

MINUTES
South Carolina Auctioneer's Commission
Board Meeting
10:00 A.M., May 17, 2010
Synergy Business Park
110 Centerview Drive, Kingstree Building, Room 204
Columbia, South Carolina

Meeting Called to Order

James Blocker, chairman, of Walterboro, called the regular meeting of the Auctioneer's Commission to order at 10:01 a.m. Other members participating in the meeting included: George Martin, vice chairman, of Pelzer; Wendell Christopher, of Roebuck; Archie Moody, of Darlington; and Patsy Towery, of Columbia.

Staff members participating in the meeting included: Lenora Addison-Miles, Administrator; Deleon Andrews, Investigator; Sharon Dantzler, Deputy General Counsel; Sandra Dickert, Administrative Assistant; Suzanne Hawkins, Litigating Attorney; Sheridan Spoon, Assistant General Counsel; and Bobby Taylor, Investigator.

Members of the public attending the meeting included: Ivan Broadwell, Debbie Martin, Adam Mlynarczick, and Raymond Thomas.

Public Notice

Mr. Blocker announced that public notice of this meeting was properly posted at the S. C. Auctioneer Commission office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

Pledge of Allegiance

All present recited the Pledge of Allegiance.

Invocation

Mr. Blocker delivered the invocation.

Approval of Excused Absences

All members were present.

Approval of the February 22, 2010 Meeting Minutes

MOTION

Mr. Moody made a motion the February 22, 2010 meeting minutes be approved as written. Mr. Christopher seconded the motion, which carried unanimously.

Chairman's Remarks – James Blocker

Mr. Blocker welcomed everyone to the meeting. He thanked staff for their work in preparation for the meeting.

Administrator's Remarks – Lenora Addison-Miles

Mrs. Addison-Moles stated the last examination was administered on March 12, 2010. She further stated there were seven candidates sitting for the exam, of which five passed. The

average score was 81, with a high score of 91 and a low score of 50. She noted the next exam is scheduled for June 4, 2010.

Mrs. Addison-Miles stated as of May 12, 2010 there are 1,013 auctioneers and 165 auction firms licensed through June 2011.

Mrs. Addison-Miles stated budget cuts for the last fiscal year resulted in the agency remitting an additional \$10,000,000.00 in funds to the legislature in addition to the required ten percent. She said this year's budget cuts may require additional monies be remitted.

- a. *Advisory Opinions, If Needed, Office of General Counsel*
- b. *Legislative Update, If Needed, Legislative Liaison Office*

No advisory opinions or legislative updates were given during this meeting.

Mr. Blocker stated he has spoken with Mr. Duncan who stated he does not believe the bill regarding vehicle auctions will be voted out of committee prior to the end of this legislative session.

- c. *OIE (Office of Investigations & Enforcement) Report*

Mr. Andrews stated there are 16 cases currently active in OIE, which include cases on the IRC report and cases now in OGC. He further stated OIE has received nine cases since January 1, 2010.

- d. *OGC (Office of General Counsel) Report*

Ms. Hawkins stated there are six open cases currently in OGC, of which two cases relate to auctioneers. She will be setting those for hearings to be held during future commission meetings. She noted OGC has closed 15 cases since January 1, 2009.

- e. *OLC (Office of Licensure & Compliance) Report*

No representative from OLC was present to give the Commission a report regarding licensure statistics.

Unfinished Business

No unfinished business for discussion during this meeting.

New Business

- a. Approval of IRC Reports – April 7, 2010 and May 6, 2010

Mr. Andrews and Mr. Taylor briefed the Commission regarding the April 7, 2010 and the May 6, 2010 IRC reports.

MOTION

Mr. Martin made a motion the Commission accept the April 7, 2010 and the May 6, 2010 IRC reports. Mr. Christopher seconded the motion, which carried unanimously.

- b. Ratification of Mail Ballot – SCAA Annual Convention CE

In January 2010 the Commission was presented with a mail ballot and pertinent information regarding a continuing education course sponsored by and held during the SCAA annual convention. All Commission members voted to approve the association's continuing education course.

MOTION

Mrs. Towery made a motion the Commission ratify the mail ballot regarding the SCAA annual convention continuing education course. Mr. Martin seconded the motion, which carried unanimously.

c. Review / Approval of Application via Examination
a. *Raymond Thomas*

The Commission has received an auctioneer's application for licensure by examination dated February 23, 2010 from Raymond Thomas. He passed the exam on March 12, 2010. Mr. Thomas answered no to the question asking, 'Have there been any judgments, liens or claims filed against you in the past five years?' His credit report reflects several unpaid collection accounts. The Commission has also received information from another attorney reflecting his clients have a civil case pending in Berkeley County.

Mr. Adam Mlynarczick, Esq. made statements on Mr. Thomas' behalf. The statements included his wife having a serious illness which required extensive medical assistance with no insurance as well as a matter in small claims court regarding Mr. Thomas' antique shop, which should be settled within thirty days. Mr. Mlynarczick has begun contacting the providers in order to get the matters resolved.

Mr. Thomas addressed the accounts in regard to the electric company, the cell phone company, as well as the voluntary repossession of a vehicle. Mr. Thomas was placed on probation by the court system for signing his nephew's name to a check made to the two of them during the time they were in business together.

MOTION

Mr. Martin made a motion the Commission discuss this matter in executive session. Mr. Moody seconded the motion, which carried unanimously.

d. Review / Approval of Application via Reciprocity
a. *Zachariah Kittrell*

On January 14, 2010 the Commission received an application for licensure by reciprocity from Zachariah Kittrell. Mr. Kittrell's application was presented to the Commission during its February 22, 2010 meeting; however, Mr. Kittrell did not appear during that meeting. He was previously licensed in South Carolina in 2001 and allowed his license to lapse in 2007. He indicated on his application there were no outstanding judgments of debt; however, his credit report reflects an unpaid tax lien of \$50,000.00 and three I-9 accounts that were closed by the creditor or written off. Mrs. Addison-Miles presented an additional explanation sent by Mr. Kittrell regarding the tax lien which she provided to Ms. Dantzler for her review. The Board voted unanimously to deny licensure until such time as further information has been received. On March 26, 2010 Mr. Kittrell sent Mrs. Addison-Miles an email asked that he be placed on the agenda for today's meeting to request reconsideration of the Commission's decision.

Zachariah Kittrell did not appear before the Commission during this meeting.

MOTION

Mr. Christopher made a motion the Commission take no action on this application. Mrs. Towery seconded the motion, which carried unanimously.

b. *Scott Mihalic / Mihalic Associates & Auctioneers*

On March 15, 2010 the Commission received an application for licensure via reciprocity from Scott Mihalic / Mihalic Associates & Auctioneers. He was previously licensed in South Carolina

and allowed his license to lapse on June 30, 2009. On September 25, 2009 Mr. Mihalic entered into a settlement agreement with the Ohio Department of Agriculture regarding his auctioneer's license for failing to ensure that the auction firm for which he was firm manager was in compliance with the Ohio Code of Laws for failing to remit funds due to clients; failed to maintain a client trust account; commingled business and client monies, failed to properly advertise absolute auctions; failed to conduct the auctions as contracted; permitted clients to bid at auction without proper disclosure; and permitted agents of the seller to bid at auction without proper disclosure. The settlement agreement suspended Mr. Mihalic's license for 14 days; however, the suspension was held in abeyance for one year from the execution of the agreement; required him to pay a civil penalty of \$1,000.00 within 30 days of the executed agreement; and required him to attend a 16 hour continuing education class, either as a seminar or as an auction school course, on the auction law prior to June 30, 2010. He provided an explanation to the Commission.

Scott Mihalic did not appear before the Commission during this meeting.

MOTION

Mr. Moody made a motion the Commission discuss this matter in executive session. Mrs. Towery seconded the motion, which carried unanimously.

c. *Leslie H. Stephens*

On February 1, 2010 the Commission received an application for licensure via reciprocity from Leslie H. Stephens. Mr. Stephens' credit report reflects one unpaid collection account. One account is past due; however, that account has not been placed in collections. He has provided a written statement regarding his credit report.

Leslie Stephens did not appear before the Commission during this meeting.

MOTION

Mr. Moody made a motion the Commission discuss this matter in executive session. Mr. Christopher seconded the motion, which carried unanimously.

e. Continuing Education Exemption Request

a. *Rodney and Sarah Miller*

On February 22, 2010 the Commission received a letter from Rodney and Sarah Miller stating that as of April 1, 2010 he has been transferred by his company, Michelin Tire of North America, to Shenyang, China for five to seven years; however, they will retain their home in South Carolina. They wish to keep their auctioneer licenses to use again when they return from China, although they will not be able to attend continuing education classes or be guaranteed Internet connections in China in order to complete the required continuing education requirements. They are asking to be exempted from the continuing education requirements for the duration of the five to seven years they are in China.

Discussion on this matter ensued and topics included, but were not limited to, Internet access to online continuing education classes, and online licensure renewal.

MOTION

Mr. Moody made a motion the Commission deny the request. Mrs. Towery seconded the motion, which carried unanimously.

f. Continuing Education Course Approvals – Nashville Auction School

Mrs. Addison-Miles stated the Nashville Auction School is one of the Commission's approved continuing education providers. The school has submitted five continuing education courses for the Commission's review and approval.

MOTION

Mr. Martin made a motion the Commission approve the courses. Mrs. Towery seconded the motion, which carried unanimously.

g. **Online Auctions – Ivan Broadwell**

Mr. Broadwell discussed Internet auctions. He noted there is a gray area regarding the Internet auctions and he is asking for clarification to assist the IRC. Some years ago the Commission discussed its jurisdiction over Internet auctions and at that time the Commission determined it would not attempt to license Internet auctions. That determination stemmed from several states attempting to license Internet auctions and failed in those attempts. The Commission has not had several complaints regarding Internet auctions and the few complaints received have come from Internet buyers. He noted the Commission has received three complaints from sellers which are different. He discussed three different scenarios. The IRC has determined if the operator of an Internet auction site is also a licensed South Carolina auctioneer the Commission has full jurisdiction over the activities of the auction including receiving consignments, advertising, handling seller's funds, etc., whether he is selling the goods live or over the Internet. He asked the members if they agree with what the IRC has determined? The Internet auction store front auctioneers are not licensed and those individuals do not call bids. However, those individuals do solicit for auctions, accept consignments for auctions, contract with sellers for auctions, use the word 'auction' in their advertising, and they handle the funds belonging to others. He asked the Commission should they be going after the store front auctioneers to get them licensed. He noted Internet store fronts were big when EBay began; however, the store fronts are now gone because they have gone bad and monies were not being returned to the consigners. The third scenario concerns the EBay auctioneer who sells his/her own stuff from his/her house. The Commission has no jurisdiction over those individuals; however, those individuals have now gotten good at what they do and are now accepting consignments from other individuals.

Discussion ensued regarding this matter.

Ms. Dantzler joined the meeting during the discussion.

Public Comments

Mrs. Debbie Martin questioned the Commission's discussion during the last Commission meeting regarding vehicle auctions. Ms. Dantzler gave the Commission three options in handling vehicle auctions: by legislation, an individual being a test case in the matter, or seek a declaratory judgment that the statute being cited does not require what is being said is required. She noted the last option is not available to the Commission but would be available to the association.

Executive Session

MOTION

Mr. Moody made a motion the Commission enter executive session to seek legal advice. Mr. Martin seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Moody made a motion the Commission return to public session. Mrs. Towery seconded the motion, which carried unanimously.

Mr. Blocker noted no official action was taken during executive session.

Raymond Thomas

MOTION

Mr. Christopher made a motion to grant license with one year probation and at the end of that year he must appear to clear the problems discussed during this meeting. Mr. Martin seconded the motion, which carried unanimously.

Scott Mihalic / Mihalic Associates & Auctioneers

MOTION

Mrs. Towery made a motion the Commission grant Mr. Mihalic and Mihalic Associates & Auctioneers licensure with one year probation. Mr. Martin seconded the motion, which carried unanimously.

Leslie Stephens

MOTION

Mr. Moody made a motion the Commission grant Mr. Stephens licensure. Mr. Christopher seconded the motion, which carried unanimously.

Adjournment

MOTION

There being no further business to be discussed at this time, Mr. Moody made a motion the meeting be adjourned. Mr. Christopher seconded the motion, which carried unanimously.

The May 17, 2010 meeting of the SC Auctioneers' Commission adjourned at 12:37 p.m.