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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Frank McDaniel
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Auctions and Auctioneers – Licenses
and Permits – Auctioneers, Board of
– Internet – Marshall County

Internet consignment shops are not acting as auctioneers and are not subject to regulation by the Board of Auctioneers when the Internet consignment shops are merely acting as an intermediary between the seller of goods and an Internet sales or auction website if the Internet sales or auction website does not engage in bid calling or the sale of things of value at public outcry as those terms are used in sections 34-4-2 and 34-4-27 of the Code of Alabama.

Internet consignment shops that hold themselves out as auctioneers are subject to regulation by the Board of Auctioneers.

Dear Representative McDaniel:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Is the definition of "auctioneer" located in section 34-4-2 of the Code of Alabama supplemented by the definition of "auctioneer" found in section 34-4-27 of the Code? If so, is the Board of Auctioneers authorized to regulate brick and

mortar stores within the state that contract with sellers to list goods with an online sales or trading platform?

FACTS AND ANALYSIS

In your letter of request, you asked this Office to clarify the opinion to Honorable Keith Warren, Executive Director, State Board of Auctioneers, dated June 6, 2007, A.G. No. 2007-101. The question in that opinion was whether the Auctioneers License Act ("Act") confers jurisdiction on the Board of Auctioneers ("Board") to regulate the activities of Internet consignment shops within the State of Alabama. The *Warren* opinion was based on a specific set of facts in which an Internet auction consignment shop was responsible for listing items for sale with an Internet service provider and either used the term "auction" in its name or held itself out as selling items with an Internet auction service provider. Based on those facts, this Office concluded that the Act confers the Board jurisdiction to regulate the activities of Internet consignment shops within the State of Alabama if the Board determines that these entities are engaging in the auction business.

You have informed this Office that many Internet consignment shops simply act as an intermediary between the seller of goods and the Internet sales or auction website and, as a result, do not negotiate or attempt to negotiate a listing contract, sale, purchase, or exchange of goods as contemplated in section 34-4-2(6) Code of Alabama. You ask whether the Board is authorized by the Auctioneers License Act to regulate entities that serve as an intermediary between a seller of goods and an online sales or trading platform. As stated in the *Warren* opinion, Alabama law defines the "business of auctioneering" as "the performing of any acts of an auctioneer or apprentice auctioneer." *Warren* at 3. Section 34-4-2 defines "auctioneer" as follows:

AUCTIONEER. Any person who has graduated from an accredited auction school and has one year's experience as an apprentice auctioneer or has two years' experience as an apprentice auctioneer in *bid calling*, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of or process of an auction or sale at auction, offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of goods, chattels, merchandise, real or personal property or of any other commodity

which may lawfully be kept or offered for sale by
or at public auction.

ALA. CODE § 34-4-2(1) (2002) (emphasis added). This section requires that an auctioneer must have either graduated from an accredited auction school and have one year of experience as an apprentice auctioneer or have two years of experience as an apprentice auctioneer in bid calling. *Id.*

Section 34-4-27 regulates privilege licenses for auctioneers and also addresses the meaning of the term "auctioneer." It provides as follows:

Each auctioneer shall annually pay one state license in an amount not to exceed two hundred fifty dollars (\$250). Each auctioneer shall also annually pay a county license of twenty-five dollars (\$25) in each county where he or she sells by auction. No privilege license shall be required for any apprentice auctioneer when he or she is listed as the principal auctioneer. No license shall be required for any auctioneer who conducts an auction, without compensation for himself or herself, where all proceeds from the auction go to the benefit of any charitable organization. *The term "auctioneer" shall include any person selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value at public outcry.* Sales at public outcry may be made for compensation without license involving any of the following:

- (1) Sales for the estate of a decedent.
- (2) Sales of property conveyed by deed of trust, mortgage, judgment, or ordered to be sold according to the mortgage, judgment, or order.
- (3) All sales under legal process.

ALA. CODE § 34-4-27 (2002) (emphasis added). Pursuant to this section, the term "auctioneer" includes any person selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value at public outcry. *Id.*

As a general rule, multiple sections of the Code dealing with the same subject matter are to be construed *in pari materia* and should be

construed together to ascertain the meaning and intent of each. *Locke v. Wheat*, 350 So. 2d 451 (Ala. 1977). Moreover, where more than one Code section is involved, each should be construed in harmony with the other Code sections in effect, so far as is practical. *Kinard v. Jordan*, 646 So. 2d 1380, 1383 (Ala. 1994). Because section 34-4-2 defines the term "auctioneer" and section 34-4-27 practically amends or adds to that definition, these two sections must be construed *in pari materia* to properly determine their meaning.

Section 34-4-2 requires an auctioneer to have either graduated from an accredited auction school and have one year of experience as an apprentice auctioneer or have two years of experience as an apprentice auctioneer in "*bid calling*." Section 34-4-27 states that the term "auctioneer" "shall include" any person who sells things of value at "*public outcry*." No other definition of auctioneer, however, is set forth in the Code. Reading chapter 4 of title 34 as a whole, the term "auctioneer" is limited to a person who engages in bid calling or who sells at public outcry. Accordingly, Internet consignment shops are not acting as auctioneers and, therefore, are not regulated by the Board of Auctioneers when the Internet consignment shops are merely acting as an intermediary between the seller of goods and an Internet sales or auction website if the Internet sales or auction website does not engage in bid calling or the sale of things of value at public outcry as those terms are used in sections 34-4-2 and 34-4-27 of the Code.

As noted in the *Warren* opinion, "[t]he definitions used in section 34-4-2 of the Code were developed and codified in 1973 and do not fully address the technological services that are available for the public today." *Warren* at 3. The definition of auctioneer in section 34-4-2 includes those who "negotiate[] or attempt[] to negotiate a listing contract." ALA. CODE § 34-4-2 (2002). This language was intended to address the traditional practice of auctioneering as it existed in 1973 and, thus, does not apply to modern intermediary Internet consignment shops, unanticipated by the 1973 section drafters.

Notably, section 34-4-20 states that "[i]t shall be unlawful for any person not licensed under the provisions of this chapter to advertise that he is in the auction business or to do anything to leave any impression upon the public that he is an auctioneer or is so engaged." ALA. CODE § 34-4-20 (2002). Therefore, an intermediary Internet consignment shop that actually advertises or otherwise holds itself out as an auctioneer would subject itself to regulation by the Board of Auctioneers and, if not properly licensed, would additionally be in violation of section 34-4-20 of the Code. To the extent that this opinion conflicts with the opinion to Honorable Keith Warren, Executive Director, State Board of Auctioneers, dated June 6, 2007, A.G. No. 2007-101, that opinion is hereby modified.

CONCLUSION

Internet consignment shops are not acting as auctioneers and are not subject to regulation by the Board of Auctioneers when the Internet consignment shops are merely acting as an intermediary between the seller of goods and an Internet sales or auction website if the Internet sales or auction website does not engage in bid calling or the sale of things of value at public outcry as those terms are used in sections 34-4-2 and 34-4-27 of the Code.

Internet consignment shops that hold themselves out as auctioneers are subject to regulation by the Board of Auctioneers.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Noel S. Barnes of my staff.

Sincerely,

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Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

TK/NB

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