

MINUTES
South Carolina Auctioneers' Commission Meeting

10:00 a.m., August 15, 2017
Synergy Business Park
110 Centerview Drive, Kingtree Building Room 108
Columbia, South Carolina

Tuesday, August 15, 2017

1. Meeting Called to Order

Victor Avendano, Chairperson, of Mount Pleasant, called the regular meeting of the South Carolina Auctioneers' Commission to order at 10:05 a.m. Other commissioners present for the meeting included: Matthew Holiday, Vice Chairperson, of Spartanburg; Joseph B. Burns, of Swansea; Michelle Pinkney, of Irmo; and Jamison Marchant, of Mount Pleasant.

Staff members participating in the meeting included: Georgia Lewis, Advice Counsel, Office of Advice Counsel; Tracey Perlman, Disciplinary Counsel, Office of Disciplinary Counsel; Amy Holleman, Administrator; Norma McAllister, Program Assistant; and Monaca Harrelson, Administrative Assistant.

Members of the public attending the meeting: William Thomas Bradley

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.

Mr. Burns gave the invocation.

2. Introduction of Commission Members

The Commission members introduced themselves.

3. Approval of Excused Absences

All Commission members were present.

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

Mr. Avendano called for approval of the May 16, 2017 minutes. The Commission members reviewed the minutes.

MOTION

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

5. Chair'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 July 2017, was \$1,094,511.90, and the Recovery Fund balance was \$119,812.29.

Ms. Holleman informed the Commission that she and Mr. Burns attended the National Auctioneer License Law Officials Association (NALLOA) conference on July 14, 2017, in Columbus, Ohio and that members of the association elected her as Vice President.

Ms. Holleman informed the Commission that 808 auctioneers, and 140 firms have renewed. As of the meeting date, 43 firms, and 160 auctioneers still needed to renew their licenses. Ms. Holleman informed the Commission that the renewal period would end September 30, 2017. Licensees that fail to renew on or prior to September 30, 2017, must apply for a new license and meet all requirements of licensure, including passing the exam.

Ms. Holleman asked the Commission how many of their licenses they wanted to select for their continuing education audit, and the Commission decided that the audit should consist of ten percent of the licensing population.

Ms. Holleman asked for guidance regarding the continuing education renewal process and approval. The Commission agreed that Ms. Holleman and Ms. Lewis send a letter with the new educational requirements to the auction schools instructing the schools to submit an application for approval as an educational provider for South Carolina licensees.

The Commission discussed the matter further and determined that the full Commission will initially review information submitted by all applicants. Thereafter, the Commission will appoint a continuing education committee to review applications.

7. Reports

A. Investigative Review Committee (IRC) Report

No cases to report

B. Office of Investigation and Enforcement (OIE) Report – January 1, 2017 – August 7, 2017

Ms. Holleman presented the OIE report as information only: one active investigation; three closed; five do not open case; three opened case; six pending IRC. Six cases closed, and six do not open from January 1, 2017 – August 7, 2017.

Mr. Avendano thanked Ms. Holleman for the report.

C. Office of Disciplinary Counsel Report (ODC) Report as of August 8, 2017

Ms. Perlman presented the ODC Report as information only: four open cases; four pending actions; zero pending Consent Agreements and/or Memorandum of Agreements; zero pending hearings; zero pending final order hearings; zero pending final orders; two cases closed; and zero appeals.

Mr. Avendano thanked Ms. Perlman for the report.

Ms. Lewis asked that the Commission move item #11 next on the agenda. Mr. Avendano approved the request.

8. Approval of Auctioneers' Renewal Application

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

1. William Thomas Bradley

Mr. Bradley appeared on his own behalf.

Ms. Holleman informed the Commission that Mr. Bradley submitted the renewal application timely, with a “yes” answer. Ms. Holleman stated staff is not authorized to approve an application submitted with a “yes” answer. Mr. Bradley answered yes to him receiving disciplinary actions since the last renewal. Ms. Holleman submitted the information from North Carolina to the Commission which included a cover letter stating Mr. Bradley is in good standing with the North Carolina Auctioneers’ Board.

Mr. Bradley stated he completed the application honestly. Mr. Bradley briefly explained the reason for the disciplinary action received from the North Carolina Auctioneer’s Board. Mr. Bradley stated he did not obtain the second signature required for a contact with a customer and used an unacceptable contract.

Mr. Avendano called for a motion to approve Mr. Bradley’s renewal application.

MOTION

Mr. Holiday made a motion to approve the renewal application. Mr. Marchant seconded the motion, which carried unanimously.

Mr. Avendano called for a ten minute recess.

9. 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 a 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. A sole proprietorship, 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).

Ms. Holleman asked the Commission to approve an e-blast informing licensees of the firm registration requirements and that all firms, including firms that conduct online auctions, must hire a licensed auctioneer to conduct all auctions.

The Commission discussed the definition of a limited liability company and statute Sections 40-6-20(5) and 40-6-20(10). Ms. Lewis referred to Section 40-6-20(5), and Section 40-6-20(10), and further clarified the statute, explaining the responsibility of the Commission. Ms. Lewis stated the statute clearly defines the criteria that requires a business to file for a firm license. The Commission members requested further legal guidance in this matter.

Executive Session

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

MOTION

Mr. Marchant made a motion to go into Executive Session to receive legal advice
Ms. Pinkney seconded the motion, which carried unanimously.

Return to Public Session

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

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

Mr. Avendano called for a motion to approve the e-blast request.

MOTION

Mr. Holiday made a motion to approve the e-blast request. Mr. Marchant seconded the motion, which carried unanimously.

Mr. Avendano called for a motion to clarify if a single member limited liability company (LLC), in which that member is a licensed auctioneer, is required to apply for a firm license.

MOTION

Mr. Burns made a motion that a single member limited liability company will require a firm license according to the statute. Ms. Pinkney seconded the motion.

Mr. Avendano called for all in favor of the motion to state "aye". Mr. Marchant; Mr. Joseph Burns; Ms. Michelle Pinkney and Mr. Avendano voted "aye". Mr. Avendano called for those oppose to signify by stating "nay". Mr. Holiday voted "nay". Mr. Avendano stated the motion carries based on the majority "yes" vote.

10. On-Line Auctions

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

Ms. Holleman cited Section 40-6-20(2), the definition of an Auction, and referenced the August 18, 2014 Commission decision regarding online auctions.

The Commission discussed the matter and upheld the August 18, 2014 online auctions decision that any person conducting an online auction must be a licensed auctioneer, and any business entity conducting an online auction must be a licensed auction firm. The Commission decided to post on its website an online auction FAQ pertaining to the August 18, 2014 decision.

11. Update – Exam Provider

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 exam provider, PSI, rejected the contract stating the offer was contingent based on administering an additional Board. Ms. Holleman explained that the \$25.00 exam fee was not sufficient to cover the cost. Ms. Holleman informed the Commission that the agency is currently in negotiations with Pearson VUE. Ms. Holleman asked that the Commission to revisit its previous motion regarding the exams and allow the agency to move the exam to a third party provider.

Mr. Avendano called for a motion to move the exams to a third party provider selected by the agency.

MOTION

Mr. Holiday made the motion to move the exams to a third party provider selected by the agency. Mr. Marchant seconded the motion, which passed unanimously.

12. Proposed Regulation Amendment

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

Ms. Holleman read Drafting Notices 17 for the record, the Department of Labor, Licensing and Regulation Chapter 10 Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-6-50 and 40-6-60

Notice of Drafting: The South Carolina Department of Labor, Licensing and Regulation proposes to amend R.10-5 to change the exam fee charged to applicants from \$25 to "as set by the provider". Interested persons may submit written comments to Amy Holleman, Administrator, Auctioneers'

Commission, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211.

Synopsis: The South Carolina Department of Labor, Licensing and Regulation proposes to amend R.10-5 to change the exam fee charged to applicants from \$25 to “as set by the provider” as the exam is not administered by the agency and is, instead, administered by a third party who sets the exam fee.

Legislative review of this amendment is required.

Department of Labor, Licensing and Regulation, Chapter 10 Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-6-50 and 40-6-60

Notice of Drafting: The South Carolina Department of Labor, Licensing and Regulation proposes to correct a scrivener’s error by adding the late fees, currently appearing in the Commission’s regulation R.14-12, to the agency’s fee schedule regulation, in Chapter 10-5. Interested persons may submit written comments to Amy Holleman, Administrator, Auctioneers’ Commission, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211.

Synopsis: The South Carolina Department of Labor, Licensing and Regulation proposes to amend R.10-5 to add late fees charged by the Auctioneers’ Commission. The late fees currently appear in R.14-12, the Commission’s regulation, and the Commission wishes to add them to R.10-5, which serves as the agency’s fee schedule regulation for boards and commissions.

Legislative review of this amendment is required.

Department of Labor, Licensing and Regulation, Chapter 10 Statutory Authority: 1976 Code Sections 40-1-50(D), 40-1-70, and 40-22-50(B)

Notice of Drafting: The South Carolina Department of Labor, Licensing and Regulation proposes to amend R.10-14 to include the fee for the state rules and regulations examination required for Surveyors. Interested persons may submit comments to Lenora Addison-Miles, Administrator, Board of Registration for Professional Engineers and Surveyors, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, S.C. 29211-1329.

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July 28, 2017

Mr. Avendano called for a motion to change the exam fee language to “as set by the provider” and to amend Regulations 10-5 and 10-14.

MOTION

Mr. Burns made a motion to change the exam fee verbiage to “as set by the provider” and to amend Regulations 10-5 and 10-14. Ms. Pinkney seconded the motion, which carried unanimously.

Mr. Avendano called for a five minute recess.

13. South Carolina Auctioneers’ Commission meeting schedule

Mr. Avendano called for a motion to change the November 6, 2017 Commission meeting to October 30, 2017.

MOTION

14. Regulatory Review Pursuant to Executive Order 2017-09

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

Ms. Lewis explained the purpose of the review. In order to carry-out the directives stated in Governor Henry D. McMaster’s Executive Order 2017-09, the South Carolina Auctioneers’ Commission must review its regulations.

The Commission reaffirmed its mission to promote the health, safety, and economic well-being of the public through regulation, licensing, enforcement, training, and education.

The Commission identified:

1. Those regulations that unnecessarily burden the pursuit of professional and occupational practice in our state or no longer serve the purpose of promoting the health, safety, and economic well-being of the public
2. Opportunities for amendment to better promote the health, safety, and economic well-being of the public
3. Those regulations that do not require either repeal or amendment because the regulations adequately promote the health, safety, and economic well-being of the public in the least restrictive manner

Therefore, the Commission made the following recommendations:

Regulation		Recommendation	Action
14-1	Examinations	A – Include firm license exam process	Amend
		B; C;D;E; F – No change	Approve
		G – redundant delete	Repeal
14-2	Reporting of continuing Education.	A – Review language	Amend
		B – No change	Approve
14-3	Change of Address	“The change of address notification must include a change of address fee” - delete	Amend
14-4	Display of License	No Change	Approve
14-5	Advertising	Change verbiage	Amend
14-6	Allowing Unlicensed Bid Callers	Change title “ Unlicensed Bid Callers not allowed”	Amend
14-7	Professional Standards	Delete – duplicate of statute 40-1-110	Repeal
14-8	Falsification of documents	Delete – duplicate of statute 40-1-110	Repeal
14-9	Declaratory Rulings	Delete	Repeal
14-10	Promulgation, Amendment, Repeal of Rules	Delete	Repeal
14-11	Written Agreements Relating to Auctions	No change	Approve
14-12	Late Fees	No change – A; B; C	Approve
14-13	Conditions for Apprentice; Exceptions	Change heading and verbiage. Combine 14-13 & 14-15	Amend
14-14	Duplicate Wall or Pocket Card License; Fees	Delete	Repeal
14-15	Supervision of Apprentice Auctioneer	Combine with 14-13	Combine with 14-13

14-16	Auctioneer, Apprentice Prohibited from Working For Unlicensed Firm; Exception; Penalty	No change	Approve
14-17	License Certification	Delete	Repeal

Ms. Holleman asked the Commission to provide guidance regarding the pro-rated fees established in policy. In response, Ms. Lewis stated that pro-rated fees not included in statute and/or regulations should be removed from the fee schedule in Chapter 10.10-5.A1 (e), 10.10-5.A2 (d), and 10.10-5.B1 (d).

Ms. Lewis asked that the Commission approve that the Chairperson sign, approving the recommendations to the regulations.

Mr. Avendano called for a motion to approve the recommendations to the regulations, and the Chairperson to sign the recommendations report submitted to the Director.

MOTION

Mr. Holiday made the motion to approve the recommendations to the regulations, and the Chairperson to sign the recommendations report submitted to the Director. Mr. Marchant seconded the motion, which carried unanimously.

15. Public Comments (no votes taken)

There were no votes taken based on public comments.

16. Executive Session

17. Return to Public Session

18. Adjournment

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

MOTION

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

Mr. Avendano, after ensuring there being no further business to discuss, adjourned the August 15, 2017, meeting of the South Carolina Auctioneers' Commission at 3:11 p.m.

The next scheduled Commission meeting for the South Carolina Auctioneers' Commission is October 30, 2017, at 10:00 a.m. at Synergy Business Park, 110 Centerview Drive, Kingstree Building Room 108, Columbia, South Carolina.