

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Room 308
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
April 27, 2007

PRESENT:

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

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

Members of the Public:

Doug Walton, OAA
David Jones, OAA
Bart Sheridan, OAA

Meeting called to order 9:15am. Donna Potter called roll. All members of the commission present except David Schnaidt. Commissioner Lafkas asked the commissioners if they had an opportunity to review the last meetings minutes. Commissioner Cain moved to approve the minutes as written. Commissioner Lafkas seconded. Motion carried by an affirmative vote of a majority of all present with Commissioner Zielinski abstaining.

Donna Potter introduced Director Robert Boggs of the Department of Agriculture. Director Boggs introduced himself to the commission. He stated that the department will be looking to promote and market Ohio products. He felt that the auctioneers would be integral to the promotion of the Ohio products. He stated that he looked forward to working with the commission and the auctioneers of Ohio. Let the record reflect that Chairman Schnaidt arrived at 9:30am.

The next item on the agenda was HB 48 and 67. Chairman Schnaidt asked Donna Potter to update the commission. Donna Potter stated that HB 67 had passed and would go into effect on July 1, 2007. HB 67 involved the classic car auction and an update to 4707.02 and 4707.074. The new law was posted on the auction program's web page. She stated that to the best of her knowledge that there had been no movement on HB 48 and she did not know if there would be any movement. She stated that she had not heard of any opposition and was unsure why the bill was still in committee.

The next item on the agenda was the topic of Guardianship auctions. Commissioner Baker had asked that the topic be placed on the agenda. Commissioner Baker stated that the new Medicare/.Medicaid law went into effect in January. He stated that on the sale of property, they require 90% of the appraised value on the tax card. He stated that he had two incidents where the tax card value was too high. He was told that he had to use the tax card value and he has to list for 90% and it had to be listed that an auction was not a valid method of sale. He stated that they cannot ask for a reevaluation of the value for 6 months. He stated that his concern is how can they preclude the auction method and he felt that it was going to cause a lot of problems down the road. Bill Hopper asked what the basic scenario was. Mike Baker stated that the guardian doesn't actually market the property, they hire a professional. He felt that the law was not meant to preclude auction but that Greene and Darke County Job and Family Services is strictly interpreting the law. He stated that he was told that he could not auction the property and that the tax card value was so high that they would not be able to realize 90% of the tax card value. He asked for a reappraisal and was told that they could not do it. Commissioner Cain stated that he was concerned with them not accepting an appraisal other than the tax value. Commissioner

Baker stated that what would happen if the tax card value was too low? He stated that an auction could produce higher results. Bill Hopper asked Mike Baker to put something in writing to the department. Commissioner Lafkas felt that an AG opinion might be warranted. Bill Hopper stated that it might be easier if the department contacted the legal counsel at ODJFS. Commissioner Lafkas was concerned if they would be familiar with the auction law. Commissioner Baker stated that Medicaid is what is triggering the issue. He cited an incident where the appraised value of the property was lower than the tax card which is what caused the red flag. Commissioner Cain stated that he felt that it needed to be addressed. Bill Hopper asked Commissioner Baker to use Donna Potter as a point of contact. He stated that he could not guarantee that ODA can resolve the issue but it may get answers or additional answers.

The next item on the agenda was the education fund. There were two requests from the OAA; one for the summer convention and for the State fair bid calling contest. Donna Potter reminded the commission that the summer convention request will be on the current fiscal year's appropriation and the bid calling contest would fall on the next fiscal year. Commissioner Lafkas asked if the topics of the summer seminar were appropriate. Commissioner Baker stated that SB 115 will be a bug topic. He moved to approve the request as submitted. Commissioner Cain seconded. No discussion. Motion carried by an affirmative vote of all present. Commissioner Lafkas moved to approve the request for the bid calling contest contingent on the funds being available in the next biennium. Discussion turned to the Spring Seminar. Chairman Schnaidt stated that he and Ms. Potter had discussed the Spring Seminar the previous week and there had been no speakers or topics proposed. He stated that he would hate to throw a seminar together just for the sake of having it and spending money but on the other hand; he hated not to have a seminar. Commissioner Baker agreed. He felt that a bedding seminar was not enough and he is glad that the Department of Industrial Compliance is interested in talking but he rather that the requirement be gotten rid of. He stated that if the same item is sold on location at a house it is exempt. He felt it was a ridiculous law designed for those who store bedding for long periods of time. Commissioner Lafkas felt that it may be a topic for a legislative change. She felt that the commission may want to survey attendees for ideas on topics at the next seminar. She stated that the commission needed to find out what the auctioneers want and to find topics that promote the profession. Commissioner Baker stated that maybe they could do half a day on legislation. Chairman Schnaidt stated that he was concerned that there would be confusion between current and proposed legislation. Other possible topics discussed were agency relationships and how to become a notary. Commissioner Lafkas moved to not have the Spring Seminar and that the commission have topics for the next meeting. Chairman Schnaidt recommended that the commission pool together with the OAA or the NAA for a seminar in the fall. Doug Walton, President of the OAA, recommended that they work together to juice up the fall seminar. Commissioner Baker stated that the NAA has a speaker's bureau and that the association has not really tapped into that resource. Commissioner Lafkas asked if there was something that could be put on the web regarding topic ideas. Donna Potter stated that she could put something in the next article that she writes for the *Buckeye*. Commissioner Baker seconded the motion. He stated that he did not think that the commission was ready for the spring seminar and if they were not going to do it right that they should not do it. Motion carried by an affirmative vote of all members.

The next item on the agenda was the auction school requirements. Donna Potter stated that with the passage of SB 209 in 2005, the commission's authority regarding the auction school and requirements were expanded. She stated that the commission had previously updated the curriculum requirements but that the rules regarding the approval and qualifications of the auction school still needed to be drafted and adopted. Ms. Potter stated at the last meeting the commissioner requested that she forward a copy of the rules adopted by Indiana for their review.

Commissioner Baker asked if they currently approved the instructors when they approve the school. Ms. Potter stated that they are required to provide a list of their instructors and their resumes when applying for approval. Chairman Schnaidt felt that instructor qualification was the biggest issue. Donna Potter stated that the instructors and the ability to rescind approval was the biggest issue. Bill Hopper recommended that the commission may want to form a subcommittee to review the issue and bring back recommendations to the commission. He stated that the subcommittee would be subject to the sunshine law. Chairman Schnaidt stated that he liked the suggestion and he wanted to do this right and he felt that the subcommittee would be a great route. He stated that the CETF was successful. He stated that there was a lot of information to dissect. Commissioner Lafkas asked what type of people/input were they looking for-- 1 or 2 auction school representatives and 1 commission member. Chairman Schnaidt recommending sending a letter to all auction schools and if interested submit names. A deadline for submittal was set for July 1. The subcommittee would consist of Commissioners Lafkas and Cain, 2 auction school representatives, 2 members of the OAA and Donna Potter.

The commission took a break at 10:40 and the meeting resumed at 10:50pm.

The next item on the agenda was the enforcement update. Jim Patterson stated that at the last meeting he volunteered to talk about the administrative process. He stated that there were three general categories: 1. administrative, 2. injunctive, and 3. criminal.

Administrative:

He stated that a complaint comes into to the auction program and is forwarded to Donna Potter for review. If the complaint has merit it is assigned to an investigator by Enforcement. The investigator will verify info the investigative process may take days to months. ODA has broad investigative authority through subpoenas, witness statements, and interviews. Once the investigation is complete, it is evaluated and if the investigation does not verify violations, the case is closed. If the investigation does verify minor violations a letter of instruction is issued and the case is closed. A letter of instruction is not a formal penalty. If the investigation reveals a serious violation there are several directions to follow. Generally the licensed entity is dealt with under R.C. 4707.15 and now 4707.19. When there is formal action taken there is a specific series of events. A written notice is sent that details what they are accused of and what the department is proposing and the 119 rights. The proposed penalty can range from a letter of reprimand to revocation. If an auctioneer requests a hearing it is held before an independent hearing officer. The hearing is held at ODA and an Assistant Attorney General represents the department. Evidence is presented to the hearing officer who issues a report and recommendation. A copy of the report is sent to the licensee and to the department. The licensee has the ability to file written objections. The report of the hearing officer and objections are submitted to the Director for review. If the Director issues an order it is effective when it is signed and journalized. The licensee has the ability to appeal to the Court of Common Pleas. A judge will decide if the Order is appropriate and if the Director appropriately applied the law.

Injunctive:

Mr. Patterson stated that generally speaking if the department is doing something in court it is usually an injunction under R.C. 4707.16. He stated that most of the time it involves an unlicensed person or company. He further stated that the department can also have an injunction against a licensee which the department had done in the Dale DeVore, Nick Verbus, and Carl Miller Jr. matters. He stated that these are rare and usually are for unlicensed conduct.

Criminal:

Mr. Patterson stated that the department is not the prosecutor in criminal matters. The department will refer the matter to a county or city prosecutor who has the authority to pursue charges. He used theft as an example.

Mr. Patterson stated that the department can pursue each option independently or a combination of the three courses.

Mr. Patterson gave an update on the Verbus and Miller matters. He stated that the Spartan Stores issue was still pending and that the department was going to file a motion for summary judgments in the cases.

Mr. Patterson stated that the department was not asking for a legal opinion but for a recommendation from the commission regarding a policy approach. He stated that a non-licensed attorney conducted an alleged auction among family members. He stated that the attorney distributed personal property amongst the heirs. Each heir received a % of the amount of the estate. He stated that the attorney conducted what was described as an auction. He stated that the heirs were not bidding to write a check but were bidding a value to assign value to an item to be deducted from their share of the estate. Mr. Patterson asked if the commission believed that this was an issue that they wanted to advise the department on. Commissioner Baker stated that he believes that there is a difference between a public and private auction. Mr. Patterson and Ms. Potter stated that Chapter 4707 does not delineate between public and private. Ms. Potter expressed concerns in the manner in which the alleged auction was conducted. She stated that there were many irregularities during the course of the event. She cited that heirs were running bids on other heirs, lots were changed while being auctioned, and she expressed a concern that if these auctions were not conducted by a licensed individual, how do you ensure compliance with the auction law? The commission felt that what occurred was an auction but raised question of the practicality of enforcement.

Chairman Schnaidt asked if there was anything further for the commission. Commissioner Lafkas moved to adjourn. Commissioner Cain seconded. Motion carried. Meeting adjourned at 11:51 am.

Approved Chairman