

MINUTES OF THE STATE AUCTIONEERS COMMISSION
OHIO DEPARTMENT OF AGRICULTURE Seminar Room B
8995 E. MAIN STREET, REYNOLDSBURG, OH 43068
November 7, 2014

PRESENT:

Commissioner Rich Kruse
Commissioner Doug Walton
Commissioner Gary Cain
Commissioner Sherri Orr

David Miran, Senior Staff Counsel
Jim Patterson, Assistant Attorney General
Donna Brinker Potter, Auctioneer Program Manager

Members of the Public:

Kathy Baber, OAA
Peter Gehres, OAA
Tim Beathard, OAA

Meeting called to order at 9:32. All members of the commission are present except Bart Sheridan who had called stating he would not be able to attend. Chairman Walton asked the commission to review the minutes from the last meeting. Commissioner Orr moved to accept the minutes as presented. Commissioner Kruse seconded. No further discussion noted. The motion to approve minutes was passed by an affirmative vote of all members present.

The first item on the agenda was the election of the chairperson. Commissioner Cain recommended that they keep the current chairperson. Commissioner Kruse seconded. Commissioner Walton expressed his appreciation for their vote of confidence. Motion carried with an affirmative vote of all members present.

The next item on the agenda is the setting of the 2015 calendar. Donna Potter stated that the commission is required to meet quarterly. She stated in the past that they had met in January, April, July, and October; however, last year the commission adjusted the meetings to January, April, August, and November. She stated that as long as they met quarterly, they could set the meetings at their choice. Ms. Potter stated that in the past the commission also tried to work around the Easter holiday and spring break, the NAA Conference and Show, and the State Fair. The meeting dates subject to room availability were set for January 16, 2015, April 24, 2015, August 21, 2015, and November 6, 2015.

The next item on the agenda is the Five Year Rule Review. David Miran stated that every five years JCARR will review all rules to see if they comply with requirements and it also gives the agency to review the rules and change, add, or delete rules. Mr. Miran stated that 901:8-2 and 901:8-3 are both up for the Five Year Rule Review. He stated that he went through and made changes to make the rule read as easy as possible. It is intent for someone who is not licensed to be able to understand them. Most of the changes were self-explanatory. Commissioner Kruse questioned the concept of financial harm. Jim Patterson stated that the courts were familiar with the concept. Donna Potter stated that any action taken would be separate from the Recovery Fund that these rules dealt with disciplinary action for the violation. Commissioner Orr questioned the difference between major and serious. She felt that major should be more severe than a serious violation. David Miran explained that it was just the classification. Chairman Walton asked what the ongoing procedure would be. David Miran responded that this is just the first step. The next step is e-notification of the rules being sent to interested parties. The rules are also reviewed by CSI, the Common Sense Initiative, for their approval. They look at the impact of the rule on businesses. After CSI approval, the rules then go to JCARR. He stated that it is a lengthy process. He stated that if he got approval today, it would take about five months to finish the process. Chairman Walton asked that the commission be able to review the rules and get back to him at the next meeting. David Miran also updated the commission on the rule update for the verbal exam scoring. He stated that the rule is currently at CSI and he is awaiting their feedback so he can file with JCARR.

He stated that the rule should be effective by the April 2015 exam. He stated that if they had any questions to please give him a call.

The next item on the agenda is absolute auction subcommittee. Commissioner Cain stated that the subcommittee met on November 6, 2014 and the minutes would be available for the January meeting. He stated that the meeting was attended by Andy White, Bart Sheridan, Gary Cain, and Richard Kiko Jr. He stated that they hope to put their suggestions together to bring before the commission. He stated that they were concerned with setting deposits for absolute auctions and with multi-par auctions. He stated that they did not set a next meeting date. Chairman Walton asked for any questions.

Enforcement update was given by Jim Patterson and Donna Potter. Jim Patterson stated that Lydia Arko from his office is learning about ODA and its programs in case of his absence, someone will be ready and up to speed to deal with hearings, commission meetings and court appearances. He stated that hopefully she would be at the next meeting to meet the commission. Mr. Patterson stated that there were a couple of cases in the pipeline and he hoped to be able to review them with the commission at the next meeting. Commissioner Orr asked approximately how many hearings the program conducts in a year. Donna Potter stated that the department conducts approximately 80 investigations a year and roughly 1/3 result in a notice of hearing letter. Jim Patterson stated that there are less than twelve hearings a year. He reminded the commission that there is a variety of options to the department in terms of handling a violation. He said the department could issue a letter of instruction which is not formal discipline to suspension, financial penalty, or revocation. David Miran stated that the department wants the industry to thrive and grow and the letter of instruction is the first option and it allows the license to correct the issue prior to formal discipline. Donna Potter stated that she had recently gotten a call from an auctioneer who stated that he had been audited by the taxation department. He had told her that he was informed that he needed to charge sales tax on his commission. She had not heard anything from anyone else and was passing the information on to the commission in case there was a change in the sales tax regulations that they needed to be aware of. Commissioner Cain questioned if the caller was maybe confused with tax on a buyer's premium.

Chairman Walton asked for any other business before the commission. Commissioner Kruse brought up HB 586 which would make changes to R.C. 2329 relating to foreclosure sales. He stated that it would significantly modify auctioneers conducting the sale rather than the sheriff. He stated that the changes are being pushed by the foreclosure attorneys and financial institutions. Peter Gehres stated at the last commission meeting the commission approved the mailing to all licensed auctioneers a flyer regarding the winter conference. He said that they had requested the addresses of all licensees and in the past the list was provided in an excel spreadsheet. This time it was provided in a PDF. He asked the commission if they could please explain why. Ms. Potter stated that she could explain it. Donna Potter stated that there was a new chief legal counsel who has stated that public record requests would be electronically responded to in the form of a PDF. Any other format can be altered and the department cannot provide the public records in a format that could be alterable to ensure security of the document. Peter Gehres invited everyone to attend the winter conference. Chairman Walton asked for any other business; no further business was brought before the commission. Commissioner Cain moved to adjourn the meeting. Commissioner Kruse seconded. No further discussion noted. Meeting adjourned at 10:35 am by an affirmative vote of all members present.

Approved Chairman