

**TENNESSEE  
AUCTIONEER COMMISSION  
MINUTES**

**DATE:** April 4, 2011

**PLACE:** Andrew Johnson Tower – 2<sup>nd</sup> Floor Conference Room  
710 James Robertson Parkway  
Nashville, Tennessee

**PRESENT:** Commission Members:  
David Cole, Vice Chairman; Marvin Alexander; Bobby Colson; and Gary Cunningham

**ABSENT:** Kenneth Dreaden, Chairman

**PRESENT:** Staff Members:  
Donna Hancock, Executive Director; Susan Lockhart, Executive Assistant; Mark Green,  
Assistant General Counsel; and Adrian Chick, Assistant General Counsel

**GUESTS:** Luellen Alexander

**CALL TO ORDER:** Vice-Chairman Cole called the meeting to order at 9:07 a.m. and the following business was transacted:

**ROLL CALL:** Ms. Hancock called the roll. Four (4) of the (5) Commission members were present at roll call. Chairman Dreaden was absent.

**AGENDA:** Ms. Hancock advised that Ms. Orr was unable to be present and asked her to present her report on her behalf. Mr. Alexander made a motion to adopt the agenda as amended, seconded by Mr. Colson. **MOTION CARRIED.**

**MINUTES:** Mr. Alexander made a motion to approve the minutes of the March 7 and 8, 2011 meetings, seconded by Mr. Colson. **MOTION CARRIED.**

Ms. Hancock introduced Gloria Lye and David Freyer to the Commission. She advised that they both assist with the daily operations of licensing for the Auctioneer Commission among other programs and would be observing some of the meeting from the audience.

**NASHVILLE AUCTION SCHOOL REPORT**

Ms. Hancock advised Ms. Orr submitted an email stating that the newsletter is in production and the next seminar is scheduled for June 21, 2011 in Clarksville.

*Mr. Chick joined the meeting at 9:15 a.m.*

**LEGAL REPORT – MARK GREEN, ASSISTANT GENERAL COUNSEL**

Mr. Green presented the following Legal Report for consideration:

1. **2010035171**  
Opened: 1/25/11  
First License Obtained: 2/7/06  
License Expiration: 2/6/08  
Type of License: Auctioneer/Apprentice  
History: No Prior Complaints

Complaint filed that stated the Respondent is conducting auctions every Friday and Saturday night without a license. Respondent failed to respond until investigator contacted him. Investigator noted that respondent's place of business did have a sign stating auctions were conducted. The investigator spoke to the Respondent who admitted he did not have a license but he was planning on retesting. While interviewing the respondent, he admitted he had an auction scheduled for that week. The investigator went into his business and found merchandise, a podium, sound system, cash register and signs. He had his expired license on the wall.

Recommendation: Authorize for a formal hearing and a consent order with a \$1,000 civil penalty in violation of TCA 62-19-102(a)(1)(2).

**MOTION: Mr. Alexander made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.**

2. **2010023791**  
Opened: 8/13/2010  
First License Obtained: 02/05/91  
License Expiration: 07/31/10  
Type of License: Firm  
History: No prior complaints

This complaint involves a Tennessee City School district who in July 2009 hired an auctioneer licensed in Tennessee (principal place of business in Georgia) to conduct an auction for them. The auction netted \$50,494.16 owed to the school. In the complaint the school system stated they had conducted business with the respondent for several years. However, this auction, the respondent failed to remit the funds. After several attempts in contacting respondent, complainant finally received a response in January 2010. In the response, respondent stated that he had not paid "due to an accounting error by an interim accountant that worked for our company, proceeds were inadvertently deposited into an operating account instead of the escrow account." Respondent asked for more time. Complainant gave him until the next month. A request for investigation was made and the investigator discovered after speaking with the respondent and his accounting firm that apparently an employee of the firm had allegedly embezzled funds from the respondent and that the money had indeed been placed in an escrow

account and not an operating account as reported by respondent to complainant at first. No criminal charges have been filed as of yet against that person.

Recommendation: Authorize formal hearing for the suspension or revocation violation of TCA 62-19-112(b)(4).

**MOTION: Mr. Colson made a motion to accept Legal's recommendation and to assess a civil penalty of \$1000.00, seconded by Mr. Alexander. MOTION CARRIED.**

**The Commission recommended a letter be sent to the Complainant involved in this matter regarding a judgment and application to the Education and Recovery fund. Also, the Commission asked that staff notify the Georgia Auctioneer Commission of the complaint and action taken.**

**3. 2011001351**

Opened: 2/24/2011

First License Obtained: 07/10/07

License Expiration: 07/09/11

Type of License: Firm

History: No prior complaints

This is a complaint about a newspaper advertisement in which the respondent is selling automobiles, and lists that there is "No Bidders Fee" in bold lettering. Beneath that lettering but in smaller letters the statement Buyers Premium \$100-\$300. In response the auction firm manager states he does not believe the advertising to be misleading as there is no bidders fee but only a buyers premium if they bid and purchase.

Recommendation: This matter seems to be vague and could be misleading. The intent is that there is no fee to come bid on the vehicles but adding the "Buyer's premium" at the successful purchase in essence means there is. Recommend a letter of warning with suggested clarification as directed by commission.

**MOTION: Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.**

Mr. Green also presented a spreadsheet of the outstanding consent orders that were previously authorized by the Commission. After some discussion, he advised that he would present a report of both the paid and unpaid consent orders at the next meeting.

**ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR**

**Waiver Request – Tim Pennington, Auctioneer** – Ms. Hancock presented a request from Mr. Pennington to waive the additional thirty (30) hours of education and retesting requirements for reinstating his license. Mr. Cunningham made a motion to approve the request, seconded by Mr. Alexander. **Motion Carried.**

**NALLOA Conference July 12-16, 2011 – Orlando, FL** – Ms. Hancock advised that she and Mr. Cunningham will both be unable to attend the conference as discussed at the last meeting. After some discussion, the Commission asked that requests be submitted for Mr. Alexander, Mr. Cole and Ms. Lockhart to attend the conference on their behalf. Mr. Cole advised that he would confirm his availability to attend with Ms. Hancock later in the week.

**Complaint Status Report** - Ms. Hancock presented a comparison of the complaints pending in March 2010 to those currently pending.

**FTC Computer Complaint 2010 Information** – Ms. Hancock presented copies of the FTC Computer Complaint 2010 Information. She pointed out that "Internet Auctions" rated seventh (7<sup>th</sup>) in the nation and sixth (6<sup>th</sup>) in Tennessee for computer related complaints.

**Information from the Packers and Stockyards Administration** – Ms. Hancock advised the Commission that she contacted that Packers and Stockyard Administration regarding the questions that arose during the last meeting and received the following answers:

*What animals are considered livestock?* The Packers and Stockyards Administration enforces the Packers and Stockyards Act of 1921 and has jurisdiction over cattle, hogs, horses, mules, sheep, and goats. They only regulate chicken and turkey growers who grow birds for the large processing plants such as Tyson. They do not have jurisdiction over exotic animals such as ducks, rabbits, etc.

*Is there a minimum number of livestock auctions an auctioneer can conduct without having to register with the Packers and Stockyards Administration?* Auctioneers do not have to register with the Packers and Stockyards Administration. The only auctioneer that would have to register is one who is actively involved in buying or selling livestock for themselves or someone else. It is against the regulations for any auctioneer to buy livestock at a market when they are auctioning the sale. They may buy at the market if they have no direct or indirect involvement in the sale.

Commissioner Alexander asked Ms. Hancock to find out how many livestock auctions can be held in one location before a firm or gallery must register with the Packers and Stockyards Administration. Ms. Hancock advised that she would submit the question and report the answer at the next meeting.

*The Commission took a break at 10:15 a.m. and reconvened at 10:25 a.m.*

**OLD BUSINESS:** Mr. Chick advised that a formal notice of hearing and charges had been filed based on the complaints presented at the last meeting. He advised that the hearing is scheduled for June 8, 2011 and may last through June 10, 2011. He referred the commissioners to copies and summaries of twenty-one (21) additional complaints to be included in the hearing and recommended they consider summarily suspending the licenses of the auctioneer and the auction firm involved until the matters could be heard. He further advised that the commissioners could review the information but should not discuss it with one another pending the hearing. The commissioners then took the opportunity to individually review the complaints in silence on record.

*Mr. Chick left the meeting briefly from 10:42 a.m. until 11:05 a.m.*

Mr. Green left the meeting briefly from 11:05 a.m. until 11:10 a.m.

Mr. Colson left the meeting briefly from 11:30 a.m. until 11:32 a.m.

After review and clarification of some questions, Mr. Colson made a motion to adopt the finding of facts presented and proceed with an order for summary suspension stating the public's health, safety and welfare require it. The motion was seconded by Mr. Alexander. **Motion Carried.**

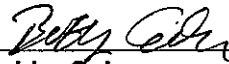
**NEW BUSINESS:** No new business was discussed.

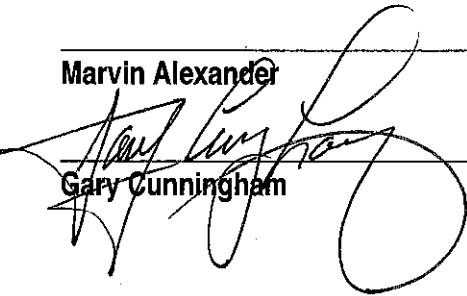
**Being no further business to discuss the meeting adjourned at 11:43 a.m.**

  
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Kenneth Dreaden, Chairman

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David Cole, Vice-Chairman

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Marvin Alexander

  
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Bobby Colson

  
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Gary Cunningham