

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Seminar Room B
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
December 08, 2008

PRESENT:

Commissioner James Milleson
Commissioner Gary Cain
Commissioner Mike Baker
Commissioner Steve Remias
Commissioner David Schnaidt

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

Members of the Public:

Barry Baker, OAA
David Jones, OAA
Joe Marino

Doug Walton, OAA
Theresa Blocher, OAA

Chris Davis, OAA
Michael Hoffman, OAA

Meeting called to order 9:30am with the Pledge of Allegiance. All members of the commission present. Chairman Baker welcomed Commissioner David Schnaidt to the commission. Commissioners Milleson and Schnaidt will abstain from voting due to they are waiting for the confirmation of their appointments by the Senate. Chairman Baker stated that after the election of the chairman, the attorneys, Bill Hopper and Jim Patterson would give the Enforcement Update. They will need to leave the meeting early due to a meeting downtown.

First item on the agenda is the election of a chairman. Commissioner Gary Cain nominated Mike Baker. Commissioner Baker stated that he did not have a problem doing it. He reminded the commission that his term expires in October, 2009. He expressed that he thought that the chairmanship should rotate amongst the commission. Commissioner Steve Remias seconded the motion made by Commissioner Cain. No further discussion was noted. Motion carried by an affirmative vote of commission with Commissioners Milleson and Schnaidt abstaining.

The next item on the agenda is the Enforcement Update. Jim Patterson introduced himself to Commissioner Milleson and to Commissioner Schnaidt. He stated that there had been a couple of cases that are useful as a precedent. The first case involved a recovery fund claim made by Spartan Stores. He gave a brief recap. Spartan Stores has obtained judgments in MI against an Ohio licensed auctioneer and unlicensed Ohio auction company. They filed in Ohio for a recovery fund payout based on the MI rulings. There were several issues with the case. 1. ODA was not named a party to the action and we had to file to intervene to defend the fund. 2. Application for recovery was untimely because they waited too long to file. 3. One of the defendants was not licensed. 4. The department questioned findings of the MI court. More than a year ago the department asked that the cases be dismissed. The department has since gotten decisions dismissing both claims. He stated that section 4707.261 is not used often, but it is important in determining claims absent a finding of the court of a violation of R.C. 4707. There have been a couple of administrative matters and director's orders issued as well. The first matter is the Moodispaugh case. The licensee failed to disclose a shoplifting conviction in WV. The department proposed to revoke and refused to renew the license. ODA had to show that the shoplifting conviction was a theft offense. There was a matter raised at hearing by the defense that it was not a conviction since it was not tried in a court of record. The Hearing Officer found that shoplifting was a theft offense and that there was a conviction. In this case and other cases where there has been a criminal conviction, the department cannot retry a criminal case. We do not have access to the witnesses and the department should not try to. If there is a criminal charge/indictment ODA will monitor and await the outcome of the criminal case before taking any action. This particular case had a Director's Order issued where the department found a

violation and ODA did not renew the license. This matter is currently on appeal. The next case is the Paranzino matter. This case is on appeal in Mahoning County. The director put on an order revoking the individual licenses and that of the company. The briefs have been filed. There will probably be oral arguments in the next 30-60 days. This case is important in terms of dealing with advertising an auction but not conducting it in the manner in which it was contracted and advertised. Commissioner Remias asked while on appeal can the licensee still act as an auctioneer. Mr. Patterson stated that in this matter, while it is on appeal, there has been a stay of the order pending the outcome of the appeal. This is a normal procedure because it involves someone's livelihood and failure to stay the order raises a due process issue. It is important to have an independent judicial authority review. The administrative process is one that where the department conducts the investigation, holds a hearing before an independent hearing officer, and the director is required to rule based on the evidence at hearing. The director administers the body that initiated the process. In the appeal process, an independent judicial review of the record occurs. Once there is an order from the trial court, there is the ability to appeal to the Appellate Court. In this matter, the director's order is final but actual date of execution of the order is pending the court findings. Chairman Baker thanked Messrs. Patterson and Hopper for coming to the meeting. Donna Potter added that the department has begun sending letters to internet companies that are advertising and holding themselves out as auctioneers or as being able to provide auction services when they are not licensed. The commission expressed support of the action.

The next item on the agenda is setting the 2009 calendar. The commission determined that the exam calendar will be as follows:

Jan 23rd @9:30. Chairman Baker appointed Commissioner Cain to act as chair if he is absent.

April 17th @ 9:30

July 24th @ 9:30

Oct. 23rd @ 9:30

Donna Brinker Potter stated that she will set the apprentice exam dates and post the schedule on the web page.

Chairman Baker asked if everyone had the opportunity to review the minutes from the last meeting. He asked for any comments, changes, thoughts or corrections? Commissioner Remias asked if the ethics question raised at the last meeting was included in the minutes. Ms. Potter indicated that they had been. She further stated that they sought an Ethics Opinion regarding the commission members who are members of the OAA being able to vote on items regarding the OAA. She stated that they were told as long as the commissioners were not OAA Board Members, there would be no conflict. Commissioner Remias moved to accept the minutes as written. Commissioner Cain seconded. Motion carries by an affirmative vote of the commission. Commissioners Milleson and Schnaidt abstaining.

The next item on the agenda is an auction school application from the Dan Stone School of Auctioneering. Ms. Potter indicated that the school meets the minimum requirements established by the commission. The commission reviewed the materials submitted. Chairman Baker asked for discussion. Commissioner Cain moved to approve Dan Stone School of Auctioneering. Commissioner Remias seconded. Motion carried by an affirmative vote of the commission. Commissioners Milleson and Schnaidt abstaining.

The next item on the agenda is the alternative to the apprenticeship. Chairman Baker stated that he felt that the apprenticeship was antiquated. He felt that there were people being shut out and that a lot of states no longer require apprenticeships. He stated that he felt if you are sponsoring someone correctly, it takes a lot of time. He stated that he doubted the apprentices were getting

guidance and that 99% of the time they are only getting their 12 auctions and no other supervision or guidance. Commissioner Cain stated that it is impossible for the enforcement division to go in and investigate every auction to check to make sure that the apprentices are being properly supervised. Chairman Baker stated that it is an alternative to the apprenticeship that the traditional apprenticeship is available to those who choose. Commissioner Schnaidt stated that his feeling on the matter is why it didn't come up sooner. He stated that he was willing to take it further. The majority of apprentices are shaky in terms of what they retain from the sponsor. It is his opinion to get rid of the apprenticeship requirement. Chairman Baker stated at least with the alternative you know what they are being instructed. He stated that there are no guidelines out there for a sponsor. Donna Potter stated that she had begun to send letters out to the sponsors with recommended areas to cover with the apprentices. Further, she did not believe that the apprenticeship could be done away with completely. She stated for the same reasons that continuing education did not pass in the last bill, she felt that total elimination of the apprenticeship would be a hard sell. Commissioner Remias stated that you need to establish objectives that they have to master. He remembers that his apprenticeship was very subjective. Commissioner Schnaidt stated that if they keep the traditional apprenticeship and offer the other; it was his belief that the traditional apprenticeship would be of better quality if they go the step further on increasing the criteria on the verbal exam as well. Commissioner Cain stated that at least it gives them an idea of what to do. If someone wanted to apprentice with an auctioneer and the auctioneer cannot, it gives the apprentice an alternative. He felt it was better than just taking an apprentice and only allowing them to sell boxes of junk at the end of the sale. He felt that was not very helpful. Chairman Baker expressed concerns over the liability to the seller when using an apprentice. He stated that the majority of the apprentices out there are only doing bid calling during the apprenticeships. He stated that he did not want an apprentice working at his clerking station. He stated that the investigations done by the department are not for bid calling but the other things that the apprentices are not learning. David Jones stated that he thought that many of the apprentices with 10 hours post licensure education might be more knowledgeable than others including the sponsors. Doug Walton stated that two things came to mind. He felt there would have to be some sort of guidelines. He also stated that they did not need a waiver of the apprenticeship but that they needed tougher professional standards. Chairman Baker read the following into the record so that everyone was on the same page:

§ 4707.04. Powers and duties; expenses.

(H) The commission shall approve post-licensure education course providers. The commission shall adopt rules regarding the course provider requirements.

§ 4707.07. Auctioneer's license.

(A) The department of agriculture may grant auctioneers' licenses to those individuals who are determined to be qualified by the department. Each individual who applies for an auctioneer's license shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:

- (1) Has a good reputation;
- (2) Is of trustworthy character;
- (3) Has attained the age of at least eighteen years;
- (4) Has done one of the following:
 - (a) Met the apprenticeship requirements set forth in section 4707.09 of the Revised Code;
 - (b) Met the requirements of section 4707.12 of the Revised Code.
 - (c) Met the requirements found in section 4707.091 of the Revised Code

§ 4707.091. Auctioneer License via Post-Licensure Education

An applicant for an auctioneer license may meet the requirement found in R.C. 4707.07(A)(4)(c) if all of the following are met:

- A. The applicant has completed an approved auction school within one year prior to the date of application;
- B. The applicant shall take and pass the written auctioneer exam with a score of 75% or higher and receive a passing score on the verbal examination administered by the auction commission;
- C. Within two (2) years of the issuance of the auctioneer license, the applicant must successfully complete twelve hours of post-licensure education. The first six hours must be completed within one (1) year of the issuance of the license.
 1. The post-licensure education shall consist of ten (10) hours of the following core courses:

a. <u>Agency Law</u>	<u>1 hour</u>
b. <u>Contract Law</u>	<u>3 hours</u>
c. <u>Uniform Commercial Code</u>	<u>2 hours</u>
d. <u>Auction Ethics</u>	<u>1 hour</u>
e. <u>Ohio Auction Law</u>	<u>2 hours</u>
f. <u>Trust/Escrow Accounts</u>	<u>1 hour</u>
 2. The post-licensure education shall consist of the licensee's choice of two (2) hours of the following elective courses:

a. <u>Advertising & Marketing</u>	<u>1 hour</u>
b. <u>Business Math/Accounting</u>	<u>1 hour</u>
c. <u>Insurance & Liability</u>	<u>1 hour</u>
d. <u>Federal Firearms Law</u>	<u>1 hour</u>
e. <u>Business Management</u>	<u>1 hour</u>
f. <u>Automobile Auctions</u>	<u>1 hour</u>
g. <u>Real Estate Auctions</u>	<u>1 hour</u>
h. <u>Property appraisals</u>	<u>1 hour</u>
 3. Courses must be taken from an approved course provider.
- D. Failure to complete post-licensure education requirements shall result in an automatic license suspension.
 1. Licenses will have six months from the date of suspension to provide proof of completion.
 2. Failure to provide proof of completion shall result in an automatic revocation of the license.
 3. If a license is revoked due to the failure to meet post-licensure requirements, the licensee may reapply within one (1) year of revocation. The licensee shall meet all requirements for licensure as if they had never been licensed which includes attendance at an approved auction school.

Doug Walton asked how would you monitor? He felt that it was important to have someone in the profession to develop camaraderie with to help the new licensee. He felt that it was dangerous to go strictly with the school. He felt it would damage the profession. Commissioner Schnaidt stated that you did not see that in other states where there were no apprenticeship requirements. Michael Hoffman stated that he taught at Reppert's. He said that he hammers the point many times that often when he teaches a class it is at the end of the two weeks and he stated that it is really hard to get the students to focus and to make sure they understand Ohio law. He stated that he is a believer that good auctions make better auctions. Chairman Baker stated that the profession has created a situation where it is a gratis deal. They can get 12 auctions and they

are not learning anything else and they are getting their licenses. Mr. Hoffman stated that he agreed that they will get licensed one way or another. Commissioner Cain stated that he did not think that it would open the flood gates. The requirements may discourage individuals from the alternative route. He felt that they needed to strengthen apprenticeship by holding the sponsor responsible. Commissioner Schnaidt stated that it is not just one thing that will make it a profession, that there needs to be many changes. He felt that the discussion was an eye opener. He stated that until you get out there and start in the profession, you really do not have a full grasp of what you are doing. Chairman Baker asked what the consensus was in terms of what is next. He stated that he felt that department would be supportive. Donna Potter stated that the Governor has been supportive of a business friendly environment in an effort to help business grow in Ohio. She believes that the department would be receptive. Chairman Baker asked for a consensus. Commissioner Milleson stated that he felt that they should move forward. He felt that the proposal was laid out very well. Commissioner Remias asked if any ever failed the school. Michael Hoffman stated that it does happen, but it is very low in occurrence. He thought maybe 1 out of 30. David Jones stated that he felt that the commission needed to have more people on board. Donna Potter stated in the past the commission has had public meetings for public input. Theresa Blocher stated that she would like to see some policing of the new licensees. She recommended something similar to the broker's law where they would have to work under someone. Donna Potter asked if she meant something like a principal auctioneer and associate auctioneer structure. Barry Baker stated that he did not want the liability. He felt that you would be hanging yourself out. Joe Marino stated that instead of less apprentice requirements; he felt you needed more. He felt that the apprenticeship should be longer. Donna Potter asked if they needed to form a subcommittee. Chairman Baker stated that he is not trying to railroad the matter. He stated that he felt they should form a subcommittee and he would like to be on it. Barry Baker felt it would delay things by creating a subcommittee. Commissioner Schnaidt asked if they should have a special commission meeting. Chairman Baker stated that he felt that they needed to come together and form a task force. Subcommittee members are: Commissioners Schnaidt, Baker, and Remias, Barry Baker, Doug Walton, Theresa Blocher, and Donna Potter. Commissioner Cain moved to form the Alternative Apprentice Task Force. Commissioner Remias seconded. Motion carries with Commissioners Milleson and Schnaidt abstaining. January 22nd at 9:30 will be the meeting date. It was decided to move the January commission meeting to Thurs. Jan 22nd. The subcommittee will meet at 9:30 followed by the verbal examination, and finally the commission meeting.

The commission took a five minute break. The meeting resumed at 11:15.

The next topic for discussion is the verbal exam criteria. Commissioner Cain expressed that he is not comfortable with the current method of grading the verbal exam. He felt that there needed to be some criteria to base the score upon. He felt that professionalism should be a factor. He felt the sample criteria sheet gives the commission something to look for. He stated that he had asked Donna Potter to create a score sheet utilizing the criteria from the state bid calling contest. Chairman Baker asked for everyone's thoughts. Commissioner Milleson stated that he liked the criteria. Commissioner Schnaidt stated that the point system is tough but they did need some criteria to base upon. Donna Potter stated that the point criteria gives them a basis for pass or fail which is more objective than subjectively deciding whether someone passed or failed. Donna Potter stated that if the commission wishes to adopt the criteria, they would have to submit it via rule to change. The process would take several months. Chairman Baker asked for a motion. Commissioner Cain moved to proceed as discussed. Commissioner Remias seconded. No further discussion noted. Motion carried by an affirmative vote of the commission. Commissioners Milleson and Schnaidt abstaining.

The next item on the agenda is the auction education request.

Chairman Baker stated that there is an application in front of you from the OAA for the Jan. 17-19th in the amount of \$6,345.00. He asked where they were at in terms of the fiscal year. Donna Potter stated that the commission had previously approved the entire spending authority for the fiscal year. The fall seminar did not spend the entire amount approved which leaves roughly \$2,000; however she did not know if the funds had been released yet. She stated that the funds will not be released until the invoice is fully processed by OBM. Further, they should be released before they can be spent. She felt that the monies would be released by January. Chairman Baker stated that there was \$2,000 that was not used. He asked for clarification regarding the funds being released. Ms. Potter explained that when a purchase order is entered into the system, the system holds the money until all of the bills have been submitted and paid. Once they have been paid, any remaining money is put back to be spent. Chairman Baker asked if the fiscal year is July to July. Donna Potter stated it is July 1-June 30th. Chairman Baker stated that they do not have \$6,345 to approve the request; but they have about \$2,000. In order to get it approved, they would have to go before the controlling board. Donna Potter stated that she did not believe that there was enough time to submit the request and get it approved in time to have a contract drafted prior to the event. She stated that she believed the last controlling board was this week and the request needed to be submitted at least two weeks in advance. Commissioner Remias asked when they resumed. Donna Potter stated in January, but she did not know the exact date; probably after everyone was sworn in. Chairman Baker asked the OAA if they wanted to speak to the request. Barry Baker stated that it was his understanding that it should have been submitted so it could be discussed at the December 15. He stated that he guessed that never happened. Donna Potter stated that she could not submit a request to the controlling board until the commission approves it. Further, that had there been a meeting in October, it could have been submitted for approval. She reiterated that she could not submit anything to the controlling board until the commission approves it. Chairman Baker asked if they could do it after the fact. Donna Potter stated no. Chairman Baker stated that he did not know if they had any options. He asked for everyone's thoughts. He asked if there were another way to go about it? He asked if the OAA had anything else to say. He did not want to belabor the issue but they did not have the funds.

Barry Baker asked when Lori from the OAA submitted the request. Donna Potter stated that the request was submitted in October. Barry Baker asked if it had arrived around the time of the October meeting. Donna Potter stated that she received it around October 25, but in the July meeting the October meeting was moved to November and then later moved to December. David Jones asked when the spending authority was spent. Donna Potter said that by the July meeting it had been approved for the entire fiscal year. Chairman Baker stated that you could not approve something you do not have. David Jones stated that there was the \$2,000. Chairman Baker asked if they could approve the \$2,000 or if it was an all or nothing situation. Donna Potter stated that they could approve a portion of the request. If they wanted to approve \$2,000 toward the cost of the seminar they could. She would just need to make sure the funds were released. Chairman Baker asked if there was a way that they would not get the \$2,000. Donna Potter stated that they were beyond the area that she could really answer. She stated that Adam Ward was the best person. She stated that she was speaking very generically. She stated that the State was in a severe fiscal crunch and they are looking at cuts, lay-offs, rotary funds, etc. She did not know if the funds would be there. Chairman Baker asked the commission what was their pleasure. Commissioner Cain stated that they knew that they can not do it all but why couldn't they approve the \$2,000? Commissioner Schnaidt asked if there were any other requests that had traditionally been approved in the past. Donna Potter stated the Spring Seminar and the OAA summer convention. Commissioner Schnaidt stated that since there was no money for the Spring Seminar, it most likely would not happen.

Chairman Baker stated to bring everyone up to speed that they spend the \$23,000 spending authority but they were looking to get increased authority and that currently there was no remaining money until next fiscal year. Commissioner Schnaidt asked for the cost of the CES course. Chairman Baker said they approved about \$13,000. Donna Potter stated that they submitted an invoice for approximately \$11,000 which leaves \$2,000 and some change. Commissioner Remias wanted to know if the money was definite. Donna Potter stated that it is there, but it just had not been released yet. She had just received the invoice from the OAA last week and it was submitted for payment. The remaining monies should be released. Commissioner Schnaidt stated that his concern is that in the future if they are going to fund designation courses without seeking additional monies they are going to tie their hands. Chairman Baker stated that they discussed it and they have a lot of money sitting there and if they do not spend it, they will lose it. It has happened in the past and will most likely happen again. The commission is trying to go quality education and that they need to try to get the money. Donna Potter stated that the commission is trying to seek an increase in the spending authority, but with the current fiscal environment she did not know what will happen to that request. Doug Walton asked if he was hearing correctly and that there is only \$2,000 left until July 1. Commissioner Schnaidt answered yes.

Doug Walton asked what the status of the spending authority was for next fiscal year. Donna Potter stated that her understanding—which is based solely on information Adam Ward had given the commission—is that the spending authority for the next biennium is requested to be increased to \$40,000. She stated that she is not sure if the new biennium starts this coming July 1 or the next. She stated that if it is not this coming July, the spending authority should stay the same. She stated that she believes the biennium is 2010/2011. She did not think it was going to be cut. Doug Walton asked if she thought they would take the remaining \$2,000. Donna Potter stated that she did not see that they would take the \$2,000, but she could not say that they would not take money from the fund. They could possibly say no more spending this year, but the money would not be lost, the commission just could not spend it. Chairman Baker asked what the commission wanted to do. Barry Baker stated that he thought it would be crazy not to ask for every dime left to be appropriated toward this request. It is not hurting anyone to go after it. He stated that it may be taken out of the account. Chairman Baker stated that there was no other request before them. Commissioner Schnaidt asked if there had been any discussion of a Spring Seminar. Donna Potter stated that she felt that it was understood when the full spending authority was approved, that there would be no money for the spring seminar. Chairman Baker stated that the biggest complaints on the fall seminar were that there were too many people, not enough room. Donna Potter stated that there were 130 people at the seminar and a couple of people were turned away. Her only concern was that she thought that the seminar was held at the hotel because they could accommodate more people than in the ODA auditorium which holds 220. Barry Baker said that it was not the only reason. Chairman Baker stated that they have a request and let's move forward. He stated he would entertain a motion either way. Commissioner Remias moved to approve the remaining spending authority for the OAA Winter Convention to be applied to speaker lodging, travel and audio visual expenses. Commissioner Cain seconded. No further discussion noted. Motion carried by an affirmative vote of the commission with Commissioner Milleson and Schnaidt abstaining.

Chairman Baker asked for any other business for the commission. Commissioner Schnaidt stated that he attended the CES designation course and he wanted to share a few thoughts. He felt that the commission needed to look forward. He felt that the seminar was a great opportunity and the thought that the OAA did a great thing in trying to get the seminar together. However, from a personal standpoint, the course fell short of his expectations. He took some things away from the

seminar; he is not sure if he could point to what makes him a specialist versus someone who did not attend the seminar. He felt that the information was covered quickly and was disappointed in the open book test. He stated that Jack Christy spent 2 hours on a video tour of his auction facility. He felt that the actual content was about an hour. Chairman Baker read from the evaluations of the seminar. He stated that many said that the course could have been offered in a single day. Michael Hoffman stated that he attended the course in Indiana and it was his experience that it was a great course. He felt that with so many people in the room that maybe why Commissioner Schnaidt's experience was different. His class only had about 40 people. Commissioner Schnaidt stated that from a fiscal standpoint they need to look at an attendance of 130 people. Barry Baker stated that he was disappointed in the quality. He thought that it would have more "meat". He said that he was looking for a general class, but he much rather of had a harder course with more detail and experience. Commissioner Schnaidt felt that in the future, they needed to look at what is being offered/taught. Chairman Baker asked if there was anything else. Commissioner Milleson asked if everyone was invited to attend the courses at the Winter Convention. Barry Baker stated that only the ones that are being funded by the OAC are free to the public. Chairman Baker asked for any other business. Seeing none, Commissioner Cain moved to adjourn the meeting at 12:00 pm. Commissioner Remias seconded. Motion carried by an affirmative vote of the commission with Commissioners Milleson and Schnaidt abstaining.

Approved Chairman