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Honorable Rachel Laurie Riddle
Chief Examiner
Department of Examiners of Public Accounts
401 Adams Avenue, Suite 280
Montgomery, Alabama 36104

Auctioneers, Board of – Auctions and
Auctioneers – Licenses and Permits –
Internet

The jurisdiction of the Alabama State Board of Auctioneers extends to internet auctions provided that all members of the community (1) have an opportunity to publicly bid; (2) are sufficiently notified of the time, place and collateral to be sold; and (3) have access to the location of the sale and the collateral.

Dear Ms. Riddle:

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

QUESTION

Does the Alabama State Board of Auctioneers have licensing jurisdiction over online auctions that are open to the public in light of the amendments to section 34-4-27 of the Code of Alabama?

FACTS AND ANALYSIS

As you indicate in your opinion request, this Office issued an opinion in 2018 to Honorable Keith E. Warren, Executive Director, Alabama State Board of Auctioneers, dated Jul. 6, 2018, A.G. No. 2018-040, opining that the Alabama State Board of Auctioneers (“Board”) did not have licensing jurisdiction over internet auctions which did not involve bid calling present in traditional crying auctions. When the *Warren* opinion was issued, section 34-4-27 of the Code required that an “auctioneer” coming under the licensing jurisdiction of the Board to sell things of value at “public outcry.” You ask whether the Board has licensing jurisdiction over internet or online auctions open to the public now that section 34-4-27 of the Code has been amended to no longer require an auctioneer to sell items at “public outcry.”

This Office based its conclusion in *Warren* that the Board did not have licensing jurisdiction over internet auctions on the definition of “auctioneer” as set out in sections 34-4-2(1) and 34-4-27 of the Code. *Warren*, at 2. Section 34-4-2(1) of the Code defines “auctioneer” as:

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) (2019) (emphasis added). Although this provision does not contain any requirement that the sale of things at public value occur at “public outcry,” this Office read this definition *in pari materia* with section 34-4-27 of the Code which more specifically defines the term “auctioneer” in the context of who falls under the Board’s licensing jurisdiction. When the *Warren* opinion was issued, section 34-4-27 of the Code provided that “[t]he term ‘auctioneer’ shall include any person selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value at *public outcry*.” ALA. CODE § 34-4-27 (2010) (emphasis added). Because the internet auctions at issue in *Warren* did not involve bid calling or selling items at public outcry, they did not fall within the licensing jurisdiction of the Board.

After this Office issued the *Warren* opinion, however, the Legislature amended section 34-4-27 of the Code to provide that “[t]he term ‘auctioneer’ shall include **any person** selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value by or at **public auction.**” ALA. CODE § 34-4-27 (Supp. 2022) (emphasis added). By deleting the word “outcry” and replacing it with “auction,” the Legislature indicated its intent to abolish the requirement that auctioneers subject to the licensing jurisdiction of the Board sell things of value at public outcry and replace it with the requirement that they merely sell things of value at a public auction. Additionally, the Board currently defines “Auction” as “[a] public sale of property to the highest bidder,” a definition broad enough to include internet auctions. ALA. ADMIN. CODE r. 150-X-1.01(2).

In its opinion to Honorable Michelle Franklin, City Clerk, City of Piedmont, dated Aug. 30, 2011, A.G. No. 2011-095, this Office defined the term “public auction” in the context of whether an online auction constituted a public auction under section 11-47-116 of the Code. That provision authorized the police chief to sell found, abandoned, and stolen property at a “public auction.” ALA. CODE § 11-47-116(b) (2008). This Office set three criteria for determining whether an auction is public:

- (1) whether the sale offered the public an opportunity to competitively bid; (2) whether there was sufficient advertising prior to the sale notifying the public of the time, place, and collateral to be sold; and (3) whether the public had access to the place of the sale and the collateral.

Id. at 3, citing Michael Korybut, *Using an Online Auction to Sell Article 9 Collateral*, 61 Consumer Fin L.Q. Rep. 792, 798-799 (2007). As this Office recognized in *Franklin*, the plain meaning of the term “public” is defined as “a place accessible . . . to all members of the community.” *Franklin*, at 3, quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1836 (2002). Therefore, the licensing jurisdiction of the Board extends to internet auctions in which all members of the community (1) have an opportunity to publicly bid; (2) are sufficiently notified of the time, place and collateral to be sold; and (3) have access to the location of the sale and the collateral are subject to the licensing jurisdiction of the Board. We note, however, that section 34-4-20 of the Code makes it “unlawful for any person . . . **in any county of this state** to act as an auctioneer . . . without first obtaining a license” Ala. Code § 34-4-20 (2019) (emphasis added). Accordingly, enforcement against an out-of-state auctioneer is not authorized.

Although the definition of “auctioneer” set out in section 34-4-2(1) of the Code requires a certain level of education and experience for auctioneers, these requirements do not limit the Board’s licensing jurisdiction as set forth in section 34-4-27 of the Code. Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). The plain meaning of section 34-4-27 of the Code clarifies that “any person” who sells things of value by or at public auction falls under the Board’s licensing jurisdiction, regardless of his or her education or experience. ALA. CODE § 34-4-27 (Supp. 2022). This opinion does not address to what extent the Board may discipline someone for selling things of value at public auction without the requisite education and experience.

CONCLUSION

The jurisdiction of the Alabama State Board of Auctioneers extends to internet auctions provided that all members of the community (1) have an opportunity to publicly bid; (2) are sufficiently notified of the time, place and collateral to be sold; and (3) have access to the location of the sale and the collateral.

I hope this opinion answers your question. If this Office can be of further assistance, please contact John Porter of my staff.

Sincerely,

STEVE MARSHALL
Attorney General

By:



BEN BAXLEY
Chief, Opinions Division