

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Seminar Room B
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
April 29, 2011

PRESENT:

Chairman David Schnaidt	James Patterson, Asst. Attorney General
Commissioner Gary Cain	Bill Hopper, Chief Legal Counsel
Commissioner Lori Kiko	Donna Brinker Potter, Auctioneer Program Manager
Commissioner James Milleson	Nathan Aichele, Legislative Liaison

Members of the Public:

Maggie Beckmeyer, OAA	Randy C	Dan Pletcher
Chris Davis, OAA	Tim Lile, OAA	Tom Gibson
David Jones, OAA	Pat Sheridan	Doug Walton, OAA
Bill Stepp, President OAA	Larry Woods	Wayne Wilson

Meeting called to order @ 9:39am by Chairman Schnaidt. All members of the commission are present except Commissioner Remias. Chairman Schnaidt asked all members of the public state their names for the record.

First item on the agenda is the education fund requests. Donna Potter stated that there were two requests from the OAA. The first is for the summer educational seminar to be held at ODA on June 30. The OAA was seeking approval for \$5,360.00. The second was for the Ohio State Fair Bid Calling Contest in which they were seeking \$6,585.00. Commissioner Kiko moved to approve the \$5,360.00 for the summer seminar request. Commissioner Milleson seconded. No further discussion. Motion carried by an affirmative vote of all members present.

Commissioner Schnaidt stated that the commission needed to go back and approve the minutes from last meeting before reviewing the request for the Bid Calling Contest. Commissioner Cain moved to approve minutes as written. Commissioner Milleson seconded. No further discussion. Motion carried by an affirmative vote of all members present.

The second education fund request was for the Ohio State Fair Bid Calling Contest in the amount of \$6,585.00. Commissioner Schnaidt asked if last year's attendance was up from the previous year by moving it to a later time. Donna Potter stated that attendance from the public was increased. Commissioner Kiko moved to approve the request as submitted. Commissioner Cain seconded. No further discussion. Motion carried by an affirmative vote of all members present.

The next item on the agenda is the Enforcement Update. Donna Potter reported that she had an email from Gary Cain requesting an investigative update. Since July 2010, the department had received 90 complaints. 67 of the complaints were closed. 18 investigations were still open. There were 5119 hearings pending and 50 letters of instruction had been issued. Most of the letters were dealing with missing language in contracts. 4 cases resulted in no violation/insufficient evidence. 8 cases resulted in voluntary compliance or no action taken; 3 settlement agreements; 1 revocation of a special auctioneer license for operating/advertising in a name other than on license; and 1 fourteen day suspension. She reported that the majority of the cases involved:

- Missing language in contract, contract deficiencies, or failure to have contract;
- Improper advertisements (mostly Estate or Absolute auctions);
- Trust account/commingling/untimely payment to clients;
- Aiding unlicensed persons; and

- Two cases of improperly conducting an absolute auction.

She stated that there was a pending recovery fund claim as a result of a failure to timely pay/account for items sold at auction and 1 bond claim. Ms. Potter stated that there was a recovery fund payout issued earlier in the year and that auctioneer had already repaid the fund.

Ms. Potter stated that at the last commission meeting it was requested that she write an article for the Buckeye addressing the issue of contracts between auctioneers. She reported that she had written the article and it was in the current Buckeye. She also stated that the department had drafted a sample contract for between auctioneers and/or between auctioneers and auction firms and it was posted on the web page. Commissioner Kiko asked David Jones if it had addressed his concerns regarding the contract requirement. David Jones stated that he was looking at the sample contract.

Donna Potter reported that all renewals had been mailed as of February and that she had received back approximately 1/3 of the renewals. She reminded the commission that the deadline to avoid a late fee is June 30th. Donna Potter advised the commission that their concerns voiced at the last commission meeting were addressed with Gary Hill, Chief of Enforcement, and as a result he had reviewed proper investigative protocol with the investigators. She asked that if the commissioners had any additional concerns, they were more than welcome to contact Gary Hill to set up an appointment to discuss their concerns further. The final item on the update was a reminder to David Schnaidt that his appointment was expiring this year and that if he is seeking reappointment he would need to contact the Governor's Office.

Chairman Schnaidt stated that the next item on the agenda is HB 114. He stated that they were going to have an update from the department and discussion amongst the commission. At the conclusion, they would open it up for public comment or questions. Donna Potter stated that she had provided two handouts for the commission to review. One was the actual language found in HB 114 as it pertains to the construction equipment auctioneer and the other was a summary of the language from LSC. She briefly outlined the new construction equipment auctioneer license and requirements and stated that the department had only learned of the bill after it had been signed into law when David Jones contacted her regarding the language. She stated that this license will fall under the jurisdiction of the Bureau of Motor Vehicles and not the department. She had been receiving calls from auctioneers and she has been referring them to BMV as they are the regulatory authority for this license. She stated that she had attended a meeting at the Statehouse on Wednesday where Senator Widener had reassured those in attendance that it was not the intent to prevent any auctioneer from being able to do what he had been legally able to do prior to the enactment of HB 114. He stated that if there was clarification needed that he was willing to work with them and he had asked for clarification from LSC regarding the impact of the new statute on an auctioneer.

Jim Patterson stated that he had a brief conversation with his counterpart at BMV. He stated that the BMV has not made a formal announcement regarding the enforcement of the new code and he would share any information that he receives regarding this. Mr. Patterson indicated that his interpretation of the statute had raised some questions regarding the definition of the construction equipment auctioneer in (LL) where it defines a term of construction equipment auctioneer that is not used elsewhere in the statute. The remainder of the statute refers to a construction equipment licensee. Mr. Patterson indicated that this may be an important issue and it could benefit from clarification. R.C. 4517.18(A) currently reads construction equipment licensee and it goes back to the intent. Construction equipment auctioneer is defined and construction equipment licensee is not. Mr. Patterson expressed a concern that depending on a court's interpretation, there potentially could be a conflict with 4707. The other section was the requirement for an

auctioneer license within the definition rather than stating that the person needed to be licensed under Chapter 4707 of the Revised Code. As written, the current language would not cover an auction firm taking construction equipment on consignment. Commissioner Kiko asked what jurisdiction BMV had to regulate these auctions. Bill Hopper responded that they have the jurisdiction over it that was granted by the State Legislature not the state agency. How the BMV determines to enforce the provision is a question for the BMV. Commissioner Cain asked if the department would be able to clarify. He felt that the department would have more authority to get answers. Bill Hopper stated that the department is making inquiries, but again, the department is not the Legislature and not BMV and is unable to control areas that do not pertain to its jurisdiction. Chairman Schnaidt stated that it would seem to him that interested parties such as the OAA or another group could come together and seek clarification and recommend changes.

Commissioner Kiko moved that the Chairman put together a letter to request clarification of HB 114 on behalf of the general auctioneer and licensing law. Commissioner Milleson stated that he felt they should consider what the OAA would have to say. Commissioner Cain stated that something from the OAC and the OAA would be appropriate. Nathan Aichele, ODA Legislative Liaison, state that as far as separate letters, he stated that it would not be appropriate for the ODA to write a letter affecting change of the language. He stated that Senator Widener is open to working with interested parties. Chairman Schnaidt stated that since legal had been asking for clarification would it make a difference if the OAC also seeks clarification. Commissioner Kiko wanted to know if it would make a better impact. Nathan Aichele stated that the Bureau cannot initiate change that for a change in the law it is better to contact the legislature. Chairman Schnaidt stated that they could ask for clarification and it would behoove a third party hire a lobbyist to get involved to make a legislative change because it is not within the OAC's authority to do so. Commissioner Cain seconded the motion. Mr. Aichele stated that a letter from the commission seeking clarification re: the interpretation of the language is appropriate. Bill Hopper agreed that it was appropriate and stated that Legal can review the letter. Commissioner Kiko amended her motion to read to write a letter to the BMV seeking clarification of new language. Chairman Schnaidt stated that it should be specific on points and specific areas. Chairman Schnaidt asked for further discussion. No further discussion from the commission is noted. The motion passed by an affirmative vote of all members present.

Chairman Schnaidt stated that they would take a brief break and then open the discussion up for public comment. Commission took a break at 10:41 and meeting resumed at 11:00.

Chairman Schnaidt asked for any other business before the HB 114 public comment. Maggie Beckmeyer stated that she had asked in the past about the commission sponsoring an expert witness class for about 50 people. She said the cost would be \$3,700. Donna Potter advised her that she was welcome to submit an education fund request to the commission for review and that the application was available on line. Bill Stepp stated that he would like to discuss online auctions at the next meeting. With no further business, Chairman Schnaidt opened the floor to public comment regarding HB 114. David Jones stated that he met with Sen. Widener and he led them to believe that nothing in law would change what they have been doing for x number of years. However, he thinks that there are issues and that they were told that BMV was at every meeting. Jim Patterson clarified that his counter part advised him that they were unaware. David Jones stated that he had issues with consignment auction. He stated that he did not like the bill and was trying to get changes made. He said the Senator didn't want to affect the profession but there were vast opinions as to whether or not it does. Bill Stepp stated that he felt that the Senator was straight forward and not playing politics. He felt that he would work with the OAA and that as President of the OAA he was trying to get something in writing out to the membership. Commissioner Kiko recommended that that OAA get own legal counsel and would follow up

with the Senator referencing previous meeting. Doug Walton stated that he did not doubt the Senator's word. He stated that the OAA had several meetings with the BMV trying to work out the consignment issue. He stated that he would hate to see them loose ground. Commissioner Kiko stated that they need to be talking to the legislature not BMV. Wayne Wilson expressed concern that he had received an email at 5:30 in the evening and wanted to know why someone did not know ahead of time. He stated that he called his representative and he did not know what was in the bill. Mr. Wilson stated that they should have the right to know. Tim Lile stated that it just smelled bad and that with how it is defined it is a clear cut issue of restraint of trade. David Jones stated that it gives the Registrar the ability to adopt rules re: construction equipment auctions. Jim Patterson stated that the two may be in conflict. He stated that when there is a conflict between a statute and an administrative rule, the statute would prevail so if an administrative rule would conflict with a provision of R.C. 4707, the statute would win. Commissioner Milleson asked what they wanted to see done. Bill Stepp responded that the Senator stated that they were not going to get it repealed. Chairman Schnaidt stated that the commission is drafting a letter on its concerns. Jim Patterson stated that it is appropriate to write a letter seeking clarification. Chairman Schnaidt asked if they would achieve anything by writing a letter. Bill Hopper stated that a letter from the OAA may be of much more import. Commissioner Cain stated that as a commission, they represent the public and the profession. Donna Potter reminded them that the Department and the OAC jurisdictionally are confined to clarification that it could not be a directive for change. Commissioner Kiko stated that they needed to draft a letter seeking clarification on how the BMV is going to enforce the statute. Chairman Schnaidt asked for other comments. He stated he wanted everyone to be heard. He said it is frustrating to be behind the eight ball. He encouraged the OAA to be involved and he felt that it has a huge affect beyond just the profession. He thanked everyone for their time and 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 11:50am.

Approved Chairman