S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 11, 2009

Opinion No. 09-27

Licensure of Public Automobile Auctioneers

QUESTIONS

1. Does Chapter 724 of the Public Acts of 2008, in effect, require the public automobile auction to be either owned by a sole proprietor that is also a licensed public automobile auctioneer or owned in part by an individual who is a licensed public automobile auctioneer?

2. Is the requirement that the public automobile auctioneer also be a licensed motor vehicle dealer satisfied where the public automobile auctioneer owns, in whole or in part, an entity licensed as a motor vehicle dealer?

OPINIONS

1. A public automobile auction is the means or process of offering motor vehicles for sale to the highest bidder; it is an act or event and thus by its very nature cannot be "owned." The auction must be arranged, managed, or carried out by a licensed public automobile auctioneer, who must be a natural person, and that auctioneer's licensed firm, which may be either a natural person or an artificial legal entity.

2. No. The public automobile auctioneer must be licensed as a motor vehicle dealer.

ANALYSIS

1. A public automobile auction is defined as "offering motor vehicles for sale to the highest bidder where buyers are members of the public by any motor vehicle dealer licensed to sell used motor vehicles, and which dealer is licensed as a public automobile auctioneer." Tenn. Code Ann. §§ 55-17-102(20) (2008) and 62-19-101(9) (Supp. 2008). This type of auction is "licensed and regulated by the Tennessee auctioneer commission and the Tennessee motor vehicle commission." Tenn. Code Ann. §§ 55-17-109(d) (2008) and 62-19-128(a) (Supp. 2008).

(a) A public automobile auction is a means or process and, thus, cannot be owned.

The first question infers that a public automobile auction is something that can be "owned." While some provisions of state law appear to support such an inference, that inference is incorrect. A public automobile auction is defined as "offering motor vehicles for sale to the highest bidder," which is an act, not something that can be owned. Tenn. Code Ann. §§ 55-17-

102(20)(2008) and 62-19-101(9) (Supp. 2008). This language is consistent with the definition of public automobile auctioneer, where the auction is described as a "means or process," Tenn. Code Ann. §§ 55-17-102(21) (2008) and 62-19-101(10) (Supp. 2008), and the definition of auction, which is a "sales transaction conducted . . . between an auctioneer and members of the audience." Tenn. Code Ann. § 62-19-101(2) (Supp. 2008).

Other language in Tenn. Code Ann. §§ 62-19-101 *et seq.* (the "Auctioneers Act") might be read to suggest that a public automobile auction is a legal entity and not a means or process. Tenn. Code Ann. § 62-19-128(b) (Supp. 2008) lists several requirements for licensed public automobile auctions. The auction must have garagekeeper's legal liability insurance, a compiled financial statement, a minimum net worth of at least one hundred thousand dollars, and a current business tax license, and must obtain . . . a valid license from the Tennessee auctioneer commission. Tenn. Code Ann. § 62-19-128(b)(2), (4), (5), (8), and (10) (Supp. 2008). Also, pursuant to Tenn. Code Ann. § 62-19-128(f) (Supp. 2008), "the public automobile auction shall be deemed the seller of the motor vehicle." To avoid a conflict between these provisions and the auction definitions, the provisions should be read as requiring the public automobile auctioneer and the auctioneer's firm, which must arrange, manage, or carry out the auction, to satisfy the requirements of Tenn. Code Ann. § 62-19-128 (Supp. 2008) for the purposes of a particular auction event that is conducted.

> (b) A public automobile auction must be arranged, managed, or carried out by a licensed public automobile auctioneer and that auctioneer's licensed firm.

One must be both a licensed motor vehicle dealer and a licensed public automobile auctioneer to offer motor vehicles for sale at a public automobile auction. Tenn. Code Ann. §§ 55-17-102(20) (2008) and 62-19-101(9) (Supp. 2008). A motor vehicle dealer is "any ***person*** . . . engaged in the business of selling, offering to sell, soliciting or advertising the sale of motor vehicles." Tenn. Code Ann. § 55-17-102(16) (2008) (emphasis added). "Person" is defined as "every natural person, partnership, corporation, association, trust, estate, or any other legal entity." Tenn. Code Ann. § 55-17-102(19) (2008). Thus, a natural person or an artificial legal entity may be a motor vehicle dealer.

An artificial legal entity may not be a public automobile auctioneer. A public automobile auctioneer is "any ***individual*** who, for a fee, commission, or any other valuable consideration, . . . by the means or process of auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase or exchange of goods, including motor vehicles." Tenn. Code Ann. §§ 55-17-102(21) (2008) and 62-19-101(10) (Supp. 2008) (emphasis added). The term "individual" is not defined in Tenn. Code Ann. §§ 55-17-101 *et seq*., or the Auctioneers Act. However, the term "person" in the Auctioneers Act is defined as "an ***individual***, association, partnership, corporation, and the officers, directors and employees of a corporation." Tenn. Code Ann. § 62-19-101(8) (Supp. 2008) (emphasis added). The use of the term "individual" instead of "person" in the definition of public automobile auctioneer limits the licensure of public automobile auctioneers to natural persons.

Other language in the Auctioneers Act might be read to suggest that an artificial legal entity could be licensed as a public automobile auctioneer. The Act provides that "[i]t is

unlawful for any ***person*** to . . . . [a]ct as, or advertise or represent to be a public automobile auctioneer ***unless the person*** is duly licensed as a public automobile auctioneer, and as a motor vehicle dealer under title 55, chapter 17, part 1." Tenn. Code Ann. § 62-19-102(a)(3) (Supp. 2008) (emphasis added). However, this use of the term "person" is likely meant to include firms who arrange, manage, or carry out public automobile auctions, as discussed in the following paragraph, and not to permit artificial legal entities to become licensed as public automobile auctioneers.

Even though an artificial legal entity may not be a public automobile auctioneer, such an entity may arrange, manage, or carry out a public automobile auction. The Auctioneers Act requires "every auctioneer licensed hereunder [to] maintain a place of business in this state at a firm which has been duly licensed by the commission." Tenn. Code Ann. § 62-19-111(g) (Supp. 2008). A firm is defined as "any ***person*** who, as part of such person's business, arranges, manages, sponsors, advertises or carries out auctions." Tenn. Code Ann. § 62-19-101(6) (Supp. 2008) (emphasis added). A person may obtain a firm license, which "must be issued in the name of the firm." Tenn. Code Ann. § 62-19-111(h)(1) (Supp. 2008). Although a "nonauctioneer" may apply for a firm license, Tenn. Code Ann. § 62-19-111(h)(4) (Supp. 2008), the principal of the firm must hold a valid auctioneer's license. Tenn. Code Ann. § 62-19-111(h)(1) (Supp. 2008).

A public automobile auction must be arranged, managed, or carried out by a licensed public automobile auctioneer and that auctioneer's licensed firm. The firm may be an individual or an artificial legal entity. If the firm is such an entity, the auctioneer must be a principal of the firm. Whether the firm is an individual or an artificial legal entity, the firm license must be in the name of the firm.

2. A public automobile auction is defined as "offering motor vehicles for sale to the highest bidder where buyers are members of the public by any motor vehicle dealer licensed to sell used motor vehicles, and ***which dealer*** is licensed as a public automobile auctioneer." Tenn. Code Ann. §§ 55-17-102(20) (2008) and 62-19-101(9) (Supp. 2008) (emphasis added). Because of the "which dealer" language, the motor vehicle dealer must be the one licensed as a public automobile auctioneer, not another legal entity that is owned by the licensed auctioneer. This language is supported by the requirement that "[t]he public automobile auctioneer shall obtain . . . a valid motor vehicle dealer license." Tenn. Code Ann. § 62-19-128(9) (Supp. 2008). Thus, the motor vehicle dealer licensure requirement is not satisfied where the public automobile auctioneer merely owns an artificial legal entity that is licensed as a motor vehicle dealer.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

NICHOLAS G. BARCA
Assistant Attorney General

Requested by:

Bobby Colson, Commissioner
Tennessee Auctioneer Commission
701 James Robertson Parkway
Nashville, Tennessee 37243-1152