Tennessee Department of Commerce and Insurance

News Line

Volume XL September 2006

An Official Publication of the Tennessee Auctioneers Commission

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Commission Members & Staff

Bobby Colson, Chairman
Middle Tennessee Member
Term: 08/31/2004 – 08/31/2007
Kenneth Dreaden, Vice Chairman
At-Large Member
Term: 11/10/2005 – 08/31/2008
John McLemore, Board Member
Consumer Member
Term: 09/01/2004 – 08/31/2007
Howard Phillips, Board Member
East Tennessee Member
Term: 09/01/2003 – 08/31/2009
Marvin Alexander, Board Member
West Tennessee Member
Term: 11/30/2004 – 08/31/2007

Lynn McGill, Administrative Director
Sheila Piper, Administrative Assistant

Mission Statement

The Mission of Tennessee Auctioneer Commission is to protect the public and licensees by monitoring the auctioneer profession through licensure and regulation.

State of Tennessee
Department of Commerce & Insurance
Tennessee Auctioneer Commission
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Davy Crockett Tower - Sixth Floor
Nashville, Tennessee 37243-1152

615-741-3236 Fax – 615-741-1245

www.state.tn.us/commerce/boards/auction

From the Chairman

by Bobby Colson, Chairperson

When I was asked to serve as a Commissioner on Tennessee Auctioneer Commission, I was both honored and humbled. I was honored to serve the auction profession I have devoted my life to, and humbled at the responsibility this position carries with regard to auctioneers, auction businesses and, most important, auction consumers in the state of Tennessee.

When we are asked to make rulings on violations and complaints, these matters come before us anonymously, by a case number, assigned by the Commission legal staff. We never know if we are ruling on cases involving our competitors, our professional associates, or even ourselves. What we do know, however, is that we are always ruling on how to hold the interest of the consumer above all else.

As auctioneers we all need to remember that our actions and our decisions affect not only ourselves and our companies, but also our seller, our buyers and our bidders. Many times, the general public is intimidated by the auction process, and too often they don't ask the questions necessary to put their anxieties at ease. If we can all remember to keep the consumer interest in mind as we go about conducting our business, and pay attention to customer service before and after the auction, we can eliminate a lot of the concerns that exist in the general public about the auction industry.

As the new Chairman of the Commission, I am equally honored and humbled. I am honored to be entrusted with this position by my fellow Commissioners, and humbled at the responsibilities this position carries. Our meetings will be changing in the months to come. As we continue to use the technological advances available to us, we will be able to videotape these meetings and make them available for viewing on the internet. This is an exciting change.

Our Commission meetings are open to the public. Everyone is welcome, so come join us, and if you have questions or comments to pose to the Commission, call the office and request to be on the agenda.

Selling Personal Items at Auction

One of the most common misunderstandings in the auction business has to do with selling one's own merchandise. Over and over again, we hear people saying, *"I don't need a license because it is my stuff I am selling."*

Example: A non-auctioneer pulls all their personal belongings out into their back yard and auctions those items off without a license, provided those items were purchased for their personal use and sales tax was paid on those items when they were purchased. In this case, **NO** license is required.

Example: A non-auctioneer purchases items to stock an auction at their home or business. These items were purchased with a certificate of resale and no tax was paid. In this case, **YES**, a license is required.

Example: A non-auctioneer purchases items to stock an auction at their home or business. Sales tax was paid on these items. In this case, **YES**, a license is required.

Example: A non-auctioneer pulls some of their personal belongings from their home to stock an auction at their home or business and includes some items purchased to sell and/or stock the auction. In this case, **YES**, a license is required.

The key points of consideration come down to this:

- Were the items purchased with the ***intent to resale***? All items purchased with the intent to resale, whether tax was paid or not, requires a licensed auctioneer to sell at auction.
- Were the items purchased for ***personal use***? Items purchased for personal use by an individual may be auctioned *by the owner of those items only* without a license.
- Was sales tax paid on the items? If sales tax **is not** paid, the presumption exists that the item was purchased for resale, but keep in mind, if sales tax is paid, there is **no** presumption of personal use.

Reference: TCA 62-19-103. Exemptions. Paragraph 5.

A Message from Commissioner McLemore

By John C. McLemore, Outgoing Chairman

When I was a much younger lawyer, the Bankruptcy Court appointed me trustee of a mega-dairy that was supposed to have more than 2,000 cows. When I arrived on the scene and conducted a roundup, I found 427 cows, two bulls and assorted baby cows. Then the fun began. For the next six months I operated that dairy keeping between 280 and 300 cows on the milk line.

The day we sold those cows I knew a thousand times more about dairy farming than I had the day of my appointment. I can remember sitting on a stairway in the courthouse where the auction was conducted signing papers and thinking, "If I had known six months ago what I know today, I could have done a much better job."

As I step down as chairman of the Auctioneer Commission, I feel exactly the same way. Life is one big learning experience. I knew when my term began there was going to be a battle over whether the Commission should regulate Internet drop-off stores. In my capacity as the consumer member of the Commission I still believe it should. I am now a veteran of one legislative session. We lost and I know a lot more about the battleground today than I did a year ago.

I think there is a good chance in the coming years that the pendulum may swing. I hope every Internet drop-off store owner in Tennessee is honest, forthright and a scrupulous keeper of consignment and financial records. If a few are not and consumers are cheated, it stands to reason the legislature will place their regulation under our Commission.

As I return to my consumer member seat on the Commission and turn over the Chairman's duties to Bobby Colson, I will continue to be an advocate for the sale of automobiles to the general public by licensed auctioneers in Tennessee. The laws that prevent Tennessee auctioneers from accepting automobiles for sale on consignment are not designed to protect the consumer but to create a closed marketplace for the automobile dealers.

If my next door neighbor can go online and bid on a car, why can't he go to a reputable auction barn on Thursday night, look at a car, kick the tires, rev the engine and bid?

Finally, I think there are a few laws impacting auctioneers that need to be updated. I have noticed during the past few years that more and more banks are using licensed auctioneers to conduct foreclosure sales on site rather than at the courthouse door. I commend all commercial lenders who do this. A well advertised public auction will fetch the true market value of the property offered. But how many of us have paid close attention to TCA 35-5-109 which requires all foreclosures and judicial sales to be held between 10:00 a.m. and 4:00 p.m. Personally, during the summer, I would much rather attend an "After Dinner" foreclosure.

I have enjoyed my first two years of service on the Commission and am looking forward to my third. I welcome your comments and questions. Do not hesitate to give me a call.

License Expiration Dates

Be sure to check your license and your pocket card for your license expiration date. It is the responsibility of each licensee to renew their license **before** the expiration date, whether you receive a renewal notice from the TAC or not. Allow at least 7-10 days for payment to reach the TAC, or renew online at www.tennesseeanytime.org/tnauct/

Editor's Note

By Wendell L. Hanson, CAI, AARE

Over the past couple of months, Rhessa Orr and I have met with the TAC Staff and Commissioners to determine ways to improve both the Newsline Newsletter and the State Seminars. We have designed a new look and hope to incorporate some new content into the quarterly newsletters.

I am excited at the opportunity to manage the Continuing Education Seminars and Newsletters for the Tennessee Auctioneer Commission. I hope you will all feel free to contact me or Rhessa Orr at nas@learntoauction.com to give us suggestions of articles you would like to see in the newsletter and topics you would like presented for Continuing Education.

Our next Seminar will be in East Tennessee on Friday, October 20, 2006 from 9:00 am (EST) until 4:00 pm (EST) at the Music Road Convention Center in Pigeon Forge. Bring the family and enjoy a fun weekend in the beautiful Smoky Mountains of Tennessee.

TAC Licensee Report:

Currently the TAC oversees 3494 licensees, as follows:

Auctioneers	**1747**
Apprentices	**338**
Firm	**1191**
Firm Branch	**61**
Gallery	**138**
Gallery Branch	**19**

Please have your license number handy when calling the TAC Office. It saves time!

Commission Report

The Tennessee Auctioneer Commission met on Monday, August 7, 2006. Commission meetings follow a very tight agenda during which they evaluate complaints and citations presented by legal counsel, Bethany A. Heuer, followed by a review of license applications requiring the Commission's attention.

Following these agenda items, the Commission began the process of evaluating the TAC Rules and Regulations to begin a Rule Making process. Several items in the current Rules and Regulations are outdated or unclear; others are suggested for revision. The Rule Making process follows a clearly defined procedure and will include a public hearing as it proceeds. **A Public Meeting has been scheduled for October 2, 2006 at 9:00 am in Room 640 of Davy Crockett Tower** to approve recommendations for a formal Rule Making hearing.

In the last meeting, Bobby Colson was elected as the Chairman and Kenneth Dreaden was elected the Vice Chairman. The next Commission meeting is scheduled for Monday, October 2, 2006 at 9:00 am (Central) in Room 640, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, TN.

Beginning in October, the meetings will be videotaped and available for download from the TAC website, www.state.tn.us/commerce/boards/auction

Due to the taping process, no meeting attendees will be allowed to participate in the meeting procedures unless they are on the meeting agenda. To be placed on the agenda, contact Mrs. Lynn McGill at 615-741-3600.

Disciplinary Action: License Revocation

Johnny Barnes of **Hohenwald, Tennessee** was scheduled for a formal hearing before the Commissioners on Monday, August 7, 2006 for multiple violations of the Tennessee Auction Code and Rules and Regulations. Mr. Barnes had been charged with conducting auctions as an apprentice auctioneer without his sponsor being present, holding auctions at an unlicensed facility, and multiple advertising violations. Mr. Barnes agreed to a revocation of his apprentice license in lieu of a hearing. In addition to violations to the Tennessee Auction Code, Rule violations were:
Rule 0160-1-.20 Section 1 and Section 2; Rule 0160-1-.12 Sections 2, 7, 8 and 9. These multiple infractions occurred over a time period beginning in September 2005 and continued into December 2005. License status is **Revoked.**

"The Tennessee Department of Commerce and Insurance is committed to principals of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator at 615-741-2177 (TDD).

Speaking of Sales Tax....

From John Harvey, Taxpayer Services Division, Tennessee Department of Revenue (07/26/2006)

Important Note: *"Any opinion from tax law or regulations given herein is believed to be a correct interpretation. However, the opinions cannot constitute a revenue or letter ruling pursuant to the provisions of Tenn. Code Ann. Sect. 67-1-109."*

1. When a buyer's premium is charged to the buyer in order to compensate the auctioneer, is the buyer's premium subject to sales tax?

*"Tennessee Code Annotated Section 67-6-102(a)(35) defines **sales price** as the total amount charged for the sale of tangible personal property. So, if the auctioneer charges a buyer's premium on the sale of an article of tangible personal property and sales tax must be collected, the buyer's premium is part of the sales tax base."*

2. If a buyer holds a certificate of resale exempting the purchase from sales tax, would the buyer's premium be subject to sales tax?

"If sales tax is not applicable (as explained above), then the buyer's premium is equally exempt.

3. What tax law changes will be going into effect July 1, 2007 which may affect auctions?

"On July 1, 2007, the provisions of the Streamlined Sales Tax will become effective in Tennessee. These changes deal basically with the way local sales tax is collected on sales where items are shipped to the customer's location. There are other changes that deal with eliminating sales tax exemption thresholds on certain items, elimination of the $ 1,600.00 threshold on local tax collections on most items, and a few other changes. Other than the elimination of the $ 1,600.00 limit on application of the local sales tax on most items, the basic application of sales tax to auctions should not be affected."

MARK THE DATE:

Monday, October 2, 2006	TAC Rule Making Meeting
Friday, October 20, 2006	TAC CE Seminar (East)
Tuesday, February 27, 2007	TAC CE Seminar (West)*
Tuesday, May 22, 2007	TAC CE Seminar (Middle)*

* Dates are tentative. Location to be announced.

Next Quarterly Publication: December 15, 2006

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Tennessee Auctioneer Commission Continuing Education Seminar Pigeon Forge, Tennessee Friday, October 20, 2006 9:00am - 4:00pm (eastern)

Driving Directions: From I-40 take Exit 407/Hwy 66 toward Sevierville-Pigeon Forge. In Sevierville, merge onto Highway 441 toward Music Road Convention Center - Pigeon Forge, Tennessee. At Traffic Light 1, Henderson Chapel Road, turn Right. Music Road Convention Center will be on your left. There are two hotel properties adjoining the Convention Center: the Music Road Inn and the Music Road Hotel. A special rate is blocked until September 19, 2006 under "**TAC**" of $ 99/night (Thursday) and $ 139/night (Friday/Sat). Call Donna Rhodes at **1-800-429-8803** to take advantage of the special rate. Reserve online at www.musicroadhotel.com, reservation code # 6849-7728

Note: Rooms in the area will go quickly because there is UT home football game that weekend. Be sure to reserve early.

"From Contracts to Closing" 4 hours
Presented by Chris Pracht, CAI, AARE, CES

"Sales Tax Update" 2 hours
Presented by Cathy Russell, TN Dept. of Revenue

BE SURE TO HAVE YOUR POCKET CARD WITH YOU TO CHECK-IN

NOTICE OF PUBLIC MEETING

The Tennessee Auctioneer Commission has scheduled a Rule Making Meeting for October 2, 2006 at 9:00 am To be held at: Room 640 – Davy Crockett Towers 500 James Robertson Parkway Nashville, Tennessee

This is a public meeting. Comments from the public will be entertained. The Board will be reviewing proposed changes to the TAC Rules to approve for a Rule Making Hearing. All licensees are encouraged to attend.

TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE AUTHORIZATION No. 335170, Revised 08/06. This public document was promulgated for 3500 copies per issue, at a cost of 37 cents per copy, paid by the Tennessee Auctioneer Commission Education and Recovery Fund.