

MINUTES
South Carolina Auctioneers' Commission Meeting

10:00 a.m., May 16, 2017
Synergy Business Park
110 Centerview Drive, Kingtree Building Room 108
Columbia, South Carolina

Tuesday, May 16, 2017

1. Meeting Called to Order

Victor Avendano, Chair, of Mount. Pleasant, called the regular meeting of the South Carolina Auctioneers' Commission to order at 10:02 a.m. Other commissioners present for the meeting included: Matthew Holiday, Vice Chair, of Spartanburg; Joseph B. Burns, of Swansea; Michelle Pinkney, of Irmo; and Jamison Marchant, of Mount Pleasant.

Staff members participating in the meeting included: Stacey Hewson, Advice Counsel, Office of Advice Counsel; Amy Holleman, Administrator; Norma McAllister, Program Assistant; Jeanie Rose, Administrative Assistant; and Dylan Sitterle, Project Coordinator, Office of Professional and Occupational Licensing.

Members of the public attending the meeting: Larry J. Meares, Owner and President of Meares Company, Inc.; Darron Meares, Chief Operating Officer of Meares Auction Group; Bob Robeson, President of South Carolina Auctioneer Association; and Julian R. Dixon, Jr. of JR Dixon Auctions.

A. Public Notice

Mr. Avendano announced that public notice of this meeting was properly posted at the SC Auctioneers' Commission office, Synergy Business Park, Kingtree 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.

B. Pledge of Allegiance

All in attendance recited the Pledge of Allegiance.

The invocation was given by Mr. Burns.

2. Introduction of Commission Members

The Commission members introduced themselves.

3. Approval of Excused Absences

All Commission members were in attendance.

4. Approval of Minutes for the November 14, 2016 meeting.

Mr. Avendano called for approval of the March 6, 2017 minutes.

MOTION

Mr. Burns made a motion to approve the March 6, 2017 minutes.
Ms. Pinkney seconded the motion, which carried unanimously.

5. Chairman's Remarks – Victor Avendano

Mr. Avendano thanked everyone for attending.

6. Administrator's Remarks – Amy Holleman

Ms. Holleman informed the Commission that the cash balance as of April, 2017, was \$922,034.54 and that the Recovery Fund balance was \$118,325.92.

Ms. Holleman reminded the Commission that it is currently in renewals, and that as of date approximately 300 licensees, including firms have renewed, with approximately 900 outstanding. Ms. Holleman stated that licensees will be able to renew without penalty through June 30, 2017. Beginning July 1, 2017, there will be an additional \$25.00 late fee, and beginning August 1, 2017 through September 30, 2017, the late fee is an additional \$100.00. After September 30, 2017, any licensee that has not renewed will be required to submit an application with fees for a new license and will be required to take the exam. Ms. Holleman stated an e-blast will be generated to remind the licensees of the renewal dates and the dates associated with each late fee.

Ms. Holleman asked the Commission to provide guidance regarding the continuing education (CE) renewal approval process. The Commission invited the members of the public to comment regarding the continuing education renewal process.

Mr. Larry Meares stated it is the understanding that the renewal is to provide uniformity in the continuing education renewal process and asked if the CE renewal process applies to new schools and/or all schools. Mr. Larry Meares mentioned, compiling all the information for every instructors and all course studies will be a tedious task. He asked if ample time was allotted to process, compile, and submit the requested information. He stated the school has approximately 19 instructors, eight received the instructors' continuing education renewal form and, and the school will be submitting the requested information for all instructors to the Commission staff. The Commission confirmed that the information is being required of all auction schools that desire to provide continuing education courses in the state of South Carolina.

Ms. Holleman explained that the information is needed to develop a more cohesive database for the licensees and others. Mr. Burns concurred that centralizing information will be a more efficient method of listing instructors, courses, and auction schools.

Mr. Avendano called for a motion regarding the continuing education approval process or a motion to go into executive session for legal advice.

MOTION

Mr. Holiday made a motion to go into executive session to seek legal guidance regarding this matter

After a brief discussion, Mr. Holiday withdrew his motion.

MOTION

Mr. Burns made a motion proceed with the agenda and table the request to be discussed in executive session to seek legal guidance regarding the topic. Mr. Holiday seconded the motion, which carried unanimously.

Ms. Holleman introduced staff member, Jeanie Rose to the members of the Commission.

Ms. Holleman reminded the Commission that they voted to send two Commissioners and the Administrator to the National Auctioneer License Law Officials Association (NALLOA) annual meeting and educational conference to be held on July 14, 2017, in Columbus, Ohio. Ms. Holleman asked that the Commission which of them will attend the conference. Ms. Holleman informed the Commission that the

Agency will cover each person's cost of airfare and one night's lodging at the \$139 conference room rate.

MOTION

Mr. Holliday made a motion to send Ms. Pinkney. Ms. Pinkney respectfully declined. Mr. Holiday stated he will not be able to attend.

MOTION

Mr. Holiday made a motion to consider Mr. Burns, Mr. Avendano, and Mr. Marchant for potential Commission attendees to the 2017 NALLOA Conference. Mr. Marchant seconded the motion, which carried unanimously.

7. Reports

A. Investigative Review Committee (IRC) Report

Ms. Wolfe presented the IRC Report for May 9, 2017. The IRC recommended the Commission dismiss cases number 2016-16 and 2017-2; dismiss with C&D cases number 2017-1 and 2017-10; accept as a formal complaint cases number 2016-22; 2017-2; 2017-4; and 2017-8.

Mr. Avendano called for a motion.

MOTION

Ms. Burns made a motion that the Commission approve the IRC report dated May 9, 2017, as provided. Mr. Marchant seconded the motion, which carried unanimously.

B. Office of Investigation and Enforcement (OIE) Report – January 1, 2017 – May 11, 2017

Ms. Wolf presented the OIE report as information only: five active investigations; two do not open case; three opened case; six pending Board action; two closed, and five do not open cases.

Mr. Avendano thanked Ms. Wolfe for the report.

C. Office of Disciplinary Counsel Report (ODC) Report

Ms. Holleman presented the ODC Report as information only. Ms. Holleman reported that as of May 9, 2017, there were; zero open cases; zero pending Consent Agreements and/or Memorandum of Agreements; zero pending hearings; zero pending final order hearings; zero pending final orders, zero cases closed, and zero appeals.

Mr. Avendano thanked Ms. Holleman for the report.

8. Moving Exams to Provider PSI

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

Ms. Holleman, introduced Dylan Sitterle, Project Coordinator, to the Commission. Ms. Holleman explained that Mr. Sitterle is coordinating the transition of administering the exam to the provider PSI. Ms. Holleman informed the Commission that the Agency's in the process of contracting exam services to outside providers to provide more security, convenience, and trained proctors for licensing candidates. Ms. Holleman stated that outsourcing these services have proven to be more cost effective, which will also benefit the licensees.

Ms. Holleman informed the Commission that current the regulation, Regulation 10-5(B), does not list a fee for the Auction Firm exam; however, the applicants currently pay \$25.00 for the exam. Ms. Holleman informed the Commission it may consider several options when designating the fee in regulations for the auction firm exam, and its transfer to the exam provider.

Ms. Holleman explained and provided the Commission with a copy of the Business Rules Document to review, give input, and approve or deny that the auctioneers, auction firm, and apprentice auctioneer exams be administered by PSI.

Mr. Avendano called for a motion.

MOTION

Mr. Holiday made a motion to move the exams for the Auctioneer; Auction Firm, and the Apprentice Auctioneer to PSI. Ms. Pinkney seconded the motion, which carried unanimously.

The Commission discussed the details regarding the Business Rules and fees which resulted in the following changes:

Examination Eligibility (how long is the eligibility from the state good for/details)	Examination Eligibility is valid for one year and you are allowed two attempts to pass the examination within a one month period. If you fail the examination two times, you must wait six months from the date of the last examination attempt before being examined again.
Does PSI send the Candidate an approval/eligible letter/email? And a Candidate information Bulletin?	Yes
Portion Retention Period (how long is a passing score good)	30 days
ID Type? SSN? Board issued?	Do not require
Attempts Allowed: (Is there a limited number of times a candidate can take the exam within a certain period of time)	You are allowed two attempts to pass the examination at any time.
Retest Latency: (If candidate tests unsuccessfully do they have to wait for a certain period of time before retesting)	If you fail the examination two times, you must wait six months from the date of the last examination attempt before being examined again.
Is extra time allowed for ESL? Is there a fee charged to the candidate for the additional time?	No
Can candidate use ESL word to word dictionary?	No
ID Requirement including number of required IDs.	One photo ID – License/Passport/State issued ID Candidates are required to bring two (2) forms of valid (non-expired) signature bearing identification to the test site. One government issued and one other form.
List of all required documents for testing	Approval Letter
Reviews Allowed (Will PSI offer exam reviews)	Yes
Will PSI be providing any references/or other exam materials at the site.....	No
Are candidates permitted to bring their own reference materials?	No
Does the exam require a calculator?	Yes, Basic
Does the exam contain exhibits?	No
Does the exam consist of multiple portions, how are these portions scheduled?	No / One
Historical Candidate Data Required?	No

Exams	Minutes	Fee	# of Items	Cut score	Open/Closed Book
Auctioneer	240	\$25.00	100	70	Closed
Apprentice Auctioneer	120	\$25.00	50	70	Closed
Auction Firm – on website online ARE WE GIVING THIS EXAM	120	\$25.00	50	70	Closed

The Commission discussed the Business Rules and the fees.

Mr. Avendano called for a motion.

MOTION

Mr. Holiday made a motion to direct \$25.00 of the application fee for Auctioneers; Prorated Auctioneer licenses; Auction Firms, and the Apprentice Auctioneers to PSI instead of to the Commission. Mr. Marchant seconded the motion, which carried unanimously.

Ms. Holleman reminded the Commission that the current regulations 14-1A states that examinations for auctioneers and apprentice auctioneers are to be held in the months of March, June, September, and December, unless there are no applications received for a particular examination period. Special examinations shall be administered upon majority vote of the Commission in exceptional circumstances to be determined in the discretion of the Commission. Ms. Holleman stated the Commission confirmed that as a business rule with PSI the auctioneer and apprentice auctioneer exams will continue to be offered throughout the months of March, June, September, and December.

Ms. Holleman stated that the auction firm exam schedule is not addressed in regulation, and the exams are currently offered throughout the year. The Commission decided to continue offering the auction firms exam throughout the year.

Ms. Holleman stated that if an applicant fails the exam and request a review within the fifteen day time Period allowed in regulation, PSI will provide the review.

Mr. Avendano called for a motion accept the Business Rules, fees, and all changes made by the Commission in reference to PSI as the exam provider.

MOTION

Ms. Pinkney made a motion that specifies discussed regarding the Business Rules, and all the changes be accepted as part of the Business Rule Document. Mr. Holiday seconded the motion, which carried unanimously.

9. Presentation and Discussions: Online Auctions – Darron Meares

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

Mr. Darren Meares provided an overview of the history and current trends of online auctions.. Mr. Meares stated several states are addressing the online auction issues as related to auctioneer practices. He stated Kentucky was the first to successfully enact a change, “It is unlawful for any person to advertise or act as an auctioneer or apprentice auctioneer within the Commonwealth, or advertise or act as an auctioneer or apprentice auctioneer of real or personal property located within the Commonwealth, without a license issued by the board.” Mr. Meares stated the “law made it illegal to sell an asset that resided in the Commonwealth of Kentucky without an auction license.”

Mr. Meares stated the current issue before most states is “having to backtrack and come up with auction law changes to plug the holes that allow individuals and companies to sell online without a license,” and dealing with estate tag sales.

In conclusion, Mr. Meares stated that he believes the most effective means to regulate online bidding is to provide regulations that would “exempt hard closing timed online auctions from the legal statute.”

Once Mr. Meares finished his presentation, Ms. Holleman asked the Commission to clarify the opinion given at the August 18, 2014, SC Auctioneers’ Commission meeting regarding online auctions that “if the auction is out of state and they have no presence in South Carolina; then the board does not have jurisdiction. The board’s interpretation is, if you do any facets of auctioning in South Carolina, if someone has a store front in S.C., if you take consignments in S. C., if you write a contract in S.C., if you receive funds on behalf of the seller or pay a seller in S. C., if there is a physical presence of personal property, then they would need an auctioneers’ license.”

Ms. Holleman stated that section 40-6-20 defines an auction as, “the sale of goods or real estate by means of exchanges between an auctioneer and a member of an audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer.”

The Commission discussed the online auctions and reaffirmed their 2014 opinion that any person conducting an online auction must be a licensed auctioneer and that any business entity conducting an online auction must be a licensed auction firm.

Ms. Holleman asked that the Commission move item #15 next on the agenda. Mr. Avendano, approved the request.

10. Discussion: Auction Firms E-blast

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary

Ms. Holleman informed the Commission that some licensees have expressed a misunderstanding regarding the types of businesses that are required to be licensed as an Auction firm.

Ms. Holleman informed the Commission that sole proprietorships, defined in Section 40-6-20(10) as an auction business owned in its entirety by an auctioneer, are exempt from firm registration per Section 40-6-235(B). Business entities, defined in Section 40-6-20(5) as a partnership, limited liability partnership, corporation, limited liability company, or other business association, excluding sole proprietorships, must have a firm registration, even if all partners, shareholders, or members are licensed auctioneers.

Ms. Holleman stated that licensed real estate brokers-in-charge and real estate firms are also exempt from auction firm registration for the purpose of conducting real estate auctions, as long as they employ a licensed auctioneer to handle the auction portions. The licensed real estate brokers-in-charge or real estate firms are only exempt for the purpose of conducting real estate auctions, not auctioning things that are not real estate.

Ms. Holleman asked the Commission that they approve an e-blast stating the firm registration requirements and that all firms, including firms that conduct online auctions, must hire a licensed auctioneer to conduct all auctions. She said she believed such an eblast would be informative to the licensees and help them stay in compliance with statute and regulations

The Commission discussed auction firms and business entities and whether or not a single member LLC whose only member is a licensed auctioneer would fall under the sole proprietorship exemption.

Mr. Avendano called for a motion to accept or table the e-blast request.

MOTION

Mr. Holiday made a motion to table this discussion for a later time in order to consult with legal

counsel. The motion was not seconded.

Mr. Avendano questioned if there is no seconded, is there another motion. No one responded. Mr. Avendano asked is there a motion to accept, approve, or deny the e-blast request.

MOTION

Ms. Pinkney made a motion to approve the auction firm e-blast. The motion was not seconded.

The Commission did not give a consensus for the e-blast, nor did the Commission render a final opinion.

Advice Counsel redirected the Commission to the online auction discussion. Ms. Holleman asked is the commission setting a policy that all businesses, including online businesses that conduct auctions be required to register as an auction firm, and all auctions are required to be conducted by a licensed auctioneer. Ms. Holleman asked would the Commission like for an e-blast to be sent to all licensees regarding this matter. The Commission members discussed the matter.

Mr. Avendano called for a motion to table the discussion for items #9 and #13 until the next South Carolina Auctioneers' Commission meeting.

MOTION

Mr. Burns made a motion to table items #9 Online Auctions, and #13 Auction Firms E-blast; and the regulations to address the auction firm testing fee, and that the items be placed on the next South Carolina Auctioneers' Commission meeting's agenda. Mr. Marchant seconded the motion, which carried unanimously.

11. Consideration for Funding Approval

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary

1. South Carolina Auctioneers Association (SCAA) Continuing Education Funding Request

Mr. Robeson, 2017 President of the SCAA, informed the Commission that the SCAA's educational event, and annual convention will be at the Hilton Garden Inn Columbia/Northeast, Columbia, S.C. on February 16-17, 2018. Mr. Robeson stated the educational events will be opened to all South Carolina licensees at no cost. South Carolina licensees attending the educational event will be required to register without a fee.

Mr. Robeson stated that the SCAA is requesting the funding of \$7500.00 from the SC Auctioneers' Commission Recovery fund to offset the cost. Mr. Robeson provided a breakdown of the \$7,500.00; printing and postage \$1,500.00; Instructor cost \$3,000.00; meeting space 2,000.00, and refreshments during breaks \$1,000.00.

Mr. Robeson stated that Mr. Mike Brandy, and Mr. Harper, approved National Auctioneers Association instructors will be the presenters for the conference. It was asked will the instructors require approval from the South Carolina Auctioneers' Commission. Mr. Burns stated that the Commission has approved a policy that instructors approved by the National Auctioneers Association will be accepted as approved by the South Carolina Auctioneers' Commission (SCAC). Ms. Holleman confirmed that on May 17, 2017 the South Carolina Auctioneers' Commission approved that SCAC will recognize and pre-approve all courses sponsored by the National Auctioneers Association, the Certified Auctioneers Institute, reciprocal states, and any courses approved by the South Carolina Real Estate Commission.

Mr. Avendano called for a motion to approve or deny the funding for the SCAA.

MOTION

Mr. Burns made a motion that this item be discussed in executive session. Mr. Marchant seconded the motion, which carried unanimously.

12. Approval for Continuing Education Applications

1. Instructor – Darron Meares
2. Southeastern School of Auctioneering

Ms. Holleman informed the Commission that Mr. Darron Meares has stated he is an approved instructor for the National Auctioneers Association; therefore, based on the Commission's continuing education criteria, only the course, Federal Laws Pertaining to Auctioneers, needs approval.

MOTION

Mr. Burns made a motion to approve the course, Federal Laws Pertaining to Auctioneers, and sponsors, Southeastern School of Auctioneering for continuing education in South Carolina. Ms. Pinkney seconded the motion, which carried unanimously.

13. Discussion: Withholding Names on Estate Auction Advertising

Ms. Holleman stated that some Auctioneers have been withholding the names on estate auctions based on a 2004 the Commission statement. The meeting excerpt is as follows, "Ms. Frierson stated that in a recent work session meeting the Commission noted places in the law that have changed and wanted to bring the changes to the attention of the association so they may review those changes. She went on to say that one of the changes is that an auctioneer is no longer required to file the name of the deceased person if the word 'estate' is used".

Ms. Holleman stated that the statute last revision in 2001 defines estate auction (Section 40-06-20) as the sale at auction of property of a specified deceased person or the property of a specified living person's estate. Estate auctions may contain property other than that of the specified living or deceased person. The inclusion of additional property must be included in all advertising and auction announcements.

The Commission discussed the statute and regulations regarding estate auction advertising.

Mr. Avendano called for a motion.

MOTION

Mr. Burns made a motion that a specified person(s) be named in estate auction advertisements.

Mr. Marchant seconded the motion, which carried unanimously.

Executive Session

Mr. Avendano entertained a motion to move into Executive Session.

MOTION

Mr. Holiday made a motion to go into Executive Session to receive legal advice

Mr. Marchant seconded the motion, which carried unanimously.

Return to Public Session

Mr. Holiday made a motion that the Commission return to public session.

Mr. Burns seconded the motion, which carried unanimously.

Mr. Avendano stated, for the record no votes were taken during executive session.

14. Public Comments (no votes taken)

The public was invited to make comments throughout the meeting. There were no votes taken based on public comments.

15. Executive Session

Mr. Avendano entertained a motion to move into Executive Session.

MOTION

Mr. Holiday made a motion to go into Executive Session to receive legal advice
Mr. Burns seconded the motion, which carried unanimously.

Return to Public Session

Mr. Burns made a motion that the Commission return to public session.
Ms. Holiday seconded the motion, which carried unanimously.

Mr. Avendano stated, for the record no votes were taken during executive session.

Mr. Avendano called for a motion in the matter of the South Carolina Auctioneers Association funding.

MOTION

Mr. Marchant made a motion to grant the funding of the continuing education seminars at the 2018 SCAA's Annual Conference at no cost to all South Carolina licensed auctioneers. Mr. Burns seconded the motion, which carried unanimously.

16. Adjournment

Mr. Avendano called for a motion to adjourn the meeting.

MOTION

Mr. Burns made a motion the Board adjourn the meeting.
Mr. Marchant seconded the motion, which carried unanimously.

Mr. Avendano, after ensuring there being no further business to discuss, adjourned the May 16, 2017, meeting of the South Carolina Auctioneers' Commission at 2:50 p.m.

The next meeting of the South Carolina Auctioneers' Commission is scheduled for August 15, 2017, at 10:00 a.m. at Synergy Business Park, 110 Centerview Drive, Kingstree Building Room 108, Columbia, South Carolina.