

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: May 6, 2013

PLACE: Davy Crockett Tower – Conference Room 1-B
500 James Robertson Parkway
Nashville, Tennessee

PRESENT: Commission Members:
Bobby Colson, Chairman
Jeff Morris, Vice Chairman
Marvin Alexander (*arrived late*)
Gary Cunningham (*arrived late*)
Howard Phillips

PRESENT: Staff Members:
Donna Hancock, Executive Director
Julie Cropp, Assistant General Counsel
Mark Green, Assistant General Counsel
Judy Elmore, Regulatory Board Administrative Assistant 3

GUESTS: Charles Schneider; Assistant Commissioner Bill Giannini; State Representative Pat Marsh; Wendell Hanson; Rhessa Hanson; Michael Driver; Laura Betty; and Luellen Alexander

CALL TO ORDER: Chairman Colson called the meeting to order at 9:10 a.m. and the following business was transacted:

NOTICE OF MEETING: Ms. Hancock read the following statement for the record, "This meeting's date, time and location have been noticed on the TN Auctioneer Commission's website, included as part of this year's meeting calendar, since August 8, 2012. The calendar was updated on February 1, 2013 to reflect the new meeting room number. Additionally, the agenda for this month's meeting has been posted on the Tennessee Auctioneer Commission's website since April 26, 2013."

ROLL CALL: Ms. Hancock called the roll. Consisting of a quorum, three (3) of the five (5) commission members were present. Mr. Alexander and Mr. Cunningham arrived later in the meeting.

AGENDA: Mr. Morris made a motion to adopt the agenda, seconded by Mr. Phillips. **MOTION CARRIED.**

MINUTES: Mr. Morris made a motion to approve the minutes of the April 1, 2013 meeting, seconded by Mr. Phillips. **MOTION CARRIED.**

**PUBLIC AUTOMOBILE AUCTION APPLICATION – DETERMINE ELIGIBILITY: APPEARANCE BY
JERRY BOWMAN**

Mr. Phillips made a motion to postpone the review and discussion of the application until the other Commission members arrived. **MOTION CARRIED.**

UPDATE ON SEMINARS & NEWSLETTERS – RHESSA HANSON, Nashville Auction School

Ms. Hanson presented an oral report on the progress of the seminar schedule and newsletter. She advised the next seminar is scheduled for Monday, May 13, 2013 at the Ward Agriculture Center in Lebanon, Tennessee. She also informed the Commission that the next newsletter will be distributed sometime in June 2013.

Ms. Hanson reported on her participation with an Ohio sub-committee regarding distance learning. She stated that the Ohio Auctioneer Commission had been solicited by an auction school to allow basic auction education by distance. Ms. Hanson participated in the meeting on April 15, 2013 and reported that Ohio is not going to take action regarding this matter at this time

Additionally, Ms. Hanson gave an accounting of her appearance before the Kentucky Auctioneer Licensing Board at their meeting in mid-April 2013. As an independent education contractor, Ms. Hanson's attendance at the meeting was to request approval for existing courses offered by the Nashville Auction School to be accepted as having met the requirements of the Kentucky CORE Course and her request was denied. She advised Kentucky's board members of the concerns previously discussed by the Tennessee Auctioneer Commission regarding Kentucky's implementation of their CORE course requirement and the burden it may impose on dually licensed individuals. She informed the KY Board of the Tennessee Commission's instruction to legal counsel to determine their authority to require similar additional continuing education requirements for Kentucky licensees. Ms. Hanson reported that Kentucky's board advised they would not change their position regarding their recently enacted CORE requirements.

Mr. Cunningham joined the meeting at 9:20 a.m.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL

Presentation of the Legal Report -

Ms. Cropp presented the following complaint report for the Commission's consideration:

1. **2013003681**
License #:
First License Obtained: 12/20/05
License Expiration: 4/1/15
Type of License: Firm
History: None

2. **2013003701**

License #:

First License Obtained: 7/7/89

License Expiration: 3/31/14

Type of License: Auctioneer

History: 3 (2 closed with no action; 1 closed in 2004 by \$500 Consent Order)

3. **2013003741**

License #:

First License Obtained: 8/12/98

License Expiration: 4/1/15

Type of License: Auctioneer

History: None

Complainant states that Respondent 1 (firm) is contracted by a municipality to provide auction services, and Complainant states that Respondent 1's website shows Respondent 3 (auctioneer) as its principal auctioneer. Complainant states that Respondent 1 and Respondent 3's licenses expired in 2011. Complainant further states that Respondent 1's website lists Respondent 2 (auctioneer) as an auctioneer, and Complainant states that the online license look-up does not show that Respondent 2 has a license. Complainant states that there are several upcoming auctions for the municipality advertised on Respondent 1's website.

Responses were submitted by Respondent 3 stating that Respondent 3 had learned prior to the complaint that Respondents 1 and 3's licenses had expired, and Respondent 3 is already working through the necessary steps to reacquire those licenses (since the date of submission of the responses, Respondent 1 and Respondent 3 have obtained active licenses). However, Respondent 3 states that this fact is irrelevant to the allegations within the complaint, as the only business which Respondents 1 and 3 have been engaging in since prior to license expiration is the reallocation of government property by and under the direction of a municipality. Therefore, Respondent 3 states that the exemption found at T.C.A. § 62-19-103(3) applies to Respondents 1 and 3, and therefore the Complainant's allegations are without merit. The relevant exemption states that "The provisions of this chapter do not apply to: (3) Any auction conducted by or under the direction of any governmental entity or pursuant to any judicial order or decree." As to Respondent 2, Respondent 3 states that Respondent 2 is a licensed auctioneer and has overseen and assisted with the municipal auctions with Respondent 1 for several years. There is no information indicating that any other types of auctions were being conducted other than those for the municipality. Additionally, Respondents 1 and 3 are now active licensees. However, it is recommended that the Commission discuss whether the exemption found at T.C.A. § 62-19-103(3) extends to this situation.

Recommendation: Discuss.

Commissioner Morris abstained from the vote on this matter

DECISION: Mr. Phillips made a motion to close as to Respondent 2 and send letters of warning to Respondents 1 and 3 regarding the provisions of T.C.A. § 62-19-102(a)(1) and Rule 0160-01-.20 regarding advertising auction sales, even though exempt, in the name of a firm which did not have a license. Mr. Cunningham seconded the motion. **MOTION CARRIED.**

Mr. Alexander joined the meeting at 9:30 a.m.

4. 2013007171

License #: Unlic.

First License Obtained: N/A

License Expiration: N/A

Type of License: Unlicensed

History: None

April 2013 Meeting – Complaint Summary for Licensed Gallery (related complaint):

The same complaint mentioned above also stated that Respondent (gallery) did not use a licensed auctioneer, but the complaint did not provide the name of any unlicensed individuals who called auctions for Respondent.

The owner of Respondent submitted a response stating that Respondent has a permanent auctioneer and provided the name and license number of the individual, who is an active licensed auctioneer (Respondent's online auction ads all appear to confirm that this licensed auctioneer is the auctioneer for Respondent). When that auctioneer is not available, Respondent's owner states that the auctioneer sends another licensed auctioneer to take his place and call Respondent's auctions. On one night (a few days before the complaint was submitted) Respondent's owner states that the regular auctioneer was called away on an emergency and told Respondent that an unlicensed individual could call that night since Respondent was selling all of that individual's items that night. Respondent's owner states that if they were in the wrong on that occasion, they were unaware, but in all other instances Respondent has used licensed auctioneers. Respondent's owner indicates familiarity with Complainant as a fellow industry member who has an auction and has attended Respondent's auctions.

Recommendation: *Letter of instruction regarding using a licensed auctioneer to call bids at all auctions under T.C.A. § 62-19-125(b) and the exemption found in T.C.A. § 62-19-103(5) for any person performing acts relating to property owned or leased by the person.*

DECISION: *The Commission voted to authorize a formal hearing with authorization for Respondent to settle by consent order with civil penalty of \$500.00 for using an unlicensed individual to call auction bids in violation of T.C.A. § 62-19-112(b)(7) and T.C.A. § 62-19-125(b) and to open a complaint against the unlicensed individual who called the bids at the auction.*

Pursuant to the direction of the Commission, this complaint was opened against Respondent (unlicensed individual) for unlicensed activity, and a copy of the complaint was sent to Respondent for a reply.

Respondent submitted a reply stating that Respondent called the auction on a single occasion because the auctioneer, who is a personal acquaintance, was called away on a family medical emergency at the last minute, and Respondent was selling only what Respondent had consigned

to the auction for that night's sale. Respondent states that Respondent graduated auction school in the 1980s in another state and, for awhile, called auctions in another state prior to moving to Tennessee. Respondent states that Respondent tries to do the right thing and did not intend to break any rules, but in this particular situation Respondent was attempting to help and thought Respondent was doing the right thing. Respondent stated that Respondent sold only property which Respondent had acquired over the years (such as tools, toys, and glassware which Respondent had possessed for many years and no longer had space for the items in storage).

Because Respondent called only one auction where only Respondent's personal property was sold, and because the information indicates that the property sold was not acquired by Respondent for the purpose of resale, it appears that Respondent falls within the exemption at T.C.A. § 62-19-103(5).

Recommendation: Dismiss.

DECISION: Mr. Cunningham made a motion to accept the recommendation of legal counsel, seconded by Mr. Morris. Mr. Alexander, Colson, Cunningham and Morris voted yes and one (1) voted no (Phillips). MOTION CARRIED by a vote of 4-1.

Now that all commission members were in attendance, the remainder of the Legal Report was tabled so the public automobile auction application scheduled earlier in the meeting could be reviewed.

PUBLIC AUTOMOBILE AUCTION APPLICATION – DETERMINE ELIGIBILITY: APPEARANCE BY JERRY BOWMAN

Ms. Hancock presented the Commission with Mr. Bowman's application for "Mid-South Public Auto Auction & Specialty Sales". The Commission reviews all public auto auction applications and determines whether minimum application requirements are met. After a discussion regarding auctioneer licensing and ownership of the firm, Mr. Alexander made a motion to approve the application. The motion was seconded by Mr. Morris. **MOTION CARRIED.**

The Commission recessed at 10:10 a.m. and reconvened at 10:25 a.m.

Ms. Cropp's presentation of the Legal Report resumed as follows:

5. 2013002641

License #:

First License Obtained: 11/19/01

License Expiration: 11/30/13

Type of License: Gallery

History: None

April 2013 Meeting:

The same complaint mentioned above also stated that Respondent (gallery) did not use a licensed auctioneer, but the complaint did not provide the name of any unlicensed individuals who called auctions for Respondent.

The owner of Respondent submitted a response stating that Respondent has a permanent auctioneer and provided the name and license number of the individual, who is an active licensed auctioneer (Respondent's online auction ads all appear to confirm that this licensed auctioneer is the auctioneer for Respondent). When that auctioneer is not available, Respondent's owner states that the auctioneer sends another licensed auctioneer to take his place and call Respondent's auctions. On one night (a few days before the complaint was submitted) Respondent's owner states that the regular auctioneer was called away on an emergency and told Respondent that an unlicensed individual could call that night since Respondent was selling all of that individual's items that night. Respondent's owner states that if they were in the wrong on that occasion, they were unaware, but in all other instances Respondent has used licensed auctioneers. Respondent's owner indicates familiarity with Complainant as a fellow industry member who has an auction and has attended Respondent's auctions.

Recommendation: Letter of instruction regarding using a licensed auctioneer to call bids at all auctions under T.C.A. § 62-19-125(b) and the exemption found in T.C.A. § 62-19-103(5) for any person performing acts relating to property owned or leased by the person.

DECISION: The Commission voted to authorize a formal hearing with authorization for Respondent to settle by consent order with civil penalty of \$500.00 for using an unlicensed individual to call auction bids in violation of T.C.A. § 62-19-112(b)(7) and T.C.A. § 62-19-125(b) and to open a complaint against the unlicensed individual who called the bids at the auction.

In light of the information obtained from the previous Respondent, who was the unlicensed individual who called one (1) auction for this Respondent, which indicated that all items sold at the subject auction were the property of the unlicensed individual calling the auction and said items were not purchased by that individual for the purpose of resale, it would appear that the unlicensed individual who called the subject auction fell within the exemption found at T.C.A. § 62-19-103(5), and this Respondent did not commit a violation. However, this Respondent would benefit from a reminder via letter of instruction regarding the specifics of the relevant exemption.

New Recommendation: Letter of instruction regarding using a licensed auctioneer to call bids at all auctions under T.C.A. § 62-19-125(b) and the exemption found in T.C.A. § 62-19-103(5) for any person performing acts relating to property owned or leased by the person.

DECISION: Mr. Alexander made a motion to accept the recommendation of legal counsel, seconded by Mr. Phillips. **MOTION CARRIED.**

Presentation of the Legal Report -

Ms. Cropp presented a revised draft of the Rule changes previously discussed for the Commission's review. After some discussion, the Commission advised Ms. Cropp to proceed with the rule making process for the draft presented.

Ms. Cropp reminded the Commission they requested her to research their authority for requiring reciprocal applicants to complete education requirements similar to those imposed by their resident state for reciprocating licensees and for Ms. Cropp to subsequently draft a rule regarding such requirements. She then presented a draft as requested. After some discussion, the Commission agreed to include this with the other draft of rules Ms. Cropp was asked to proceed with the understanding it is part of the preliminary process and may be omitted or edited in the future before being finalized.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending in May 2012 to those currently pending.

Budget Report – Ms. Hancock presented a comparison of the revenues and expenditures for the last three (3) fiscal years along with year-to-date information for the current fiscal year. She also presented a similar report for the education and recovery account for the Commission's review.

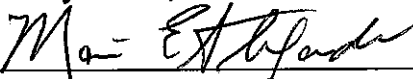
Reciprocal Agreements – Discussion – Ms. Hancock advised she has requested copies of the reciprocity agreements between the Tennessee Auctioneer Commission and reciprocating states, from the state administrators, for the Commission's review. Mr. Morris made a motion to table any discussion regarding the reciprocal agreements to allow Ms. Hancock time to collect as many as possible prior to the next meeting. The motion was seconded by Mr. Alexander. **MOTION CARRIED.**


UNFINISHED / NEW BUSINESS – BOBBY COLSON, CHAIRMAN

Ms. Hancock announced the administrative offices for the Commission is in the process of moving and would be located on the fourth floor of the Davy Crockett Building by the end of the week.

Being no further business to discuss, the meeting adjourned at 11:20 a.m.


Bobby Colson, Chairman


Marvin Alexander


Howard Phillips


Jeff Morris, Vice Chairman


Gary Cunningham