit a document from his physician that he meets the ADA requirements to take an oral exam.

MOTION

Ms. McCoy moved, based on the score of 67 and that the law does allow the Commission to grant Mr. Bailey a license at this time, the Commission deny his request. The motion was seconded by Mr. Blocker and unanimously carried.

1. Applicants for Renewal a. Johnathan Ammons

Ms. Miles stated Mr. Ammons has applied for renewal of his auctioneer's license. The application contains a criminal history report as well as an incident report regarding pending charges against him. The office has received a petition containing 218 signatures in support of the Commission granting his license.

Mr. Ammons and his attorney, Mr. Michael Atwater, Esq., appeared before the Commission at this time.

Mr. Atwater stated Mr. Ammons is concerned with the posture of this matter being handled in public session. He further stated Mr. Ammons has already been licensed as an auctioneer and it appears that to him that looking at this action in regard to taking an adverse action against his license even at the time of renewal. He indicated there are certain requirements in the statute 40-1 and 40-6, which requires that several things be done and that the proceedings be confidential. He continued by saying Mr. Ammons received notice of a hearing and the notice did not give statutory language in regard to

what the Commission was referring to, whether or not an investigation has been initiated or whether or not the Commission has taken any disciplinary action.

Ms. Dantzler stated there are two choices at this point and they belong with Mr. Ammons. She indicated the Commission is dealing with an application, which includes a check mark where in his application for license renewal he disclosed that he is currently charged with two violations of the South Carolina Criminal Code. She went on to say that application hearings are public hearings because they are in regard to a public document. She noted that Mr. Ammons has the option to explain in public session why these charges should not delay his renewal. However, if he chooses not to do so, everything is in limbo, including his application, until such time that disciplinary action is or is not taken on the violations. She said that although it would require him to make statements in public session, this is an opportunity to clear his renewal application at this time. She indicated that the department has not conducted an investigation or made findings, as the department has not charged him with any violation of the practice act. The department is offering him the opportunity to obtain his license and explain why this should not interfere with his license.

The Commission moved to the next item of business on the agenda while Mr. Ammons and Mr. Atwater further discussed this matter with Ms. Dantzler outside of the conference room.

b. Myron Bowling

Ms. Miles stated Mr. Bowling has applied for renewal of his auctioneer license. She noted that he has received disciplinary action against his license in Wisconsin; however, he is now in compliance with that state. The Commission was presented with Mr. Bowling's application that contains the final order from Wisconsin and his response. (This application and attachments is herewith attached and becomes a permanent part of this record retained at the Commission's office.)

Mr. Bowling appeared before the Commission at this time.

Mr. Bowling stated an advertisement was placed in a newspaper without the proper license numbers, with the term 'Wisconsin registered auctioneer' and that the term 'buyer's premium' was used instead of the common term of buyers fee. He went on to say the firm did not have a Wisconsin registered bank escrow account. He noted that all of the matters were corrected prior to that sale and all future sales.

MOTION

Mr. Blocker made a motion, seconded by Mr. Mullis and unanimously carried, that the Commission accept Mr. Bowling's application for renewal as it stands.

c. Asa Marshall

Ms. Miles stated Mr. Marshall has applied for renewal of his license. She noted he has received disciplinary action against his license in North Carolina for auctioneering with an unlicensed auction firm and for using his name and license number to appear on the

advertisement without reading the content. He has paid the fine and his license has been reinstated. (Mr. Marshall's application along with the information from North Carolina Auctioneer's Commission and his statement are herewith attached and become a permanent part of this record retained at the Commission's office.)

Mr. Marshall was not present for the meeting.

MOTION

Mr. Moody moved the Commission accept Mr. Marshall's application as it stands. Mr. Mullis seconded the motion, which carried unanimously.

d. David Michael Rogers

Ms. Miles state Mr. Rogers has applied for renewal of his auctioneer license. She indicated his application includes a criminal history record that shows an arrest charge. (Mr. Rogers' application, along with the criminal history record and his explanation are herewith attached and becomes a permanent part of this record retained at the Commission's office.)

David Michael Rogers appeared before the Commission at this time.

Mr. Rogers stated his auction facility had been broken into and chairs were stolen. He indicated he was borrowing chairs from an individual and on the return home he was pulled over for speeding. He further stated he had some items that came through his auction facility in a box slot deal and one of the boxes contained small blackjacks. He indicated that the officer searched his van and found a blackjack. He did not know blackjacks were illegal weapons if they were found out of the glove compartment in a vehicle. He also said he had just purchased the van and did not know that there were rolling papers in a pocket in the back door of the van. He noted that he went to court and was fined \$1,100, which he paid.

MOTION

Ms. McCoy moved the Commission discuss this matter in executive session. Mr. Blocker seconded the motion, which carried unanimously.

e. Thomas Whitehead

Ms. Miles stated Mr. Whitehead has also applied for renewal of his auctioneer's license. She went on to say he was arrested for receiving stolen goods. (Mr. Whitehead's application, along with the criminal history record and his explanation, are herewith attached and becomes a permanent part of this record retained at the office.)

Thomas Whitehead appeared before the Commission at this time.

Mr. Whitehead stated he was in the process of purchasing a bobcat to work with and that an individual had been contacting him in regard to purchasing one. He further stated the individual came to his home around 9:00 p.m. one night and he agreed to purchase the

bobcat. However, he was leaving for California and did not have the extra money to purchase the machine. He indicated the individual left the bobcat in his yard and he left for his trip the next day. He went on to say he was in New Mexico when he received a phone call indicating the bobcat in his yard had been stolen. He apologized to the officer and to the individuals who had reported the bobcat stolen. He made a voluntary statement regarding what happened and indicated that no money had been exchanged. He was charged with receiving stolen property.

MOTION

Ms. McCoy moved the Commission discuss this matter in executive session. The motion was seconded by Mr. Blocker and unanimously carried.

2. Applicants for Initial Licensure

a. Cindy Causey (East Columbia Auction)

Ms. Miles stated Ms. Causey has submitted an application for a firm license. She indicated that she passed the exam with a score of 86. She went on to say Ms. Causey's credit report indicates she has approximately \$3,000 in unpaid collection accounts and several charged off accounts. She noted that staff has not received an explanation regarding these accounts. She further stated Ms. Causey was notified, in a letter dated June 7, 2004, that she should appear at this meeting and that a written explanation regarding her credit report was needed. (Ms. Causey's application and credit report are herewith attached and becomes a permanent part of this record retained at the office.)

Ms. Causey was not present for the meeting.

MOTION

Mr. Moody made a motion, seconded by Mr. Blocker and unanimously carried, that the Commission deny this application until such time further information has been received from Ms. Causey.

b. Michael A. Stone

Ms. Miles stated Mr. Stone is applying for licensure via reciprocity with Mississippi. She further stated his credit report indicates \$6,000 in numerous uncollected accounts and several charged off accounts. (Mr. Stone's application and his credit report are herewith attached and becomes a permanent part of this record retained at the office.)

Michael A. Stone appeared before the Commission at this time.

Mr. Stone stated the credit report is inaccurate and several items are not his. He went on to say he has hired an attorney to handle the matters contained in his credit report. He further stated he was not aware his credit report contained this information until he submitted this application. He went on to say that the attorney has stated that some of the items may be removed quickly and some of the items may take a longer time to be removed due to cross referencing with other credit bureaus. He indicated he has been licensed since 1992.

MOTION

Ms. McCoy moved the Commission grant Mr. Stone a probationary license and that he appear before the Commission in six months to show the Commission the resolution of the credit issues. Mr. Blocker seconded the motion, which carried unanimously.

c. Cheryl M Whipple

Ms. Miles stated Ms. Whipple is applying for an auctioneer's license. She further stated Ms. Whipple passed the exam on June 4, 2004 with a score of 86. Her credit report reflects collection accounts exceeding \$2,000.00 and numerous charged off accounts. Her SLED report contains a fraudulent check charge in 2001.

Cheryl M. Whipple appeared before the Commission at this time.

Ms. Whipple stated her husband had been in the military for 20 years. She further stated that following his discharge, there were problems adjusting to civilian life. She indicated he did not have a job, which led to a separation and divorce. She noted he chose not to take care of items named in the divorce decree. She continued by saying there had been a fraudulent check, which she paid at the Greenville County Courthouse. She noted she had written a check on their personal account and he had taken the money out of that account without her knowledge. She went to say she has been in an auction facility for almost four years.

MOTION

Mr. Moody moved the Commission grant Ms. Whipple a license under probation for one year and that she appear before the Commission at the end of the one-year period with proof that she has made an effort to pay the debts listed on the credit report. Mr. Blocker seconded the motion, which carried unanimously.

Recess

At 11:00 a.m., the Board recessed for five minutes.

Return to Public Session

Johnathan Ammons (continued)

Mr. Atwater stated Mr. Ammons has been licensed as an auctioneer for four years and has a vested interest in that license and his right to continue to operate. He further stated the Commission obviously has a mandated concern to protect the public against improperly licensed individuals practicing as auctioneers. He went on to say that Mr. Ammons brought the matter to the Commission's attention. He indicated Mr. Ammons does not have a previous criminal record and still does not have a criminal record. He indicated the Commission has been made aware of a petition bearing 218 signatures in his support. He pointed out Representative Walt McLeod was present on Mr. Ammons behalf. He went on to say the Commission has a copy of the report of the criminal charges brought against Mr. Ammons. He represents Mr. Ammons on the criminal charges as well. He stated Ms. Dantzler has indicated the Commission may wish to place conditions on his license. He continued by saying that the incident has nothing to do with

auctioneering and is of a private nature and occurred on private property.

Ms. Frierson asked Ms. Dantzler since the charges have nothing to do with the auction profession how has the Commission ruled on such matters in the past. Ms. Dantzler stated if the Commission has found that the charges had nothing to do with auctioneering a license has been renewed without conditions and that if the Commission has found that the charges would have some affect on the auction profession, if proven true, the Commission has approved the renewal with a condition that there would be an immediate suspension if there was a conviction. She indicated the ruling is strictly based on the Commission's conclusion on whether or not these charges, if proven true, would have any bearing on the auction profession. She does not know if the Commission has, in the past, denied the renewal or if the Commission could or should deny the renewal application.

MOTION

Ms. McCoy moved the Commission grant a probationary renewal license for one year at this time pending the outcome of the charges against Mr. Ammons and, if at that time, there is further action required by the Commission it would be necessary for him to reappear before the Commission. The motion was seconded by Mr. Moody and unanimously carried.

3. Auction School Audit

a. Lenoir Community College

Lenoir Community College has submitted information regarding the auction school audit. The information includes a course syllabus/curriculum, list of instructors, and information regarding the facilities, equipment and teaching aids used. The college is approved in the State of North Carolina.

MOTION

Mr. Blocker made a motion, seconded by Mr. Moody and unanimously carried, that the Commission approve the information subject to the Commission receiving the instructors' credentials and the course outline.

b. Texas Auction Academy

The Texas Auction Academy has submitted information regarding the curriculum, a list of instructors and their credentials, and a course outline for the Commission's approval.

MOTION

Mr. Blocker moved the Commission approve the audit for the Texas Auction Academy. Mr. Mullis seconded the motion, which carried unanimously.

c. Reppert School of Auctioneering

Reppert School of Auctioneering has submitted information regarding the curriculum, list of instructors and the facilities for the Commission's approval.

MOTION

Mr. Blocker moved the Commission approve the information as received. The motion was seconded by Mr. Mullis and unanimously carried. Mr. Blocker amended the motion to accept the Reppert School of Auctioneering pending receipt of detailed instructor resumes. Ms. McCoy seconded the amendment, which carried unanimously.

4. Requests for Continuing Education Approvals

a. William Barry Kelley (course/instructor approval)

Ms. Miles stated Mr. Kelley is asking for the Commission's approval to instruct three classes: The Auctioneer's Guide to the Real Estate Appraisal Process, The Auctioneer's Guide to the Internal Revenue Service Form 8300, and Auctioneering Trust Accounting. (Documentation regarding these courses is herewith attached and becomes a permanent part of this record retained in the Commission's office.)

William Barry Kelley appeared before the Commission at this time.

Mr. Bryant stated Mr. Kelley's information was taken to Mr. Ivan Broadwell for his review. He further stated staff then sent a letter to Mr. Kelley suggesting the information include further information such as how many times the courses would be offered and the conditions. He also suggested that Mr. Kelley attend the Commission's meeting on August 16, 2004 to answer any questions from the Commission. Mr. Bryant read a letter from staff to Mr. Kelley to the Commission:

"This letter is to acknowledge receipt of documentation regarding the three courses you would like to have approved by the Auctioneer Commission. The documents have been reviewed by staff and I recommend that you provide additional information regarding where you plan to teach these courses, how often the courses would be offered and under what the conditions.

Your information will be presented to the Commission at the August 16th meeting. Our office encourages you to attend and answer any questions the Commission may have concerning the information you have submitted."

Mr. Kelley stated he has been approved to teach auctioneering continuing education in Alabama, North Carolina and Tennessee. He has pending approval to teach these courses in Georgia where the Auctioneer Commission meets on August 23, 2004. He became licensed as an auctioneer in June 2003. He has been instructing insurance and real estate appraisal for approximately the last four years.

MOTION

Mr. Moody moved the Commission accept Mr. Kelley's continuing education classes. Mr. Blocker seconded the motion, which carried unanimously.

b. Nashville Auction School - Lori Browning

Ms. Miles stated the Nashville Auction School is beginning an on-line continuing education program in conjunction with the National Auctioneer Association. The Nashville Auction School has submitted information for the Commission's approval of Lori Browning as an

instructor who will serve with Wendell Hanson. Mr. Hanson will serve as a proctor on the courses. She went on say she spoke with a representative from the Tennessee Auctioneer Commission who indicated that Commission is familiar with Ms. Browning because she is an employee of the Nashville Auction School, however, the Commission has not approved her as an instructor. (This documentation is herewith attached and becomes a permanent part of this record retained at the Commission's office.)

Mr. Blocker questioned if the Commission has made a ruling in regard to online instruction. Ms. Frierson replied the Commission has not made a ruling, as this was the first one before the Commission. Ms. McCoy stated she loves online opportunities to complete courses for her real estate license. She indicated she could complete the courses at her own pace. She is in favor of the online courses.

MOTION

Mr. Moody made a motion, seconded by Mr. Mullis and unanimously carried, that the Commission deny the request to approve Ms. Browning pending receipt of a detailed resume and a course outline.

5. Legislation

Ms. Frierson suggested forming a committee to review the information. She appointed Mr. Blocker, Mr. Rodney Lee, Ms. McCoy, and Mr. Broadwell to serve on the committee. She asked the committee to review the current law and make clarification on gray areas in the statutes.

6. IRC Members - Reconfirmed

Ms. Frierson stated Mr. Rodney Lee would be replacing Mr. Wendall Christopher on the IRC. She further stated that Mr. Lee is from Ridgeway, South Carolina and owns an auction firm that has been established for 27 years. She continued by saying that Mr. Ivan Broadwell is being reappointed to the IRC.

7. Newsletter

Ms. McCoy stated she has not completed any articles for the newsletter. She further stated she feels producing newsletter articles is a staff function.

Discussion Items

There were no discussion items for the August 16, 2004 meeting.

Public Comments

Mr. Barry Kelley stated he had submitted a letter regarding absolute versus reserve auctions and that matter had been tabled. He asked that the Commission take up the matter for discussion. Ms. Frierson stated that the matter was not placed on the agenda for today's meeting and could not be discussed. He went on to say he had also submitted a letter seeking approval of his teaching experience as continuing education. Ms. Frierson stated he would have to submit the proper forms indicating the duration of the course, the number of students, and the length of classes. Ms. Frierson asked Ms. Dantzler for a

legal opinion regarding Mr. Kelley's continuing education. Mr. Kelley voiced his approval of on-line continuing education.

Lunch

The Commission recessed for lunch at 11:55 a.m. and reconvened in executive session at 12:45 p.m.

Executive Session

The Commission entered executive session following the recess for lunch.

Return to Open Session to Report on Executive Session

MOTION

Mr. Blocker moved the Commission return to public session. Mr. Moody seconded the motion, which carried unanimously.

Ms. Frierson noted for the record that no motions were made nor were any votes taken during executive session.

Thomas Whitehead

MOTION

A motion was made by Mr. Moody that the Commission renew Mr. Whitehead's license with the condition he serve a probation for two years, that he submit a clear SLED Report every six months during the two year period and, if there is receipt of a further conviction, his license would be immediately suspended and he would be required to appear before the Commission. Mr. Blocker seconded the motion, which carried unanimously.

David Michael Rogers

MOTION

Ms. McCoy moved the Commission renew Mr. Rogers' license with the condition he serve a probation for two years, that he submit a clear SLED Report annually during the two year period and, if there is receipt of a further conviction, his license would be immediately suspended and he would be required to appear before the Commission. The motion was seconded by Mr. Blocker and unanimously carried.

Adjournment

MOTION

There being no further business to be brought before the Commission at this time, Mr. Moody made a motion, seconded by Ms. McCoy and unanimously carried, the meeting be adjourned.

The August 16, 2004 meeting of the SC Auctioneer's Commission adjourned at 1:58 p.m.