

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Seminar Room B
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
January 14, 2011

PRESENT:

Chairman David Schnaidt
Commissioner Gary Cain
Commissioner Lori Kiko
Commissioner James Milleson
Commissioner Steve Remias

James Patterson, Asst. Attorney General
Bill Hopper, Chief Legal Counsel
Donna Brinker Potter, Auctioneer Program Manager

Members of the Public:

Maggie Beckmeyer, President OAA
Harry Grafton
David Jones, OAA
Bill Stepp, President-Elect OAA

Meeting called to order @ 9:35am by Chairman Schnaidt. All members of the commission are present. Chairman Schnaidt asked all members of the public state their names for the record.

Chairman Remias asked for a moment of silence for the victims of the shootings in Arizona. Commissioner Cain seconded. Motion Carried. Moment of Silence observed.

Chairman Schnaidt asked the commission if they had a moment to review the minutes of the October 29, 2010 meeting. Commissioner Cain moved to approve the minutes as corrected. Commissioner Remias seconded. No further discussion noted. Motion carried by an affirmative vote of all members.

The July Commission meeting date was changed to July 29, 2011 with the approval of all members of the Commission.

The next item on the agenda is the auction school application for Mendenhall School of Auctioneering. It had previously been denied due to an incomplete application. All requested materials had been submitted with proof of meeting the curriculum requirements established by the Commission. Commissioner Remias moved to approval Mendenhall. Commissioner Kiko seconded. There was no further discussion noted. Motion carried by an affirmative vote of all members.

The next item on the agenda is the Enforcement Update. Bill Hopper advised the Commission that the new Governor John Kasich had taken office. James Zehringer had been appointed Director of Agriculture, Fred Shimp, Assistant Director; Rocky Black, Deputy Director; and Andy Ware, Director of Communication.

Donna Potter stated that license renewals would be mailed by mid-February for licenses with last names beginning with A-J and W-Z; auction firms, and apprentice auctioneers. She stated that the apprentice language had been forwarded to the new administration for their review. She also updated the Commission on the balances of the auction education and recovery funds. She stated that there was an issue with the OAA flyers for the Winter Convention Seminars that she wanted to bring to the attention of the Commission. She stated that the flyers that were mailed failed to mention that the educational seminars were sponsored by the OAC and funded by the Auctioneer Education Fund and that they were free to all licensees. She expressed a concern that the flyers

appeared to show that there was a charge for attending and some may construe that it was for OAA members only. In an attempt to correct the error, a slip of paper was inserted into every envelope stated that the educational seminars were free and open to all licensees. Lori Landry at the OAA indicated that they would post a sign at the convention stating the educational seminars were sponsored by the Ohio Auctioneer Commission.

Jim Patterson advised the Commission that the new Attorney General is Mike DeWine and that they were still working on naming a Senior Staff. He did not expect any significant changes that would affect the representation of ODA by the AG's office. He further stated that he did not expect any procedural changes. He stated the Department had wrapped up two cases that he thought would be useful to mention. The first was a claim filed against an auctioneer who had a contract where all of the expenses to the auction were to be prorated amongst several consignors. One consignor felt that he had been inappropriately assigned an unfair portion of the expenses. The contract failed to stipulate how the expenses would be prorated. ODA found that the auctioneer's contract was deficient in terms of how the expenses would be prorated. If the contract had been explicit, there would not have been an enforcement action. The consignor also alleged there was a verbal agreement with the auctioneer where he had promised a certain percentage of the proceeds. This was not introduced at the hearing due to the Parole Evidence Rule which states that a written contract is presumed to contain all of the terms of the contract. Verbal contracts are not admissible. The result was that the consignor pursued a claim against the recovery fund based upon the finding that the auctioneer's contract was deficient. There was a claim that there was a breach of the verbal agreement and that he was overcharged for expenses. The Department did not oppose the overcharging of the expenses issue but opposed the recovery claim for the breach of the verbal agreement. The Hearing Officer agreed that the verbal agreement was not admissible and denied the claim. The recovery fund issued a payout of \$547.00 for the overcharging of the expenses.

The second case was where a licensed auctioneer submitted original and subsequent renewal applications indicating that he had no prior criminal convictions. In an unrelated investigation, it was determined that the auctioneer had three previous theft convictions within 10 years of making application. The department moved to revoke the auctioneer's license for making false and misleading statements on an application. There are also statutory provisions that prevent the department from issuing a license to an individual who has had a conviction for theft or fraud within ten years of the date of application. Once the department initiated a notice of proposed revocation action, the auctioneer then hired an attorney to change his original plea with the court and to enter into a plea agreement where he agreed to plea to a non-theft charge. The department was not involved with this action with the court. For ODA's purposes, the change in plea did not make a difference because it did not change the fact that the auctioneer had supplied false statements in his application and subsequent renewals. The case went through several steps. The first was before a hearing officer. The hearing officer found that the auctioneer had made fraudulent statements to the department in the application and renewals and that by itself justified a revocation. The Director approved and adopted the findings of the hearing officer. The matter was then appealed to the Mahoning County Court of Common Pleas where the court upheld the Director's Order. Bill Hopper stated that it is possible that the auctioneer could appeal the decision to the Court of Appeals, but none had been filed to date. Jim Patterson said the final thing that he wanted to mention is the first official act of Governor Kasich was to issue an Executive Order which has an indirect effect on the penalties assessed by state agencies for penalties on 1st offenses involving a minor violation. This action does not change what ODA has been doing due an Executive Order issued by the previous governor which was later included in statute.

Commissioner Kiko asked in the process of an investigation is there an opportunity for mediation before an investigation is commenced. Jim Patterson stated that there is no mechanism for a 3rd party process. The opportunity for settlement discussions, etc. occurs before an administrative hearing would take place after an investigation is completed. He stated that there is no provision for formal discovery in the administrative process. The Ohio Supreme Court ruled that civil rules do not apply in the administrative process. He further stated in an administrative action, due process exists and ODA voluntarily will turn over the case file, evidence, etc. before the formal hearing process begins. Commissioner Kiko inquired if the investigative process is determined by statute or code. Jim Patterson stated that the Department's authority to conduct the investigation is statutorily granted in R.C. 901.27 and in R.C. 4707.16. Commissioner Kiko stated that as a Commissioner, she would like to recommend a different way of handling the investigations. Jim Patterson stated that it is appropriate to advise the Director to suggest something that pertains to the ODA administration. He stated that if the Commissioners ever are contacted by a licensee who has an issue with the way a complaint is being investigated, to please refer them to Gary Hill, Chief of Enforcement or to the Director. Commissioner Kiko recommended that the Department review the way complaints and investigations are handled by the Department of Commerce, Division of Real Estate. Commissioner Cain recommended that the Department give the investigators some "PR" guidelines. Donna Potter explained that the procedure for investigating complaints. She stated that the investigator is not supposed to express an opinion about the case or to give legal opinions; he is there to collect information, conduct interviews with licensees and witnesses, and put the gathered information in an investigative summary. The investigative file is then reviewed by Ms. Potter and Gary Hill and discussed with the legal department before any action may or may not be taken. She reiterated that if someone is concerned with an investigator or the way an investigation is being handled, their concerns should be addressed to Gary Hill.

Chairman Schnaidt asked for any other business. David Jones asked about contracts between auctioneers. Donna Potter stated that the contracts between auctioneers must follow the requirements found in R.C. 4707.20. The Commission asked Donna Potter to write an article regarding contracts for the next OAA Buckeye Magazine. With no other business before the commission, Chairman Schnaidt asked for a motion to adjourn; Commissioner Milleson so moved. Commissioner Remias seconded. No further discussion. Motion carried. Meeting adjourned at 11:19am.

Approved Chairman