

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Seminar Room B
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
July 23, 2010

PRESENT:

Commissioner James Milleson
Commissioner Gary Cain
Commissioner David Schnaidt
Commissioner Lori Kiko

David Gorman, ODA Staff Counsel
Donna Brinker Potter, Administrative Assistant III

Members of the Public:

Maggie Beckmeyer OAA

Meeting called to order @ 9:40am by Chairman Schnaidt. All members of the commission are present except Commissioner Remias.

Chairman Schnaidt asked the commission if they had a moment to review the minutes of the last meeting. Commissioner Cain moved to approve the minutes as written. Commissioner Milleson seconded. No further discussion noted. Motion carried by an affirmative vote of all members.

Chairman Schnaidt thanked everyone for coming and stated that the agenda was fairly light for the day's meeting. The first item discussed on the agenda was the education fund requests. Chairman Schnaidt was curious how the summer seminar went. He felt that they were great topics but unfortunately, he was unable to attend. Maggie Beckmeyer with the OAA stated that it was well received and that they had a good response from venders and attendance was good for a summer seminar. Before the commission was the fall educational seminar request from the OAA. The seminar is scheduled for October 28. The OAA is requesting \$4,230.00. Commissioner Kiko moved to approve the request as submitted. Commissioner Cain seconded. No further discussion noted. Motion carried by an affirmative vote of all members present.

The next item on the agenda is the enforcement update. Ms. Potter reported that the department had revoked two licenses; one licensee had been convicted of four felony charges and another had failed to disclose a prior felony conviction in another state. She reminded the commission that the renewal season was underway and that there were currently 3,121 active licensees with 2,681 auctioneers, 159 apprentices, 189 auctioneer corporations, 5 special auctioneers, and 86 auction firms. She stated that there are 229 people who had not yet renewed but could do so before September 1 and pay a \$100.00 late fee. She stated that as of June 30, 2010 the fund balances are as follows: Education fund: \$236,491.14; Recovery Fund: \$1,038,771.25; and Operating Fund: \$421,506.16. As of July 1, \$30,375.54 was transferred from the operating fund to the auction recovery fund in accordance with R.C. 4707.05. Ms. Potter also discussed the verbal exam criteria with commission.

The next item on the agenda is contracts. Commissioner Milleson asked that contracts be included in the agenda for the day. Donna Potter put together a word document for the commission that pulls all of the statutory requirements together into one document for the commission's review per their request at the last meeting. She also advised that the department had changed its standing policy regarding a sample contract. The program is currently working with the legal department to draft a sample contract that will be available to all licensees on the web page free of charge. Commissioner Milleson asked about a real estate company with auctioneers on staff and was curious about how the contract would work when there are other employees calling for bids and who has the auction. Donna Potter stated that the statute requires an auctioneer to have a contract with either the owner or the consignee of the property sold prior

to conducting the auction. If an auctioneer is aiding another auctioneer at a sale, he has to have a contract with somebody--either the seller or the other auctioneer that meets the requirements found in Chapter 4707. Commissioner Kiko stated that all of the auctioneers can sign same contract with the seller. Commissioner Milleson had another question regarding title work prior to the sale at auction. Does the title work need to be completed and available prior to the auction? Donna Potter stated that there is nothing in the auction statute that real estate law would have jurisdiction. Commissioner Milleson stated that mineral rights are becoming a big issue and proper advertisements are becoming a big issue. Commissioner Cain advised that you should not advertise anything that you are not sure. His next question was whether or not a prospective bidder can request who is bidding against him. Donna Potter stated that they can ask but they do not have to disclose it. Commissioner Milleson stated that he has been at auctions where he cannot tell who the bidders are. Donna Potter stated that if someone suspects shill bidding or phantom bids, they can file a complaint with the department and we can go in and find out who the bidders are. Commissioner Milleson's final question was when a bidder pre-registers and is buying for someone else, can they sign the contract for that other person? David Gorman stated that you cannot execute a purchase agreement on behalf of someone unless they have granted a POA. If the bidder signs his own name on the contract, then he is on the hook for the property.

Commissioner Cain asked about tie bids and the reopening of bids. Donna Potter provided a copy of an article by Steve Proffitt that explains the UCC and why you cannot reopen the bidding. He felt that it was better protection for the seller because you can get more money for your seller by reopening the bidding. He asked what it would take to change it. Donna Potter stated that you would have to have a legislative change and modify the UCC. Commissioner Cain stated that no one is harmed when you reopen the bidding. Dave Gorman pointed out that the person who the item was declared sold to, is harmed when you reopen the bidding. It is was the consensus that it would be difficult to change the law and in all practicality the way the law is written it takes the burden off the auctioneer when people are upset.

Commissioner Cain asked about the multi-par method of sale and whether or not you can conduct it as an absolute auction. Donna Potter stated that she is not aware of case law on this matter. She stated that she sat in on a seminar where Kurt Bachman stated that you not do it because you are changing your lots once you have started calling for bids. She stated that the department has not taken a position on it and to the best of her knowledge there is not case law on it. David Gorman stated that until the department takes a position, if you do it, advertise, disclose, and conduct the auction exactly as advertised.

Donna Potter stated that they had a little bit of old/new business. She stated that she talked to Mike Eckhardt and he stated that the apprentice language would not be moving forward this legislative session and if they wanted to tweak the apprentice language, they could but they would need to have it to him by the end of October for introduction in the new legislative session after the first of the year. Chairman Schnaidt stated that it was an opportunity for the commission to take the time to make sure that they have the language right. The commission scheduled a special meeting for September 9, 2010 at 9:30 at ODA. Chairman Schnaidt asked that the members of the subcommittee be invited to attend to provide their input.

Chairman Schnaidt asked for any other business. With no other business before the commission, Chairman Schnaidt asked for a motion to adjourn; Commissioner Kiko so moved. Commissioner Cain seconded. No further discussion. Motion carried. Meeting adjourned at 11:37am.

Approved Chairman