

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Room 308
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
January 12, 2007

PRESENT:

Commissioner David Schnaidt
Commissioner Shannon Lafkas
Commissioner Mike Baker
Commissioner Gary Cain

Donna Brinker Potter, Administrative Assistant III
Jim Patterson, Assistant Attorney General
William Hopper, Chief, Legal Counsel

Meeting called to order 9:40am with the pledge of allegiance. Donna Potter called roll. All members of the commission present except Commissioner Joseph Zielinski who has had some health concerns. Ms. Potter stated that Commissioner Zielinski had indicated to her that he may be stepping down due to health concerns. Ms. Potter stated that he would need to submit a resignation in writing to Governor Strickland.

Chairman Schnaidt welcomed the new commissioners and he stated that their appointments had been long awaited. He asked if the commissioners had the opportunity to review the meeting minutes from the October and December meetings. The commission set the calendar for the remainder of 2007. The meetings will be held on April 27, July 27, and October 26.

The next item on the agenda is the application of Western College of Auctioneering. Donna Potter stated that the application failed to show that they met the minimum curriculum requirements set forth by the commission. Commissioner Cain stated that it did not appear that they check to see what the requirements were for Ohio. Chairman Schnaidt noted that there was a deficit in regard to compliance and that they would have to meet minimum before they would be considered. Donna Potter stated that the commission could send them a letter to let them know that they do not meet the minimum requirements. Commissioner Lafkas moved to disapprove Western College of Auctioneering. Commissioner Baker seconded. No discussion. Motion carried by an affirmative vote of all members present.

Donna Potter stated that there was still some work to be done regarding auction school requirements that the commission had set the curriculum but still needed to set the requirements for the school itself. She stated that in the past there had been discussion regarding requirements for instructors and she cited that in the past there was an application from a school owner who was an apprentice and the commission required that the apprentice not teach any of the auction classes. They found that he was only qualified for the real estate instruction. Ms. Potter stated that previously the commission had reviewed the requirements in Indiana but nothing had been decided. Bill Hopper inquired if there was enough to put a draft together. Ms. Potter stated that there was not. She asked the commissioners to forward information to her and she could put something together for the next meeting. She stated that she would forward the requirements that Indiana had to all commissioners. She advised the commission that they cannot set policy nor have a meeting via email due to public meeting requirements but that she could compile information for the next meeting. Bill Hopper explained to the commission public meetings and how it affects email. Chairman Schnaidt states that during the exam they try and get information from the examinees regarding their school. He encouraged all commissioners to get their thoughts together for the next meeting. Chairman Schnaidt asked before they moved to the next item on the agenda that Donna Potter to go over the duties of the commission and to explain spending authority and the auction education fund.

Donna Potter stated that under the statute the Commission has three duties: 1. Administer the education fund; 2. advise the department; 3. set standard for auction schools and curriculum. The

auction education fund receives \$7.50 out of every \$100 fee and that fund is basically the commission's to approve and put on educational seminars for the good of the profession and advancing of the profession for auctioneers and the public. The commission still has to comply with state spending requirements. All state agencies, boards and commissions are given a budget and given spending authority. The spending authority for the education fund for the beginning of the year was \$24,496. She stated that if you receive a lot of request and more money is needed it is possible to go before the controlling board and ask for more money. The controlling board is made up of members of the House and Senate. They meet every month when in session. The Commission can conceivably ask for more money for a specific amount. It is a matter of submitting paperwork and testifying. The Commission will need to justify the expenditure. The remaining spending authority for the year is \$7,760.76. Commissioner Baker asked what the fiscal year is. Ms. Potter stated that the fiscal year is July 1 through June 30th. Ms. Potter stated that the spending authority will remain at the same level for the next two years because the biennial budget had already been approved. Jim Patterson said that this is important because you cannot commit funds beyond the biennium. Ms. Potter stated that previously the commission ran into that issue when they wanted to pay for seminar using funds from two different fiscal years. She stated that the expenditures and payments are from the same fiscal year. She stated that there are three funds 1. operating 5B8 2. education 4D2 and 3. the recovery fund 5UI. The beginning of the fiscal year balance for 5B8 is \$685,444.72 and the current balance is \$487,677.68 at the end of the fiscal year, the director will review the fund and if the fund balance exceeds \$300,000, 25% of the overage will be transferred into the auction recovery fund. She stated that when the program transferred from the department of commerce this fund was over \$1 million. The transfer to the recovery fund will insure that the balance of the fund does not grow too large. She stated that the education fund was over \$200,000 but the commission was not able to spend the monies which were a point of contention.

She stated that the recovery fund was created by transferring \$500,000 from the operating fund as seed monies for the fund. When the recovery fund gets above \$2 million, the department could fund studies and educational programs beneficial to the profession and to the public. The recovery fund balance is now \$1,037,131.19. Mike Baker stated that it amazed him that previous to being at the department that they were told that the auctioneers could not carry their own weight. He felt that it was critical that they do not assume that the money is going where it needs to go. He felt that there is communication with the department that they never had before. Commissioner Lafka stated that now that the monies can be transferred to the recovery fund it will protect the operating fund from being raided. Ms. Potter stated that they had the funds raided in the past, the operating fund lost \$200,000 and the educational fund lost \$100,000. Last year when OBM tried to take the interest monies and transfer them to the GRF the commission sent a letter of protest to OBM, the Speaker of the House, President of the Senate, and the Governor. The interest monies were returned. She felt that this was indicative of the good communication that has developed between the department and the commission. She believed that previous to the arrival at the department the commission would not have even been told of the transfer considering they were never told the balances of the funds. She further stated that the information regarding the funds is not a secret and if the commission wants more information to let her know, if she does not have it readily available she will get it for them. Chairman Schnaidt stated that he was encouraged and excited about the ability to fund programs and studies from the recovery fund that in just a few short years that the option will be available to provide top notch seminars. Ms. Potter stated that to the best of her knowledge Ohio is the only state that has a specific fund set aside for the funding of educational programs for auctioneers and that she has had calls from other states asking how they were able to put on their programs. The balance of the education fund at the beginning of the fiscal year was \$173,946.69. The current balance of the educational fund is \$169,874.04. Chairman Schnaidt asked if that was completely derived

from license fees. Ms. Potter stated that now the department has the ability to assess civil penalties for violations of the auction law, that 50% of the penalty is deposited into the education fund and 50% is deposited into the recovery fund.

Jim Patterson asked if he could cover the open meetings law. He stated that the Commission meetings fall under the open meetings law which meant that all business of the commission must be conducted in the context of an open meeting and public notice must be given for the meetings. He stated that the commission cannot deliberate outside of a noticed public meeting with the exception of an executive session. The public records law as applies and that the commissioners should assume that any document they create is a public records and any one can request a copy of it which includes emails. Commissioner Baker stated that Mr. Patterson brought up executive sessions; he wanted to know if they are protected from lawsuits. Jim Patterson stated that of they are acting in the scope of their authority they are indemnified. Chairman Schnaidt stated that as a commission member, people will contact them. He advised to be careful in conversations to make sure they are not using their position as a commissioner or speaking on behalf of the commission or giving legal opinions.

The commission took a break at 10:40. Meeting resumed at 10:45a

Chairman Schnaidt asked if everyone had a chance to review the meeting minutes. He asked for a motion to approve. Commissioner Lafkas moved to accept the minutes as written for October and December. Commissioner Cain seconded. Commissioner Baker had a question regarding the speaker in October. Chairman Schnaidt stated that they were surprised by the turnout that they had expected a higher turnout due to the quality of the speaker. No further discussion. Motion carried by an affirmative vote of all present.

The next item on the agenda was the auction education fund. Donna Potter stated that the commission normally finalizes the plans for the spring seminar in March at the January meeting. Chairman Schnaidt stated that there is not a lot of time and there needed to be discussion on this. He felt that it would be best to be prepared to move forward and finalize at the April meeting. Chairman Schnaidt said that in the past have had enough monies. He felt that the Spring Seminar is the best seminar because they have had good subjects such as ATF, BMV, etc. Donna Potter recommended maybe something regarding charity auctions geared toward charity groups explaining to them the law, how to market, etc. Or they could do a seminar for the charity groups in the morning and something for auctioneers in the afternoon. She also discussed the possibility of using education fund monies to work with the OAA to create a brochure for distribution to charity organizations. Chairman Schnaidt preferred to have the seminar with a speaker in the morning with the right content and to have round tables in the afternoon. He liked the idea of working with the OAA to develop a brochure promoting auctioneers and the charity auction. Commissioner Cain liked the idea of the brochure being professionally done and having an education seminar for the auctioneers. Commissioner Lafkas recommended the topic of how to utilize a celebrity properly. Chairman Schnaidt questioned as to whether or not it was appropriate. Commissioner Baker stated that with HB 517, the charity bill, at this point was dead. Bill Hopper stated that it is only dead because the last legislative session ended. He cautioned that they cannot assume that the issue has gone away. He did state that he thought that it was appropriate that part of the seminar be on charity auctions. Commissioner Baker wanted to know who was pushing the charity issue. Bill Hopper stated that there are a number of groups that are behind the issue. Donna Potter stated that there was interest by several legislators on the issue that Rep. Tim Schaffer, Sen. Tim Grendell and Rep. Gibbs all sought to introduce legislation regarding the matter. She felt that the issue was not going to go away. Chairman Schnaidt said that he did not see a down side to 517 as it was written in the final draft. Commissioner Lafkas

said that she felt that they should wait until the next meeting to finalize plans for the seminar. Chairman Schnaidt asked that the commissioners forward any information or ideas to Donna before the next meeting.

The enforcement update was the next item on the agenda. Donna Potter stated she would be attending the NALLOA conference in Tucson, AZ in February and that they had put together a conference geared toward regulators. The department entered into a reciprocal agreement with Louisiana. She also announced that based on conversations with the commission and based on issues brought to the department's attention; the department adopted a new policy effective for anyone licensed as an apprentice after Jan. 1, 2007. All apprentices must submit a copy of the advertisement listing their name along with the signed slip from their sponsor when applying for their auctioneer license. Jim Patterson explained the disciplinary process and that the commission's role is advisory and that they do not play a specific role in the process. However, the department does rely on the commissioners to advise and to serve as experts when necessary. Commissioner Lafkas apologized and stated that she needed to leave the meeting. Jim Patterson explained the situation with regard to the Spartan Stores recovery fund claim. He stated that there are two ways to make claim to the recovery fund: administrative and court. The Spartan Stores matter involves an aggrieved party who went to a Michigan court and obtained a judgment against an Ohio licensee. They then filed in Lucas County Court and obtained an order directing payment out of the fund. Mr. Patterson stated that there are some procedural issues with the case. First is that the department has the right to appear and defend the fund. He stated that both judgments had issues with the right of recovery. ODA's position is that Spartan Stores had no right of recovery on either claim. He stated that the department planned to ask the court to consolidate the claims and show the judge why there was no right to recovery. Mr. Patterson stated that this is an unusual case because there is an out of state judgment. Commissioner Baker asked how they could get an out of state judgment. Jim Patterson stated that ODA is not under the jurisdiction of Michigan and they have to have an Ohio court involved. Mr. Patterson stated that the department is representing the fund and that the litigation is not concluded.

Mr. Patterson also gave an update on the Nick Verbus matter. He stated that Mr. Verbus is the subject of numerous proposed administrative penalties. That ODA had problems getting him in for a hearing. There had been a recovery fund payout that had caused Mr. Verbus' license to be suspended. The department also sought an injunction preventing Mr. Verbus from acting as an auctioneer until the administrative process had been concluded and until Mr. Verbus filed a surety bond or irrevocable letter of credit. ODA learned that he had acted as an auctioneer while the injunction was in place and sought contempt of court charges in Licking County Court of Common Pleas. The judge found Mr. Verbus guilty and sentenced him to 5 days and ordered restitution to the individuals harmed during the injunction. The department is still trying to conclude the administrative process. The department also referred criminal charges to Cuyahoga County as a result of the failure to pay clients and bouncing checks. Mr. Verbus was found guilty of 1 count of felony theft and 1 count of felony passing bad checks. The department refused to renew Mr. Verbus' licenses and the last step was the actual administrative hearing which occurred yesterday. Mr. Verbus' attorney had asked for a continuance and the department refused and advised the attorney they could request a continuance from the hearing officer. Mr. Verbus' attorney did not contact the hearing officer. Mr. Verbus or his attorney failed to appear and the hearing was held in his absence. Mr. Patterson stated that right now the administrative case is waiting for the report and recommendation from the hearing officer and he could not speak as to what the director of agriculture will do based on the evidence. He stated that this case is unusual due to the number of violations and long extended process, criminal cases and contempt charge. Chairman Schnaidt asked if Mr. Verbus would be responsible for paying back the fund. Mr. Patterson stated at this point the fund had been reimbursed for the one claim and the other

claimants had been reimbursed based on the court order and that there was not a payout of the fund.

Chairman Schnaidt asked for a motion to adjourn. Commissioner Cain so moved. Commissioner Baker seconded. Motion carried. Meeting adjourned at 11:45 pm.

Approved Chairman