

MINUTES (Conference Call)
South Carolina Auctioneers' Commission
Board Meeting

10:00 a.m., May 18, 2015
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Monday, May 18, 2015

1. Meeting Called to Order

Victor Avendano, Chairman, of Mt. Pleasant, called the regular meeting of the SC Auctioneers' Commission to order at 10:06 a.m. Other Board members attending the board meeting via conference call included: Matthew Holiday, Vice Chairman, of Spartanburg; Joe Burns, of Swansea; and, Jamison Marchant, Isle of Palms.

Board members present for the meeting: Michelle Pinkney, of Irmo.

Staff members participating in the meeting included: Georgia Lewis, Advice Counsel, Office of Advice Counsel; Zubin Billimoria, Office of Disciplinary Counsel; Wendi Elrod, Program Assistant; Amy Holleman, Administrator; Holly Beeson, Communications and Governmental Affairs; and, Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement.

A. Public Notice

Mr. Avendano announced that public notice of this meeting was properly posted at the SC Auctioneers' 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.

2. Approval of Excused Absences

There are no absences at this meeting.

3. Approval of Minutes for the February 23, 2015

MOTION

Mr. Holiday made a motion that the Commission accept the meeting minutes for the February 23, 2015, as written. Mr. Marchant seconded the motion, which carried unanimously.

4. Chairman's Remarks – Victor Avendano

Mr. Avendano thanked everyone for their time to attend the meeting.

5. Administrator's Remarks – Amy Holleman

Ms. Holleman stated that currently the Auctioneers' Commission has a total of 1,169 licensees; 167 firms; two apprentices; 1,002 auctioneers. She stated that the renewals were mailed on April 1, 2015, and about 300 licensees have renewed.

The Auctioneers' Commission balance as of February 2015 is \$948,957.50. The recovery fund balance as of February 2015 is \$145,921.40.

6. Reports

A. Investigative Review Committee (IRC) Report – Sharon Wolfe

May 7, 2015 IRC report

Ms. Wolfe stated that the IRC recommendation is to dismiss case numbers 2015-3 and 2015-4.

MOTION

Mr. Holiday made a motion that the Board approve the IRC recommendations. Mr. Marchant seconded the motion, which carried unanimously.

B. Office of Investigations and Enforcement (OIE) Report – Sharon Wolfe

Ms. Wolfe stated that there are currently four do not open cases, one opened case, two pending board action cases, and two closed cases from January 1, 2015 through May 7, 2015. There are a total of three active cases.

Amend Agenda

MOTION

Mr. Burns made a motion that the Board amend the agenda to add 6. C. ODC report. Ms. Pinkney seconded the motion, which carried unanimously.

C. Office of Disciplinary (ODC) Counsel

Mr. Billimoria stated that ODC opened five cases, five cases are pending action, and four cases have been closed.

7. New Business

A. National Auctioneer License Law Officials Association (NALLOA) Meeting

Ms. Holleman informed the Board of the NALLOA meeting on July 17, 2015 in Addison, TX, in case anyone is interested in going.

She stated that the agency usually pays for two Board members and one staff member to attend, which usually includes plane and hotel costs.

Ms. Holleman stated that she doesn't believe the agency will pay for the National meeting except for the regulatory portion of the conference.

Mr. Avendano stated that he would like to attend.

MOTION

Mr. Holiday made a motion that two Board members and one staff member be allowed to attend the conference. Mr. Marchant seconded the motion, which carried unanimously.

B. Advice Counsel-Overview of process for statutory and regulatory changes

Ms. Lewis introduced Ms. Beeson, which is with upper management staff. She stated she is counsel to the Office of Communications and Governmental Affairs.

Ms. Lewis stated that Ms. Beeson will review Title 40 Chapter 6, which refers to the statute, and Chapter 14, which refers to the regulations.

Ms. Beeson stated that her office is made up of two components. One area handles FOIA and subpoena requests for licensees and the other is promulgating any regulation changes. She also stated that LLR staff will help with updating the statute change to the extent the agency will allow.

Ms. Beeson stated that Title 40 governs all Boards/Commission for the agency and most of them have the same language in their statute called the Practice Act. In regards to how a Board/Commission goes about updating the statute, the general rule is that the Board/Commission

doesn't have the authority to update the Practice Act itself. The Board/Commission doesn't have the authority to hire a lobbyist or lobby on behalf of the Board/Commission for any changes. She stated that most Boards/Commissions make changes with the assistance of their association.

She stated that most Boards/Commissions meet to discuss areas that the Practice Act is silent such as online auctions. She said they meet, discuss any suggested changes that need to be made to update the Practice Act, and generally the associations take it from there. The association either retains or has on staff a lobbyist, which is the authorized individual by law under the Ethics Act who may reach out to members of the General Assembly to assist in updating the Practice Act.

An update to the Practice Act would require bill sponsorship from both or either of a Senator or House member.

As for changes to the regulations, the Board/Commission has a lot more control. Ms. Beeson stated that the Board/Commission can review, discuss and suggest changes. Then the Board/Commission can work with Ms. Lewis and her office to get the suggested changes published with the State Registrar.

Ms. Beeson stated that regulation changes are different from statute changes. She stated that statute changes are in the form of Bills that have sponsors from the General Assembly. For regulation changes, there is a term called "read across the desk" where the change is read and sent to a sub-committee. The regulations are then considered, vetted, and a joint resolution could be passed trying to disapprove them. Generally the promulgation process moves forward until the changes have been filed with the General Assembly for 120 days. If no negative action has been taken they become effective as a matter of law.

She stated that Labor, Licensing and Regulation (LLR) tracks these and lets the Board/Commission know when there may be any meetings/hearings regarding these because they are public meetings/hearings. She stated that someone from the agency will attend these meetings/hearings for and with the members of the Board/Commission. The agency will keep the Board/Commission updated on the progress as for as timing for what is known as the 120 day rule.

Ms. Lewis asked Ms. Beeson to explain what may be in the statute and regulations regarding the limitation on expanding the statute instead of the regulations.

Ms. Beeson stated the statute is the black letter law, which governs the licensure and disciplinary process. She stated it is the law parameters for all licensees. The regulations help implement what is in the statute. For instance, if there is language in the statute stating "the licensee is required to have four hours of continuing education (CE) every two years" then the regulations could specify how the licensee may take the continuing education. For example "what subject(s) the CE hours may be in" or "how many CE hours may be allowed for online courses".

Ms. Beeson stated that the Boards/Commissions don't usually make changes to the statute and regulations at the same time.

Ms. Lewis indicated that no one else can make changes to the regulations except for the Board/Commission. Ms. Beeson stated that is correct. Ms. Beeson said that most Boards/Commissions hesitant to make changes to the statute in order to minimize any unwanted changes.

Ms. Beeson stated regulations are different in that the Board/Commission has complete control over what is in the regulations. The only way they will not pass is if someone opposes and stops the regulations from moving forward.

Ms. Lewis stated since the statute doesn't state anything about internet auctions the Board can't bypass the statutory process. It will need to be updated in the statute before it can be updated in the regulations.

Ms. Lewis stated that she can research other states to see how they are handling internet auctions and how they have been successful in monitoring and regulating them. She stated that it is a good idea to mention the NALLOA conference, maybe NALLOA has everything the Commission will need.

Mr. Holiday pointed out that an auction is an auction regardless of how it is taking place. Can the Commission emphasize that if an auctioneer is located in South Carolina or the items are in South Carolina then you must to be licensed.

Ms. Lewis stated that the statute has set a precedent by defining general, absolute, and estate auctions, which would necessitate defining internet auctions, even if a definition of an auction would limit what the Board/Commission can regulate.

Mr. Avendano pointed out that the Uniform Commercial Code (UCC) defines absolute or reserve auctions but not internet auctions. He stated you can have absolute, reserve or estate auctions online.

Mr. Burns stated that if he understands correctly, the point is focusing on the delivery of the auction, whether it's a live, internet or simulcast auction, the Commission has defined it in the regulations without having to define it in the statute. It is strictly the delivery of the auction that should be defined in the regulations since auction itself is already defined in the statute.

Ms. Beeson asked if anyone is aware if there have been any complaints regarding an internet auction that has reached the Commission. Ms. Lewis stated that staff has received several questions regarding internet auctions. Ms. Beeson will ask Christa Bell, the Assistant Deputy Director for the Office of Investigation and Enforcement, since that is where complaints are sent to see if any complaints for internet auctions have been filed for the last five years.

Ms. Holleman stated since she has been Administrator for the last three and a half months, complaints for internet auctions have been received. It is the opinion of the Investigative Review Committee (IRC) that a letter of caution be issued since the statute isn't clear enough for the Commission to take action.

Ms. Holleman stated that it seems to be the opinion that the Commission can't do much with internet auctions the way statute is written at this time.

She stated that she believes the regulation was written in the 1970's and the statute was last revised sometime in the 1990's. She doesn't believe in the late 1990's that anyone had anticipated that the internet would play the part that it does today.

She stated that the minutes from the August 18, 2014, Auctioneers' Commission meeting reference Online Auctions-Licensing Requirements, which Ms. Lewis read:

Ms. Price informed board members of the large volume of emails, and telephone calls staff is receiving regarding out of state auctions. She gave them a print out of some of the questions. A number of the questions are related to Real Estate, and a lot are two part questions. Staff's answer to the online auctions, is, 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.

Mr. Avendano stated that the Commission has been down this road before and it reminds him of the New Hampshire Auctioneer laws, Title XXX Section 311-B4. It states that any business that holds an auction is strictly prohibited unless they are licensed by the Auctioneer Commission. He stated he doesn't know how New Hampshire did it, but he hopes that South Carolina can contact them for advice.

Ms. Lewis read Section 40-6-235(C) states "Licensed real estate broker-in-charge and real estate firms are exempt from auction firm licensure, as provided for in subsection (A), if they employ a licensed auctioneer to handle those aspects of the transactions peculiar to the auctioneer profession".

Mr. Holliday stated that means they should either have an auction firm license or an auctioneer license. Ms. Lewis stated that is correct, they're supposed to have active firm or auctioneers' license.

Mr. Holliday stated that there are massive amounts of online real estate auctions happening out of state, which some of these are licensed through the Real Estate Commission. So he thinks it is a good idea to have an expert in this area to speak to the Auctioneers' Commission. Ms. Lewis stated that she wants to be clear on who the Commission wishes to come speak regarding this matter.

Mr. Holliday stated that his concern is that the Real Estate Broker will conduct an online auction and not use a licensed auctioneer. Ms. Lewis stated then that will be a violation of the Auctioneers' Commission statute, since it states there must be a licensed auctioneer.

Mr. Holliday asked if an online company makes a bid, then they must be a licensed auctioneer firm or be owned by a licensed auctioneer. Ms. Lewis stated no, the company will need to employ a licensed auctioneer.

Ms. Lewis read the Real Estate law regarding auctions:

40-57-135 (C)(6): A licensee clearly shall reveal his license status in a personal transaction involving the purchase, sale, exchange, rental, lease, or auction of real estate. A licensee meets the requirements of this section by disclosing in underlined capital letters on the first page of the contract his license status in the real estate sales contract, exchange, rental, or lease agreement. Monies received in a personal rental transaction must be deposited in the licensee's personal trust account and do not have to be deposited in the broker's trust account, unless the real property is managed by the broker's company.

Ms. Beeson stated she will check with Grant Gillespie to see if he is aware of any way to streamline any possible legislative changes.

Ms. Holleman pointed out that 40-6-235(c) of the Auctioneers' Commission statute states: "Licensed real estate brokers-in-charge and real estate firms are exempt from auction firm licensure, as provided for in subsection (A), if they employ a licensed auctioneer to handle those aspects of the transactions peculiar to the auctioneer profession."

Mr. Avendano suggested that Ms. Lewis and Ms. Holleman review other state laws regarding internet auctions and discuss at the August 2015, Auctioneers' Commission meeting on a possible statute and/or regulation change.

Ms. Holleman stated that she will contact Mr. Darron Mearers to speak to the Commission regarding internet auctions after the NALLOA conference since he is a speaker if the Commission members believe that will be appropriate.

8. Application – request to keep same license number

A. Palmetto Auction & Realty, LLC – Kenneth Rickey Heaton

Ms. Holleman stated that Mr. Kenneth Heaton purchased Palmetto Auction & Realty, LLC, and she explained to him that when the firm is under new ownership the process is to issue a new license number because the legal entity has changed for the firm.

Mr. Heaton submitted a written request stating he wishes to keep the same license number for the new entity for practical purposes because to the general public there will be no change in operation. He stated that they have had that license number since 1999 and it is on their website, signage and other marketing materials and it would be costly to make all those changes unless it was absolutely necessary.

Mr. Avendano inquired on when Mr. Heaton was issued a SC Auctioneers' license. Ms. Holleman stated that Mr. Heaton's license was issued on June 27, 2008.

Mr. Avendano stated that he believes they should be required to get a new license which should have been built into the cost of purchase.

Mr. Marchant stated he agrees and that it will help protect the current and previous owner.

MOTION

Ms. Pinkney made a motion that the Commission deny Mr. Heaton's request to keep the same license number and a new license number to be issued. Mr. Marchant seconded the motion, which carried unanimously.

9. Old Business

A. Auctioneer Exam review and proposed update

Ms. Holleman stated there has been some discussion on having different exams but with questions pulled from the same data bank so the applicant isn't taking the same exam each time.

Ms. Holleman suggested a work group to review the exam questions made up of Mr. Burns, Ms. Holleman and Mr. Ivan Broadwell.

Mr. Burns suggested alternating the exam questions so they aren't taking the same exam.

Ms. Holleman stated she will get with Molly Price, previous Board Administrator, regarding the online exam and the provider.

10. Public Comments (no votes taken)

No public comments at this time.

11. Executive Session (If necessary)

No need for executive session.

12. Return to Public Session

No need for executive session.

13. Adjournment

MOTION

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

The May 18, 2015, meeting of the SC Auctioneers' Commission adjourned at 11:53 a.m.

The next meeting of the SC Auctioneers' Commission is scheduled for August 17, 2015.

.